



Fort Myers Beach Town Council

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

Agenda

Monday, June 5, 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 May 15, 2023
- IX. CONSENT AGENDA**
 - A. Farmers Market
Special Event - Farmers Market Under the Bridge.
 - B. Resolution 23-52 Heavy Equipment Purchase
Motion to approve Resolution 23-52 entitled: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK CONTRACT BETWEEN THE TOWN AND CREEL TRACTOR COMPANY. IN AN AMOUNT NOT TO EXCEED \$108,416.46, UTILIZING SOURCEWELL CONTRACT 031121, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT, EXPEND FUNDS, AND TAKE ALL APPROPRIATE ACTIONS TO PURCHASE A REPLACEMENT TRACTOR; AND PROVIDING FOR AN EFFECTIVE DATE.

- C. Authorize Town Manager to approve Coastal Engineering Consultants, Inc. STA# 4 for Contract RFQ-21-09-EN to monitor shorebird nesting for the Emergency Berm Project.

Motion to authorize the Town Manager to approve Coastal Engineering Consultants, Inc. STA# 4 for Contract RFQ-21-09-EN to monitor shorebird nesting for the Emergency Berm Project.

- D. RFQ-20-22-AD, STA #8

Motion to approve STA #8 authorizing the appropriation of additional funds for Axis International to continue to provide planning and zoning professional services.

X. PUBLIC HEARINGS

- A. Ordinance 23-08; Parallelogram Lot Setbacks

Final Reading and Public Hearing on proposed Ordinance 23-08 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, ADDING SECTIONS 34-269 PARALLELOGRAM LOT SETBACKS, AND ASSOCIATED DEFINITIONS IN CHAPTER 34, ARTICLE I., SECTION 34-2 DEFINITIONS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

- B. Ordinance 23-10; Olde Seaport CPD and MCP Amendment

First reading and Public Hearing on proposed Ordinance 23-10 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 17-39, AND AMENDING THE AREA FOR CONSUMPTION ON PREMISES AND THE MASTER CONCEPT PLAN FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 645 OLD SAN CARLOS 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 June 20, 2023 at 9:00 a.m.

- C. Ordinance 23-11; Setbacks for residential uses in nonresidential districts

First Reading and Public Hearing on proposed Ordinance 23-11 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SUBDIVISION II. DOWNTOWN ZONING DISTRICT, SECTION 34-674 BUILDING PLACEMENT; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on June 20, 2023 at 9:00 a.m.

- D. Ordinance 23-12; Amending side setbacks for lots less than 50 feet wide
**First Reading and Public Hearing on proposed Ordinance 23-12 entitled:
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA
AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, TABLE 34-3
DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS;
PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S
ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the
first public hearing and schedule for second reading and final adoption
on June 20, 2023 at 9:00 a.m.**

XI. ADMINISTRATIVE AGENDA

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 STREAMED LIVE ON YOUTUBE.

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



**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.



Fort Myers Beach Town Council

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

Minutes

Monday, May 15, 2023

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member Veach moved to approve the minutes; second by Council Member Woodson.

Motion carried unanimously.

V. PUBLIC COMMENT

Ed Ryan from Beach Talk Radio thanked 35 volunteers and sponsors for helping with the 5k run. There were four hundred runners and not one injury. He reported that the event raised \$11,000.00 for FMB Strong. He presented interim Town Manager Wilkins with a gift to remember the beach by.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Dr. Traci Kohler, Principal of Fort Myers Beach Elementary, was grateful to the district, town and the community for supporting each other. She reported that student assessments took place and the students were out-performing other schools in the district, especially in grades 3-5. She thanked the community for

their love and support and noted that the school received \$50,000.00 from the estate of Joseph Bishop.

The historic building will be remediated, and students are expected to be in class by the fall. She invited everyone to the musical at 5:30 p.m. in Times Square on Tuesday.

Council Member King noted that Council Members Woodson and Veach recently had birthdays. He thanked everyone who was involved with the beach elementary school meetings. He thanked a list of people whose support and help was essential. He attended the South Florida Water Management governing board meeting and the CEO of the Conservancy offered to help the town. Council Member King will work with him regarding tickets for a summer school event at the facility.

Vice Mayor Atterholt acknowledged John Goss, Jenny Tardiff, Patrick Vanasse and Monica Schmucker for their passion and for managing the beach school effort when their lives were in disarray. He thanked them for their efforts and Ed Ryan for organizing the 5k run. He suggested that the town begin to think about having events during off-season. He thanked interim Town Managers Wilkins and Holley. Council Member Woodson thanked the parents, teachers and kids of the beach school. She was proud of what everyone accomplished. She agreed with holding events off-season and suggested a festival for the 4th of July since they were not having fireworks. She thanked interim Town Managers Wilkins and Holley.

Council Member Veach was proud of the community for showing strength and compassion regarding the beach elementary school. He thanked interim Town Managers Wilkins and Holley.

Mayor Allers was proud of the community for their efforts and the positive outcome of the beach school negotiations. He thanked Ed Ryan for the beach run event and the TDC (Tourist Development Council) for approving their requests. The information will be on the town's website. He thanked interim Town Managers Wilkins and Holley.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Steve Johnson, Chair of the Marine & Environmental Resources Task Force, reviewed a list of items in his report and requested guidance on issues. He questioned whether anything needed to be added or removed from the list. Vice Mayor Atterholt suggested partnering with the beach school to formulate ideas for a magnet school. Chair Johnson agreed to add the topic to their agenda. Council Member Veach brought up funding for the tree giveaway and Chair Johnson commented that he would call nurseries. Vice Mayor Atterholt questioned whether Tidal Basin could be a resource. Interim Town Manager Wilkins confirmed that Tidal Basin was looking for funding opportunities. Mayor Allers commented that repairing beach accesses was a high priority and that Times Square should be identified as a beach access. Council Member Veach thought there was a way to get the designation and Chair Johnson replied he would research the topic.

Council Member Woodson brought up the importance of Bayside Park and felt that it should be a high priority.

VIII. APPROVAL OF MINUTES

- A. Town Council May - 1, 2023
Council Member King moved to approve the minutes; second by Council Member Woodson.
Motion carried unanimously.
- B. Management & Planning Session - May 4, 2023
Alyza presented from Tidal Basin, not Eliza.

Council Member King moved to approve the amended minutes; second by Council Member Woodson.
Motion carried unanimously.

IX. CONSENT AGENDA

Council Member Veach moved to approve the Consent Agenda with items A and D pulled for discussion; second by Council Member Woodson.
Motion carried unanimously.

- A. Resolution 23-51, Utility Vehicle Replacement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK CONTRACT BETWEEN THE TOWN AND TAMIAMI FORD, INC. IN AN AMOUNT NOT TO EXCEED \$49,054.38, UTILIZING COLLIER COUNTY CONTRACT 19-7522, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT, EXPEND FUNDS, AND TAKE ALL APPROPRIATE ACTIONS TO PURCHASE A REPLACEMENT UTILITY VEHICLE; AND PROVIDING FOR AN EFFECTIVE DATE.

Public Works Director Jason Freeman explained that a transit van had broken down and needed to be replaced or repaired. He introduced Utilities Manager Steve Matuska, who explained why they needed a new utilities vehicle.

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

- B. Bay Oaks Youth Programming

Accept the Fort Myers Beach Community Foundation donation of \$8,000.00 to be used towards Bay Oaks youth programming.

Council Member Veach moved to accept the donation; second by Council Member Woodson.
Motion carried unanimously.

- C. RFP-23-13-CR; Partial Re-Roof of Mound House

Approve the Selection Advisory Committee's recommendation in response to RFP-23-13-CR entitled Partial Re-roof of Mound House, and authorize the Town Manager to negotiate and execute an agreement with Crowther Roofing and Sheet Metal of Florida, Inc.

Council Member Veach moved to approve; second by Council Member Woodson.

Motion carried unanimously.

D. RFP-17-29-AD; Emergency Debris Removal

Approve 60 day extension of debris removal services agreement with Crowder Gulf

Interim Town Manager Wilkins stated the extension was changed from 60 days to 120 days.

Council Member Veach moved to approve; second by Council Member Woodson. Motion carried unanimously.

X. PUBLIC HEARINGS

A. Ordinance 23-05; Temporary Housing

Final Reading and public hearing for proposed Ordinance 23-05 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE PLACEMENT OF TEMPORARY HOUSING AND TEMPORARY GOVERNMENTAL USE FACILITIES IN SPECIFIED ZONING DISTRICTS OF THE TOWN, PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, SUNSETTING OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Town Manager Hyatt stated that the temporary trailers were already set up. Town Attorney Herin, Jr. suggested adding the following sentence to the end of paragraph two on page 323: "A TTP shall not be used for the purpose of placing and operating a short-term rental." Adding this statement will clarify that an RV cannot be used for a short-term rental. Mayor Allers questioned whether the ordinance would have to come back to align with possible legislation from the state.

Town Attorney Herin, Jr. replied negatively.

Council Member Woodson mentioned that some people lost their income when their rental property was destroyed. Mayor Allers indicated that the legislature could allow businesses to litigate against municipalities when changes were made to affect their business. He wondered whether the town was restricting their ability to operate their business. Town Attorney Herin, Jr. stated that they were not making a change and trailers were not identified as eligible structures to be licensed for short-term rentals. He did not think a lawsuit would be successful, especially since the ordinance's purpose was to provide relief to individual homeowners whose homes were damaged or destroyed.

No public comment.

Council Member Veach moved to approve the ordinance as amended by the Town Attorney; second by Vice Mayor Atterholt.

Motion carried unanimously by roll call vote.

B. Ordinance 23-07: Parallelogram Lot Setbacks

1st Reading and Public Hearing on proposed Ordinance 23-07 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, ADDING SECTIONS 34-269 PARALLELOGRAM LOT SETBACKS, AND ASSOCIATED DEFINITIONS IN CHAPTER 34, ARTICLE I., SECTION 34-2 DEFINITIONS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on June 5, 2023 at 9:00 AM

Mayor Allers read the title of the ordinance. Community Development Planner Sarah Propst utilized PowerPoint for her presentation. Slides included: Parallelogram Lots - Proposed Ordinance Amendments; New Definitions; New Diagram and Explanation.

Public comment:

Tyler Knafelc from Homebound described one of his client's experiences designing a house under old setbacks. (The recording skipped before he could finish the first sentence.)

Public comment closed.

Mayor Allers was cautious regarding changing side setbacks.

Council Member Veach was uncomfortable with reducing side setbacks for one builder's design.

Mayor Allers thought the design referred to would fit within the current setbacks.

Vice Mayor Atterholt commended the LPA for a reasonable and practical solution.

Mayor Allers liked the fact that the solution did not have an adverse effect on public safety.

Council Member Veach moved to move Ordinance 23-07 to a second reading on June 25, 2023, at 9:00 a.m.; second by Council Member Woodson.

Motion carried unanimously by roll call vote.

XI. ADMINISTRATIVE AGENDA

A. Resolution 23-45; Interlocal Agreement regarding Fort Myers Beach Elementary

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY AND THE TOWN OF FORT MYERS BEACH REGARDING THE REBUILD, EXPANSION AND OPERATION OF FORT MYERS BEACH ELEMENTARY SCHOOL; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE MAYOR AND AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE INTERLOCAL

AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Herin, Jr. recognized and acknowledged the parents' hard work, the ad-hoc committee and everyone else who supported the effort. The interlocal agreement (ILA) provided for the rebuild, improvements and eventual expansion of the beach school.

Public comment:

John Goss thanked everyone and noted that the cost per student was the driving issue. He indicated that Dr. Kohler was working hard to find savings. He clarified that the issue was not how many children were enrolled by a specific date, but the cost-per-student had to be in line with Sanibel and Pine Island. He stated that the community would have to start raising money for the school. He requested that 5th graders be allowed to continue the tradition of putting their handprints and names on the sidewalk in the cement. Patrick Vanasse thanked everyone for their support. He felt the ILA was a good compromise and fair for both parties. If the cost-per-student criteria are not met in four years, the town would have to find other options. He noted 25 kids could participate in summer school at the Mound House this year.

Monica Schmucker requested that the Council support the ILA. She thanked Town Attorney Herin, Jr. for working hard to listen, engage and understand the parents. She also thanked Vice Mayor Atterholt for his compassion, wisdom and listening to the parents. She supported the ILA and noted that it required a committee to be formed to monitor the goals and one member had to be a Town Council member. She recommended Vice Mayor Atterholt for the position since he had been there from the beginning.

Jenny Tardiff thanked everyone for their support and unity. She was thankful that the school would be renovated.

Traci Kohler stated that she was having discussions with the school district regarding the staffing structure and everything was moving in a positive direction.

Public comment closed.

Mayor Allers supported the ILA and Vice Mayor Atterholt's involvement in the committee. He suggested that the town create a corporate partnership strategy concerning after-school activities at the school to help drive numbers up.

Council Member Woodson questioned the ILA concerning the steps to take after renovating the historic school. Vice Mayor Atterholt replied that as the school population grew, state requirements required the school district to respond accordingly to the space needs of the school. Town Attorney Herin, Jr. discussed what the school must do in the ILA. Vice Mayor Atterholt added that the other buildings on the property would be destroyed.

Town Council members did not object to Vice Mayor Atterholt participating on the ad-hoc committee. Town Attorney Herin, Jr. stated that the ad-hoc committee would have to be created with an ordinance.

Vice Mayor Atterholt moved to approve Resolution 23-45; second by Council Member King.

Motion carried unanimously.

B. Beach Profile Monitoring Survey

Authorize Town Manager to approve Supplemental Task Authorization #16 Contract RFQ-20-06-AD for the 2023 Annual Beach Profile Monitoring Survey.

Town Manager Hyatt stated that the town's portion of the contract would be \$7,068.00 out of \$47,000.00. Environmental Project Manager Chadd Chustz commented that the survey was done every year and will be used for design plans for the renourishment project.

Project Manager Chustz described the progress of the emergency berm and noted most of the sand was on the beach. He indicated that 10,000 linear feet should be surveyed by the end of the week. He confirmed that the berm would be landward of the CWA (Critical Wildlife Area), and sand would be added to Leonardo Arms.

Project Manager Chustz remarked that one berm would be built straight across the beach but sand in front of the accesses would be pushed up and an on-grade access would be created on the sides.

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

C. SB-4A Grant

Approve submission of a grant application to the SB-4A Waiver program.

Town Manager Hyatt stated the program was for recovery and mitigation activity and was available from July 15, 2023, through June 2027 or until the funds ran out. Funds available were from \$250,000.00 to \$1 million and the grant was reimbursable. Council Member Woodson questioned how the funds would be used. Town Manager Hyatt replied that they would determine which projects would be prioritized.

Council Member Veach questioned whether Bay Oaks would qualify. Town Manager Hyatt was not sure, but he would share details as they become available.

Council Member King moved to approve; second by Council Member Woodson.

Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

Terry Persaud, business owner, stated that the Town Attorney Herin, Jr. did not submit a counterproposal to his attorney. A federal mediation was scheduled for 2:30 p.m. today and he questioned why no one from the town was attending.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hyatt sent a press release concerning hurricane and emergency preparedness and noted that hurricane reentry passes were ordered. He will review the purchasing policy and is waiting for the disbursement of the emergency bridge loan agreement. The \$8.8 million balance of the capital improvement revenue note may be used for FEMA-reimbursable projects. The extended deadline for drawing down the funds was extended to May 2024 with an interest rate of 3.15% and the town applied for a \$5 million community disaster loan.

Mayor Allers questioned whether the \$8.8 million could be used for projects other than the three capital improvement projects and how the money gets drawn down. Town Manager Hyatt will find out.

Mayor Allers suggested that Town Manager Hyatt and staff research emergency notification software. He received support from Council members. Town Manager Hyatt described using a system called Evergreen, which the state used at the time. He will investigate different systems.

Public Works Director Jason Freeman stated that he was working with DRMP regarding what could be reused for Bayside Park and FEMA-reimbursable. An invitation to bid on the project should go out very soon. Since the landscape was difficult to get reimbursed for, he welcomed landscape funding opportunities.

Director Freeman was working with DRMP to present the Bay Oaks plans for the review process.

Vice Mayor Atterholt questioned whether condo residents who applied for permits before Ian would have to pay for the permits again, even though they could not get into the condo to make repairs. Community Development Director Poposki replied that it was on a case-by-case basis. He encouraged residents to contact him.

Mayor Allers stated that people who had permits for any work before Ian could not get into their building now to do that work. Every permit that was approved before the hurricane but not completed should be allowed to be renewed at no cost.

Contractors are not allowed in the condos yet and homeowners should not be penalized. Town Manager Hyatt agreed. Mayor Allers remarked that permits should be allowed to be renewed if the permit expires after Ian; however, the permit could not be amended. Director Poposki questioned how long the grace period would be. Vice Mayor Atterholt suggested that the end of the year would suffice. Director Poposki recommended that any permits getting ready to expire could be extended with an email by the homeowner at no charge due to the state of emergency. Mayor Allers supported an extension to the end of the calendar year.

Interim Town Manager Wilkins praised Town Manager Hyatt. He stated that solicitation responses for the town attorney were due on May 22, 2023, and the process was the same as it was for the town manager. He suggested hiring a law firm to vet the candidates and manage the process. He described a possible timeline and noted a law firm was on standby to assist the town if needed.

Council Member Woodson supported hiring a third party. She stated they gave the town attorney directions to put the settlement agreement in place, but it had not been done, according to Mr. Persaud. She described a lack of deliverables,

late deliverables and a lack of communication. She questioned whether another member of the law firm could step in for Town Attorney Herin, Jr. Interim Town Manager Wilkins replied affirmatively.

Mayor Allers agreed that a third party made sense, but he was not in favor of replacing Town Attorney Herin, Jr. right now. Council Member King agreed with a third party in the process and agreed that the town attorney should be replaced immediately.

Vice Mayor Atterholt supported having a firm help with the transition, but unless the town manager had a problem with Town Attorney Herin, Jr., he did not support replacing him with another member of his firm.

Interim Town Manager Wilkins felt that there had been operational challenges. Council Member Woodson felt the town attorney's actions were counterproductive and the town needed a fresh perspective.

Council Member Veach supported hiring a third party but disagreed with replacing the town attorney immediately.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. reiterated that he worked at the pleasure of the council and if they did not want him to serve, he would move on.

He stated that the mediation scheduled today for Mr. Persaud's case was rescheduled for June 12, 2023, at 2:30 p.m. at the mediator's request. He noted that a council member could be appointed to attend the mediation. He reminded everyone that he was not the attorney of record on the matter.

He was waiting for a settlement proposal in writing from the attorney representing Key Estero Shops and will present it to the council when he receives it.

Town Attorney Herin, Jr. stated that he would work with the new manager to resolve any issues. He added that if there were any issues with his service, the quality of it or the cost of it, he was available 24/7.

Mayor Allers received support to attend the mediation meeting.

Town Attorney Herin, Jr. added that the League of Cities was handling the Jamison litigation and he would keep the council posted.

Town Attorney Herin, Jr. indicated that he would reply to the email requesting the status of the Rood litigation, but he would not provide legal advice to members of the public. He stated that the permit was not issued for the dune walkover because the subject was on appeal. He advised all parties that a town-drafted indemnification agreement would have to be produced before a permit could be issued. Town Attorney Herin, Jr. did not tell Mr. Rood to draft his indemnification letter and had conversations with Mr. Rood, Mr. Kroemer and their attorneys regarding the matter. If the Town Council directs him and the staff to issue a building permit, he will prepare an indemnification agreement and send it to Mr.

Rood's attorney. A building permit will be issued if the attorneys agree and execute the agreement. Council Member Woodson replied that they agreed to issue a permit and the agreement should be drafted. Mayor Allers noted that circumstances changed, and construction could not start until after the turtle season, so there was no rush. Town Attorney Herin, Jr. stated that his agreement would contain a statement that Mr. Rood and Mr. Kroemer would release the town from future claims and litigation regarding removing the dune walkover if the

appeal against them and the town were successful. He added that he had a draft and would forward it to Mr. Rood and Mr. Kroemer's attorneys if so directed. Council Member Veach did not see any rush and felt the Audubon suit had merit. Mayor Aller agreed there was no rush, but he did not see any harm in having the agreement drafted and sent to the applicants. Town Attorney Herin, Jr. will prepare the agreement.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King suggested that the Audit Committee start meeting and Mayor Allers felt that all advisory committees should start meeting again. Town Manager Hyatt commented that the meetings would be held at the Mound House. No items from other members.

A. SWFLC Voting Member

Appoint Council Member John R. King as a voting member representing the Town to the Southwest Florida League of Cities Board of Directors.

Council Member King stated that he would declare his candidacy as secretary and a vote would be taken in July.

Mayor Allers moved to appoint Council Member King to the Southwest Florida League of Cities Board of Directors; second by Vice Mayor Atterholt. Motion carried unanimously.

XVI. ADJOURNMENT

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

The meeting was adjourned at 11:41 a.m.

1. **Requested Motion:**

Meeting Date: June 5, 2023

Special Event - Farmers Market Under the Bridge.

Why the action is necessary:

Ordinance 20-17

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

Shop Local Productions is requesting approval to use the parking spaces under the Matanzas Bridge every Saturday from July 8, 2023 through June 29th, 2024. Moving the Farmers Market from Santini Plaza and the Beach baptist Church to this location. This is the same event as the previously mentioned event. Requesting waiver of parking fees in the amount of \$118,300.00 in total. See attachment. Pending approval from the Fire Department and updated insurance.

Attachments:

1. 232975 Farmers Market Under the Bridge_5_1_2023

Financial Impact:

Lost of revenue of 65 spaces for 7 hours per day = \$2,275.00 per day for 52 days = \$118,300.00. Under the bridge is one of the very few places people who paid for parking passes can park, taking away their ability to utilize those spaces that they paid for.

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Patty Prevost, Code Supervisor/STR Coordinator
Steve Poposki, Community Development Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 5/16/2023
Approved - 5/16/2023
Approved - 5/24/2023
Approved - 5/24/2023
Final Approval - 5/24/2023



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 Email: Specialevents@fmbgov.com



Name of event Under The Bridge Market FMB
Attach separate sheet of paper with detailed description of event
SATURDAYS JUL 8, 15, 22, 29 AUG 5, 12, 19, 26 SEPT 2, 9, 16, 23, 30 OCT. 7, 14, 21, 28

Date(s) and times of event NOV 4, 11, 18, 25 DEC 2, 9, 16, 23, 30 JAN 6, 13, 20, 27 FEB 3, 10, 17, 24
MAR 2, 9, 16, 23, 30 APR 6, 13, 20, 27 MAY 4, 11, 18, 25 JUN 1, 8, 15, 22, 29

Address of event CITY LOTS under the bridge

Expected # of participants/attendees 45 / 300

Sponsoring Organization Shop Local Productions

Organization address 19552 The Place Blvd. Estero, FL

Contact Person/Phone# ShopLocalPro@gmail.com

E-mail Linda Miller (239) 289-3786

Amplified Music Y ☐ N ☐ 500 Ft Notifications ☐ Copy of Letter ☐

Renting Town Property Y ☐ N ☐ Renting Parking Spaces Y ☐ N ☐

How many Spaces? 7 hours How many hours 8am-2pm includes setup + break down
9am-1pm OP. HOURS

Extension of Premises? Y ☐ N ☐ ABT Form ☐ How many days? 52 (Over 3 days needs to go to Council)

Letters of Permission to use Property ☐

Letters of Permission to use Parking ☐ Parking Plan ☐

Site Plan ☐ Insurance ☒ (Naming Town of FMB as Certificate Holder)

Requesting Water Y ☐ N ☒ Electric Y ☐ N ☒

Requires Council Approval:

Waiver of open container Y ☐ N ☒ Waiver of Town parking fees Y ☒ N ☐

Waiver of Noise Ordinance Y ☒ N ☐ Recurring Event Y ☒ N ☐

Applicant Signature Linda Miller

Printed Name Linda Miller

This permit is subject to the applicant meeting all requirements contained in Fort Myers Beach Code of Ordinance Book Part 2 Chapter 22 and in compliance with all items in the special event application.

Applicant to Complete:

Company managing trash removal: Vendors Remove Trash

No. of dumpsters: 0 Type of dumpsters: NA

Who is responsible for clean-up and payment: NA

City right-of-way Parking Use: _____ Number of spaces: _____

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: See Attached

Approval: _____ Date: _____

FMB Environment Science: Tel (239)765-0202

FMB Environmental Sciences remarks: See Attached

Approval: _____ Date: _____



Date: 04/10/2023

Permit #: 232975

Permit Date: 04/05/2023

Review Date: 04/05/2023

Permit Type:

Review Type: SEP-Public Works Review

Target Date: 04/07/2023

Scheduled Time: 00:00

Completed Date:

Description:

Review Status: APPROVED

Assigned To: Martin Pitts

Time In: 00:00

Time Out: 00:00

Hours: 0.0

Property Information

Parcel#: TIMESQUARE ROW ESTERO/ OLD SAN CARLOS

2525/2523 ESTERO BLVD

Zoning: 1S-1Lot: Block:

2525/2523 ESTERO BLVD

FORT MYERS BEACH, FL 33931



Date: 04/10/2023

Permit #: 232975

Permit Date: 04/05/2023

Review Date: 04/05/2023

Permit Type:

Review Type: SEP-Environmental

Target Date: 04/07/2023

Scheduled Time: 00:00

Completed Date: 04/08/2023

Description:

Review Status: REVIEWED W/CONDITIONS

Assigned To: Chadd Chustz

Time In: 00:00

Time Out: 00:00

Hours: 0.0

Notes

Special event permit holders are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. In the event this section is not complied with, the town manager has the authority to contract with a cleaning service and the cost of the cleanup will be the responsibility of the permit holder (Sec. 22-12).

04/08/2023

No person shall make, continue or cause to be made or continued any noise disturbance in accordance with Land Development Code Sec. 14-23. Noises resulting from a special event authorized pursuant to chapter 22 of the Land Development Code are excepted; provided, such noises are in compliance with any specific limitations as set forth within the special event permit. If no specific limitations are set forth in the special event permit, the provisions of Land Development Code Sec. 14-23 shall fully apply.

Property Information

Parcel#: TIMESQUARE ROW ESTERO/ OLD SAN CARLOS

2525/2523 ESTERO BLVD

Zoning: 1S-1Lot: Block:

2525/2523 ESTERO BLVD

FORT MYERS BEACH, FL 33931

FORT MYERS BEACH FIRE DEPT

100 Voorhis Street • Fort Myers Beach, Florida 33931

Tel (239) 590-4210

Fire Guards: (how many?) _____

Fee: _____

Flammable Vegetation: _____

First Aid Equipment: _____

Fire Extinguishing Equipment: _____

Special Arrangements: _____

Print Name

Approval Signature

Date

prevention@fimbfire.org – For Fire Department Handbook and additional application.

LEE COUNTY SHERIFF'S DEPT Tel (239)477-1830 Fax (239)432-0268
15650 Pine Ridge Road, Fort Myers, FL 33908

Parking: All parking will be in authorized areas only & the right-of-way must not be impeded at any time.

Deputies (how many?) None required for this event.

Traffic Control: _____

Fees: None required for this event.

Special Arrangements: Event traffic should not impede the normal flow of traffic. Should it be found to, an extra duty traffic detail may be required at the vendor's expense.

Paul Cummings
Print Name

[Signature]
Approval Signature

4 4 23
Date

Please forward the completed application and site plan along with the individual approval request to each identified agency below. Once complete return all to our office.

Florida DEP: DEP now provides an online application process for minor event approval

Self Certification for CCCL Permit Guidance Document: <http://www.dep.state.fl.us/beaches/>

FOR MAJOR EVENTS ONLY CONTACT

Kelly Cramer

Tel (239) 770-7502 Fax (850) 412-0590

Email: kelly.cramer@floridadep.gov

Florida DEP remarks: NA (not on beach)

Check list: Application _____ Site Plan _____ Description _____

Florida DEP approval: _____ Date: _____

Turtle Time Inc.: Eve Haverfield

Tel (239) 481-5566 eve@turtletime.org

Turtle Season is May 1 through October 31

Turtle Time remarks: NA (not on beach)

Turtle Time approval: _____ Date: _____

UNDER THE BRIDGE FMB Farmers Market

THIRD STREET					SECOND STREET					FIRST STREET				
Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking
22	21	20	19	18	17	16	15	14	13	12	11	10	9	8
23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking

Produce, Food Vendors And Cooking on this side of market

← (HOT FOOD) →



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/30/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Hiscox Inc.
520 Madison Avenue
32nd Floor
New York, New York 10022

CONTACT**NAME:**

PHONE (A/C, No, Ext): (888) 202-3007

FAX (A/C, No):

E-MAIL: contact@hiscox.com

ADDRESS:**INSURER(S) AFFORDING COVERAGE**

NAIC #

INSURER A: Hiscox Insurance Company Inc

10200

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED

Watergemz, LLC DBA Shop Local Productions
19552 The Place Blvd
Estero, FL 33928

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY	Y		P100.409.208.3	07/15/2022	07/15/2023	EACH OCCURRENCE \$ 2,000,000
	☐ CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	☒ POLICY ☐ PROJECT ☐ LOC						PRODUCTS - COMP/OP AGG \$ S/T Gen. Agg.
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ANY AUTO						BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	☐ SCHEDULED AUTOS						\$
	☐ NON-OWNED AUTOS						\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	☐ OCCUR						\$
	☐ CLAIMS-MADE						\$
	DED RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE ☐ OTH-ER ☐
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below	☐ N/A					E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

FMBeach Farmers Market Description

Fort Myers Beach 33931

Sponsored by Shop Local Productions

41markets.com

Open Saturdays mid-July through May, 9am-2pm.

Mission:

To provide a positive community event for all ages to convene and to enjoy accessibility to healthy, unique foods, items and art. This event provides employment to over 40 families.

Description:

More than ever and since the Hurricane devastation, FMB locals and visitors request and need fresh and varietal foods, produce, seafood and commodities brought into the island and something lively and happy to do when getting out of the house.

Over 20 websites are used to attract visitors to the markets and Fort Myers Beach including Google where this market gets 30K views per month during season.

Vendors include a few hot food vendors, cottage food products, local seafood, honey and produce, bakeries, coffee, guacamole, smoothies, nuts, healthy snacks, organic skincare, handmade jewelry and art. These niche items fill a void in FMB shopping. Contrary to common belief this market brings a lot of business to the shopping center and two of the tenants participate happily every year for last five years. Even 7/11 and CVS across the street has reported better sales on the days the market is open.

Per the American Independent Business Alliance the money made at local businesses pushes 80% back into our local economy unlike corporate businesses: <https://www.amiba.net/resources/multiplier-effect>

Set Up

Set up is 2 hours before opening and 1 hour after close. Vendors are responsible for removing all trash from location.

Volunteers:

The market has 2 managers with decades of retail management experience.

Superb Record:

In all of its history the market has had no emergencies, accidents or complaints.

Information:

Vendor Inquiries and more info can be found at 41markets.com

Patty Prevost

132975

From: Todd Sears
Sent: Wednesday, April 5, 2023 1:28 PM
To: Patty Prevost
Subject: FMBeach Market Parking

Importance: High

We have 65 parking spaces in MP lots 2-4. They are asking for 46 spaces. We are unable to close off part of a parking lot to appease 46 spaces. Also, the last time that we approved parking under the bridge we received several complaints from residents that obtained residential parking permits as this is the only place that they are allowed to park downtown. The price breakdown is as follows:
65 spaces for 7 hours per day = \$2,275 per day.
52 days of event @\$2,275 per day = \$118,300.
If you have any questions, please let me know.

Todd Sears

Beach Enforcement Supervisor
Town of Fort Myers Beach, FL
2525 Estero Blvd. 33931
239-463-5888

Farmers Market under the Bridge Permit Application

To Jennifer Campbell jcampbell@gmbfirefl.gov

CC: Patty Prevost

4/21/2023

Re: Farmers Market Under the Bridge Permit Application Corrections

Dear Jennifer,

Attached you will find the amended FMB Fire District Special Event Application for the farmers market.

3 vendors will be cooking onsite as shown amended on Page 8.

4 vendors will be using generators as shown on Page 8.

See their designated spaces on the Floorplan. For your convenience a Google Map is also provided.

Thank you for your assistance.

Best regards,

Linda Miller

Shop Local Productions

239-289-3786



Date: 04/18/2023

Contractor: Shop Local Productions

RE: 232975 / 2525/2523 ESTERO BLVD/ Farmers Market Under the Bridge

Cc: Property Owner

The drawings submitted for the referenced project have been reviewed following the 7th Edition (2020) Florida Building Codes, Florida Statutes (F.S), and the Town of Fort Myers Beach Land Development Code. For the reasons listed below, we cannot approve your application at this time.

Please provide the Rejection Letter and a Cover Letter showing where each corrected item can be found.

1st Fire Review – Jennifer Campbell -jcampbell@fmbfirefl.gov

The following information is required:

1. Complete the FMB Fire District Special Event Application and submit to the Town.
2. Provide # of vendors that will be cooking at the site.
3. Provide # of vendors that will be using a generator.

PLEASE NOTE:

- **Mailed in or paper plans will not be accepted.**
- Submit all corrections together at one time with an appropriate response/ cover letter showing where each corrected item can be found to resubmittal@fmbgov.com.
- Please note that no other reviews will be done until the **Zoning Review** is approved.
- Resubmittals will not be processed unless all review comments are addressed.

Please refer to the **Permit Portal** to access a copy of this rejection letter.

Sincerely,

Town of Fort Myers Beach Building Services and Community Development Departments.

PAGE 8

PAGE 8

UNDER THE BRIDGE FMB Farmers Market

THIRD STREET

Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking
22	21	20	19	18	17	16	15
23	24	25	26	27	28	29	30

SECOND STREET

Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking
31	32	33	34	35	36	37	38
39	40	41	42	43	44	45	46

FIRST STREET

Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking
47	48	49	50	51	52	53	54
55	56	57	58	59	60	61	62

THIRD STREET

SECOND STREET

Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking
63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78

FIRST STREET

Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking
79	80	81	82	83	84	85	86
87	88	89	90	91	92	93	94

SECOND STREET

THIRD STREET

Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking	Vendor Parking
95	96	97	98	99	100	101	102
103	104	105	106	107	108	109	110

3 COOKING ON SITE
4 GENERATORS



Imagery ©2023 Maxar Technologies, U.S. Geological Survey, Map data ©2023 Google 100 ft

1. **Requested Motion:**

Meeting Date: June 5, 2023

Motion to approve Resolution 23-52 entitled: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK CONTRACT BETWEEN THE TOWN AND CREEL TRACTOR COMPANY. IN AN AMOUNT NOT TO EXCEED \$108,416.46, UTILIZING SOURCEWELL CONTRACT 031121, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT, EXPEND FUNDS, AND TAKE ALL APPROPRIATE ACTIONS TO PURCHASE A REPLACEMENT TRACTOR; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Town purchasing policies require Town Council approve for expenditures over \$25,000.

What the action accomplishes:

Authorizes the Town Manager to execute a contract and purchase a replacement tractor and expend appropriated funds.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

Sourcewell (p/k/a, the National Joint Powers Alliance), a purchasing service cooperative entered into a competitively bid contract with Creel Tractor Company to provide heavy machinery and related services to local governments nation-wide, and the Town's Finance Director has determined that piggybacking on this contract is financially advantageous to the Town.

The Town previously had a Tractor before the hurricane which was damaged and claimed through the Town's insurance post hurricane. This purchase will provide a needed replacement for heavy machinery for Beach Access Maintenance operations and a replacement tractor was included in the current year's TDC (Tourist Development Council) grant budget.

Attachments:

1. 23-52, Resolution 23-52 re Approving Piggy contract Purchase of Tractor(146268866.1)-C
2. Piggyback for tractor with creel
3. Sourcewell Contract 031121
4. TRACTOR- M6-141 QUOTE

Financial Impact:

\$108,416.46 total, from which \$56,933.33 is from insurance and the remainder is from budgeted TDC Funding

6. **Alternative Action**

Do not approve and find other machinery options.

7. **Management Recommendations:**

Approve the Resolution and authorize the purchase.

8. **Recommended Approval:**

Jason Freeman, Public Works Director
Cheri Russ, Accounting Manager
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 5/25/2023
Approved - 5/26/2023
Approved - 5/30/2023
Approved - 5/31/2023
Final Approval - 5/31/2023

RESOLUTION NUMBER 23-52

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK CONTRACT BETWEEN THE TOWN AND CREEL TRACTOR COMPANY IN AN AMOUNT NOT TO EXCEED \$108,416.46, UTILIZING SOURCEWELL CONTRACT 031121, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT, EXPEND FUNDS, AND TAKE ALL APPROPRIATE ACTIONS TO PURCHASE A REPLACEMENT TRACTOR; 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 (“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, the Town wishes to purchase a replacement tractor; and

WHEREAS, under the Town Code, the purchase of goods under a contract awarded by another governmental entity is authorized provided the finance department director makes a written determination that time and expense factors make it financially advantageous for the Town to do so; and

WHEREAS, Sourcewell entered into a competitively procured contract to purchase vehicles and related services, and the Town’s Finance Director has determined that piggybacking on this contract is financially advantageous to the Town; and

WHEREAS, the Town believes it is in the best interest of the Town’s business owners, residents, and visitors to enter into a piggyback contract with Creel Tractor Company.

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

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. The piggyback contract between the Town and Creel Tractor Company, attached as Exhibit “A”, is approved, the Town Manager is authorized to execute the contract and expend budgeted funds on behalf of the Town, and take all appropriate actions to purchase a replacement tractor.

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

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

ADOPTED this 5th day of June 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

This Resolution was filed in the Office of the Town Clerk on this 5th day of June 2023.

**AGREEMENT TO PIGGYBACK A CONTRACT FOR GOODS AND SERVICES
COMPETITIVELY PROCURED BY ANOTHER GOVERNMENTAL ENTITY**

THIS AGREEMENT is made and entered into this ___ day of _____, 2023, by and between the Town of Fort Myers Beach, Florida (“Town”), a Florida municipal corporation whose principal place of business is 2525 Estero Blvd., Ft. Myers Beach, FL 33391 and **Creel Tractor Company**, a Florida corporation, (“Contractor”) whose principal place of business is **3771 Palm Beach Blvd, Fort Myers, FL 33916** (“Contract”). Town and Contractor may also be referred collectively as the “Parties.”

WHEREAS, Contractor and **Sourcewell**, Florida entered into a competitively procured contract known as **4WD Farm Tractor, Electro- Hydraulic Shuttle Transmission & Cab**, as amended (“**Sourcewell** Contract”); and

WHEREAS, Town needs to purchase all terrain **4WD Farm Tractor, Electro- Hydraulic Shuttle Transmission & Cab**; and

WHEREAS, the Town desires to have **Creel Tractor Company provide 4WD Farm Tractor, Electro- Hydraulic Shuttle Transmission & Cab**; and

WHEREAS, under the Town Code, the purchase of goods and services under a contract awarded by another governmental entity is authorized provided the finance department director makes a written determination that time and expense factors make it financially advantageous for the Town to do so; and

WHEREAS, Contractor is willing to provide **4WD Farm Tractor, Electro- Hydraulic Shuttle Transmission & Cab**, subject to the terms and conditions of the County Contract, with the specific modifications set forth herein; and

WHEREAS, the Town’s finance department director has determined that piggybacking on the **Sourcewell** Contract is financially advantageous to the Town.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

1. **Incorporation of County Contract.** This Contract incorporates by reference, the **Sourcewell** Contract, which is attached as Exhibit A.
2. **Scope of Service.** During the Term of this Contract, Contractor will **4WD Farm Tractor, Electro- Hydraulic Shuttle Transmission & Cab.**
3. **Pricing.** The Town will pay Contractor a sum not to exceed **\$108,578** for the good. This sum will be Contractor’s sole compensation for the goods and services provided by Contractor under this Contract.

4. Contract Term. The Term of this Contract begins on the date set forth above and ends NUMBER OF DAYS FOR COMPLETION days thereafter. The Town has the option to renew this Contract up to two (2) ninety (30) day periods with written notice to the Contractor at least thirty (30) days before the Contract expires.
5. Designated Representative. The Town's **Jason Freeman**, or designee, shall be the Town's Designated Representative in matters arising under Contract.

Jason Freeman, Public Works Director
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL. 33931
JasonF@FMBGOV.COM

6. Modifications to Sourcewell Contract. Notwithstanding the incorporation of the Sourcewell Contract into this Contract as referenced, the Parties hereby agree to certain modifications to the Sourcewell Contract, as follows:
 - a. All references in the **Sourcewell** Contract to terms such as "County" or "City" will be deemed to refer to the Town. In addition, all references within the County Contract to specific officers/departments/divisions, or to specific locations (such as for delivery of goods/services, receipt of Contractor invoicing, etc.), if not specifically addressed in this Contract, will be deemed to refer to the equivalent Town officers/departments/divisions, and Town locations, as hereafter designated by the Town's Designated Representative.
 - b. Town's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Town Council.
 - c. The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of §448.095, Fla. Stat., and maintain a copy of such affidavit for the duration of the Contract.
 - d. This section serves as notice to the Contractor regarding the requirements of §448.095, Fla. Stat., specifically sub-paragraph (2)(c)l, and the Town's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated §448.09(1), Fla. Stat. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year after the date of such termination. The Town reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Town develop a good faith belief that the subcontractor has knowingly violated §448.095(1), Fla. Stat.
 - e. 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.

- f. 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 A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (239) 765-0202,

**FMBPUBLICRECORDS@FMBGOV.COM , 2525 ESTERO
BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as below.

TOWN OF FORT MYERS BEACH

CONTRACTOR

Andy Hyatt, Town Manager

By: _____
Its: _____

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

**Solicitation Number: RFP #031121****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Kubota Tractor Corporation, 1000 Kubota Drive, Grapevine, TX 76051 (Vendor).

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Grounds Maintenance Equipment, Attachments, and Accessories with Related Services from which Vendor was awarded a contract.

Vendor desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires April 30, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.
- C. **SURVIVAL OF TERMS.** Articles 11 through 14 survive the expiration or cancellation of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new/current model. Vendor may offer close-out or refurbished Equipment or Products if they are clearly indicated in Vendor's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Vendor warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Vendor warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Vendor's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that is effective past the expiration of the Vendor's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution, Vendor will make available to Sourcewell a means to validate or authenticate Vendor's authorized dealers, distributors, and/or resellers relative to the Equipment, Products, and Services related to this Contract. This list may be updated from time-to-time and is incorporated into this Contract by reference. It is the Vendor's responsibility to ensure Sourcewell receives the most current version of this list.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced as stated in Vendor's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Vendor must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable

time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery.

Vendor must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcwell may declare the Vendor in breach of this Contract if the Vendor intentionally delivers substandard or inferior Equipment or Products. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Vendor as soon as possible and the Vendor will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

B. SALES TAX. Each Participating Entity is responsible for supplying the Vendor with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Vendor may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Vendor determines it will offer Hot List Pricing, it must be submitted electronically to Sourcwell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcwell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Vendor may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcwell Price and Product Change Request Form to the assigned Sourcwell Contract Administrator. This form is available from the assigned Sourcwell Contract Administrator. At a minimum, the request must:

- Identify the applicable Sourcwell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing

restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Vendor understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Vendor is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Vendor's employees may be required to perform work at government-owned facilities, including schools. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor. Typically, a Participating Entity will issue an order directly to Vendor. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration of this Contract; however, Vendor performance, Participating Entity payment, and any applicable warranty periods or other Vendor or Participating Entity obligations may extend beyond the term of this Contract.

Vendor's acceptable forms of payment are included in Attachment A. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. **ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM.** Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Vendor, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be worked out directly between the Participating Entity and the Vendor. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. **SPECIALIZED SERVICE REQUIREMENTS.** In the event that the Participating Entity requires service or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in this Contract, the Participating Entity and the Vendor may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. **TERMINATION OF ORDERS.** Participating Entities may terminate an order, in whole or in part, immediately upon notice to Vendor in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the goods to be purchased;
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements; or
3. Vendor commits any material breach of this Contract or the additional terms agreed to between the Vendor and a Participating Entity.

E. **GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Vendor will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. **BUSINESS REVIEWS.** Vendor must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. **CONTRACT SALES ACTIVITY REPORT.** Each calendar quarter, Vendor must provide a contract sales activity report (Report) to the Sourcewell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

The Report must contain the following fields:

- Customer Name (e.g., City of Staples Highway Department);
- Customer Physical Street Address;
- Customer City;
- Customer State/Province;
- Customer Zip Code;
- Customer Contact Name;
- Customer Contact Email Address;
- Customer Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Vendor.

B. **ADMINISTRATIVE FEE.** In consideration for the support and services provided by Sourcewell, the Vendor will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Vendor may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Vendor will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Vendor's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Vendor agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Vendor is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Vendor's Authorized Representative is the person named in the Vendor's Proposal. If Vendor's Authorized Representative changes at any time during this Contract, Vendor must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed assignment agreement. Such consent will not be unreasonably withheld.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.

D. **WAIVER.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.

E. **CONTRACT COMPLETE.** This Contract contains all negotiations and agreements between Sourcewell and Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their

respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. LIABILITY

Vendor must indemnify, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees, arising out of the performance of this Contract by the Vendor or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications.

12. GOVERNMENT DATA PRACTICES

Vendor and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify Sourcewell and Sourcewell will assist with how the Vendor should respond to the request.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Vendor a royalty-free, worldwide, non-exclusive right and license to use the Trademark(s) provided to Vendor by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Vendor.
 - b. Vendor grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Vendor's Trademarks in advertising and promotional materials for the purpose of marketing Vendor's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to its and their respective distributors, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.
3. *Use; Quality Control.*

- a. Sourcewell must not alter Vendor's Trademarks from the form provided by Vendor and must comply with Vendor's removal requests as to specific uses of its trademarks or logos.
 - b. Vendor must not alter Sourcewell's Trademarks from the form provided by Sourcewell and must comply with Sourcewell's removal requests as to specific uses of its trademarks or logos.
 - c. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's Trademarks only in good faith and in a dignified manner consistent with such party's use of the Trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.
4. As applicable, Vendor agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Vendor in violation of applicable patent or copyright laws.
5. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of vendors which may be used until the next printing). Vendor must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Materials should be sent to the Sourcewell Contract Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Vendor must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

Minnesota law governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state court in Todd County or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control (including either pandemic or epidemic). A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found to be illegal, unenforceable, or void then both Sourcewell and Vendor will be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it will not be affected by such declaration or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Vendor may escalate the resolution of the issue to a higher level of management. The Vendor will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed will be borne by the Vendor.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Vendor must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Vendor will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Vendor will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance.* During the term of this Contract, Vendor will maintain umbrella coverage over Workers' Compensation, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance.* During the term of this Contract, Vendor will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Vendor to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Vendor must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Vendor agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Vendor's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Vendor, and products and completed operations of Vendor. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Vendor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other

insurance applicable to the Vendor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Vendor or its subcontractors. Where permitted by law, Vendor must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Vendor must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcwell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Vendor certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcwell related to bankruptcy actions. If at any time during this Contract Vendor declares bankruptcy, Vendor must immediately notify Sourcwell in writing.

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further warrants that it will provide immediate written notice to Sourcwell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may also require additional requirements based on specific funding specifications. Within this Article, all

references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Vendor’s Equipment, Products, or Services with United States federal funds. . The Participating Entity must provide advance notification to Vendor if federal funds are being used for the purchase.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 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(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference. [Note - Vendor operates under California law and does not participate in or file Affirmative Action Plans.]

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Vendor must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity 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 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of

every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Vendors must file any required certifications. Vendors must not have 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. Vendors must 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 non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Vendor must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Vendor must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition. [Note – Vendor’s products are not manufactured domestically and do not satisfy the second element of the Buy American Act test for domestically manufactured products.]

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor’s discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor’s personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring

solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

22. CANCELLATION

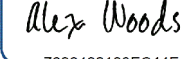
Sourcewell or Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Vendor's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

Kubota Tractor Corporation

DocuSigned by:

C0FD2A139D06489...
By: _____
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 4/28/2021 | 12:20 PM CDT

DocuSigned by:

7839492180EC44E...
By: _____
Alex Woods
Title: Vice President
Date: 4/28/2021 | 9:39 AM PDT

Approved:

DocuSigned by:

7E42B8F817A64CC...
By: _____
Chad Coauette
Title: Executive Director/CEO
Date: 4/28/2021 | 12:30 PM CDT

RFP 031121 - Grounds Maintenance Equipment, Attachments, and Accessories with Related Services

Vendor Details

Company Name: Kubota Tractor Corporation
Address: 1000 Kubota Drive
Grapevine, TX 76051
Contact: Mike Spillars
Email: mike.spillars@kubota.com
Phone: 817-532-5592
HST#: 95-2801513

Submission Details

Created On: Thursday January 21, 2021 09:29:17
Submitted On: Thursday March 11, 2021 13:37:19
Submitted By: Rusty Pugh
Email: rusty.pugh@kubota.com
Transaction #: e816d383-5749-427b-85c2-950c6dca68cc
Submitter's IP Address: 74.84.168.187

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Please do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; mark "NA" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (and applicable d/b/a, if any):	Kubota Tractor Corporation	*
2	Proposer Address:	1000 Kubota Drive Grapevine, TX 76051	*
3	Proposer website address:	www.kubotausa.com	*
4	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Alex Woods Vice President 1000 Kubota Drive, Grapevine, TX 76051 alex.woods@kubota.com PH: 817-756-1171	*
5	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Rusty Pugh National Accounts Manager, Municipal and New Business 1000 Kubota Drive, Grapevine, TX 76051 rusty.pugh@kubota.com 817-716-3587	*
6	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Mike Spillars National Accounts Business Development Manager 1000 Kubota Drive, Grapevine, TX 76051 mike.spillars@kubota.com 817-532-5592	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	
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7	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	Who Kubota is, and will continue to be, is summed up in this statement; Kubota is passionate about, and dedicated to food, water, and life. Gonshiro Kubota demonstrated this with the founding of Kubota in 1890 as a casting company to serve a critical need for safe drinking water. In 1893 Kubota produced the first ever domestic cast iron pipes. Following WWII food was in short supply in Japan. Kubota developed the cultivator, a pioneering piece of equipment in the mechanization of agriculture and the revolution of the production of food. With small villages in Japan suffering from labor shortages, Kubota developed our first tractor to provide a stable and abundant food supply. In 1969 Kubota Corporation filled a void in sub-compact tractors by introducing its first tractor into the United States. The Kubota Tractor Corporation was formed in 1972 as a privately held corporation of Kubota Corporation, Osaka, Japan. It has been growing and expanding its offering in the United States ever since. Kubota Tractor Corporation serves Kubota Corporation as distribution in the United States for Kubota equipment. This includes all the products serving this contract in turf mowing and grounds maintenance equipment, tractors, and attachments, as well as compact construction equipment which includes excavators, skid steers, backhoes, wheel loaders and utility vehicles. Additionally, Kubota Corporation has a wholly owned subsidiary in Canada (Kubota Canada Limited "KCL"). KCL supports Canadian sales and distribution. Innovating products since 1890, Kubota continues today to innovate and bring new products and technology into the marketplace. One example is Kubota's revolutionary common rail system with exhaust gas recirculation (EGR), and diesel particulate filter (DPF) muffler. This combination produces more torque at low rpm's with less emissions and better fuel efficiency. This innovation is used across our products where possible. Another example is our inventive glide steer technology, found on our GR series of mowers. These mowers also feature Reverse Awareness Systems (KRS) for additional safety when mowing in reverse. These are but a few examples in action of Kubota's philosophy of creating new and innovative products that are dedicated to preserving our environment and life. Kubota continues to innovate and serve its customers today with the number one selling sub-compact tractor, mini excavator, diesel utility vehicle, and diesel engine in the United States along with a varied and respected product offering. Kubota's core values of dedication to food, water and life are tied to serving our customers. Our company is committed to working for the development of society by drawing on all our capabilities and know-how to offer superior products and technologies. Kubota's business philosophy and primary objective is not sales and profits, rather, to win the trust of our customers and contribute to society in a growing number of ways. Everything we do is for the customer and this can be seen below in the "Kubota Promise". - Produce state of the art, quality products - Lead the industry in engineering and technological firsts - Respect the environment and protect our customer's safety - Provide uncompromising service - Listen and respond to the customer's needs - Value each customer relationship with integrity and respect - Support professional dealers and retailers - Manage with vision and leadership Since our founding in 1890, Kubota continues to be a global leader in the products we produce and the markets we serve. Food, water, and the environment are indispensable for human beings. Kubota is looking to the future to support earth and humanity. By contributing products, like the utility vehicles in this proposal, and creating a superior living environment through superior products, technologies, and services, Kubota is living out its core values and business philosophy of being passionate about, and dedicated to food, water, and life.
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8	What are your company's expectations in the event of an award?	If awarded the Sourcewell contract number 031121, Kubota expects to meet and exceed the expectations of Sourcewell members for products, services, and support. Kubota will position Sourcewell as our first and best solution for cooperative purchasing. Our dedicated National Account Manager for Municipal and Business Development makes our Sourcewell contracts a focus for sales growth throughout the United States and Canada. Kubota is committed to supporting Sourcewell members wherever they are located at a level that meets and exceeds their expectations. Kubota will build into dealer training meetings, Sourcewell member aftersales support, and marketing direction to ensure success. We will engage our 1,100 dealers to promote our contract, and support Sourcewell members to the greatest extent possible. Kubota will engage government entities in the adoption of our Sourcewell contract in place of establishing individual government contracts. Kubota and the National Account Manager for Municipal and New Business will partner with Sourcewell for marketing materials and trade show support. Kubota looks forward to attending and supporting Sourcewell "Get to Know Us" forums and will encourage dealer participation to understand the value of contract purchasing with Sourcewell members. Kubota will incorporate all Sourcewell marketing materials, resources, and tools (e.g. training videos, Talkin' Tactics Webinars, etc.) into dealer education and business development. Lastly, Kubota's expectations are when Sourcewell members reach out to their local Kubota dealer, the dealer knows who they are and how they can help.	*
9	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Financial information has been attached. These documents include general information such as Dun and Bradstreet number and Federal I.D numbers as well as more specific financial information such as creditors and banking information. Beyond the numbers is more tangible evidence of strength and stability. Kubota can demonstrate this financial strength and stability in multiple ways. Kubota pays dividends on its stock. Dividends attract long-term investors and offering them is a sign of financial stability. Additionally, in 2020, Kubota announced a multi-year strategic alliance with Microsoft. Kubota is migrating its IT infrastructure and SAP mission-critical systems onto Microsoft's trusted cloud platform. This investment in long-term company infrastructure streamlines business operations, accelerates innovation, and shifts towards a solution provision model. Furthermore, this investment not only demonstrates financial strength and stability, it allows Kubota to develop AI-based solutions for businesses in the area of food, water, and the environment. Kubota Tractor Corporation's parent company, Kubota Corporation, carries an AA- issuer rating as well as a Long-Term Issue rating of AA-. This very high credit worthiness is supported by excellent factors. The short-term rating is a-1+. This rating denotes a high certainty of fulfillment of short-term obligation. In closing, a copy of the most recently available full year financial report has been included in documentation.	*
10	What is your US market share for the solutions that you are proposing?	Kubota has approximately 34% market share for the solutions being proposed.	*
11	What is your Canadian market share for the solutions that you are proposing?	Kubota's Canadian market share data mirrors that of the United States.	*
12	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No, Kubota has never petitioned for bankruptcy protection.	*
13	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	a) Distributor. Kubota Tractor Corporation was incorporated under the laws of the state of California and is a wholly owned subsidiary of the holding company Kubota North America Corporation which is wholly owned by Kubota Corporation, a Japanese Corporation. Kubota Tractor Corporation and Kubota Canada Ltd sell Kubota equipment to the Kubota dealer network of over 1,100 independently owned Kubota dealerships. These dealers service and sell Kubota products in all 50 states and throughout Canada.	*

14	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	No licenses and certifications are required to be held by Kubota. However, our commitment to environmental excellence is witnessed in achieving our ISO 14001 environmental certifications. ISO 14001 certification has been achieved at all domestic sites and 14 production sites in Japan. ISO 14001 certification is an environmental certification issued by the International Organization for Standardization. Additionally, all divisions have achieved ISO 9001 certification. 24 Kubota Group companies whose primary operation is manufacturing have acquired certification. Certifications demonstrate Kubota's commitment to excellence in quality in design, development, and environmental sustainability. Some examples include employing DRBFM, a cross functional disciplined process to evaluate proposed changes to designs. Kubota self-audits quality, quality compliance, cross audits, and audits at short notice. This focus on auditing and compliance is to achieve operational excellence. It is these kinds of actions that result in Kubota's operational excellence and our certifications.	*
15	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	None. There have been no suspensions or debarment in the past ten years.	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *
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16	Describe any relevant industry awards or recognition that your company has received in the past five years	2020 • Landscape Business "Twenty for 2020 New Products Award • Pro Tool Innovation Awards – SZ series stand-on mowers • Rental Equipment Register 2020 "Innovative Product Award" – SVL65-2 • Pro Tool Innovation Awards – RTV-XG850 • Diesel International "Diesel of the Year" V5009 – first ever won by a Japanese manufacturer for this European award • "2020 Machine of the Year" Agraheute Audience Choice Award– M7003 • Georgia US Department of Economic Development GEAR Award Transportation Equipment Manufacturer of the Year. 2019 • Best-selling diesel utility vehicle in North America – Power Products Marketing North American Utility Vehicle Market Reports (ranked number one every year since 2004). • The North American Dealers Association (NAEDA) Dealers-Manufacturers survey has ranked Kubota number one, six years in a row. • OEM Off-Highway Research – Worlds #1 selling compact excavator. • Kubota obtained the highest rated "A-List Company" in "CDP Water Security Program". The CDP is an international non-profit organization that conducts researches against companies and governments to reduce greenhouse gases and emissions. • Equipment Watch - Kubota U35-4 compact excavator wins Highest Retained Value Award. • Excellence Award in Environmental Reporting - 23rd annual Environmental Communication Awards co-sponsored by the Japanese Ministry of the Environment and the Global Environment Forum. 2018 • Best-selling diesel utility vehicle in North America – Power Products Marketing North American Utility Vehicle Market Reports. • Environmental Technology and Project Award presented by the Environmental Engineering Committee of the Japan Society of Civil Engineers. • OEM Off-Highway Research – Worlds #1 selling compact excavator. • Excellence Award - CASBEE Sakai Environmental Building Awards for promoting environmentally buildings. • BLUE PROPER Award - Environment Minister Indonesia. This rating is only for companies found operating 100 percent in compliance with environmental regulations. • Green Award - Kubota Environmental Engineering (Shanghai) - Chinese Environmental Conference. • KBS Kubota Co., Ltd. - Environmental Contribution Award presented at the 2018 Logistics Awards sponsored by the Japan Institute of Logistics Systems. • Excellence Award in Environmental Reporting - 22nd annual Environmental Communication Awards co-sponsored by the Japanese Ministry of the Environment and the Global Environment Forum. 2017 • AE50 Outstanding Innovation Award – RTV X1140 Utility Vehicle • Best-selling diesel utility vehicle in North America – Power Products Marketing North American Utility Vehicle Market Reports. • OEM Off-Highway Research – Worlds #1 selling compact excavator. • Green Industry Award from the Thai government. • Kubota obtained the highest rated "A-List Company" in "CDP Water Security Program" in 2017. The CDP is an international non-profit organization that conducts researches against companies and governments to reduce greenhouse gases and emissions. • AGRITECHNICA 2017 – Vicon Extra 7100T GEOMOW – Machine of the Year. • iF International Forum - Design Award – M7001 series 2016 • Japan Institute of Design Promotion – FY2016 Good Design Award. • Best-selling diesel utility vehicle in North America – Power Products Marketing North American Utility Vehicle Market Reports. • OEM Off-Highway Research – Worlds #1 selling compact excavator.	
17	What percentage of your sales are to the governmental sector in the past three years	Government and education collectively comprise approximately 45% of Kubota's national accounts program reporting.	*
18	What percentage of your sales are to the education sector in the past three years	Government and education collectively comprise approximately 45% of Kubota's national accounts program reporting.	*

19	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	Sourcwell cooperative purchasing contract – 2020 - \$34.5mm, 2019 - \$33.8mm, 2018 - \$26.3mm BuyBoard – 2020 - \$8.03mm, 2019 - \$9.9mm, 2018 – no contract HGAC cooperative purchasing contract - 2020 - \$306k, 2019 - \$595k, 2018 - \$656k MAPO cooperative purchasing contract - 2020 - \$1.4mm, 2019 - \$1.7mm, 2018 - \$1.16mm Louisiana state contract - 2020 - \$199k, 2019 - \$3.4mm, 2018 - \$3.41mm Oregon state contract - 2020 - \$396k, 2019 - \$1.2mm, 2018 - \$860k New York state contract (adopted Sourcwell contract, volume is included in Sourcwell totals) Pennsylvania state contract - 2020 - \$2.07mm, 2019 - \$2.2mm, 2018 - \$44k	*
20	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	Kubota has multiple dealers holding General Services Administration contracts and can be found on https://www.gsaadvantage.gov/advantage/ws/main/start_page?store=ADVANTAGE . While dealer overall sales volumes are visible to Kubota, dealer GSA sales volumes are not reported Kubota.	*

Table 4: References/Testimonials

Line Item 21. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *	
Lodi Unified School District	Eric Wise	209-712-6346	*
Eugene Water and Electric Board	Gary Lentsch	503-484-2411	*
Samaritan's Purse	Matt Libby	207-551-8292	*
New York State Natural Heritage Trust	Bill Bohach	631-323-2440	
Auburn University	Malcomb Pegues	251-928-2740	

Table 5: Top Five Government or Education Customers

Line Item 22. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
Village of Holley	Government	New York - NY	Construction and grounds maintenance equipment - Kubota equipment purchases	\$25,000-\$50,000	\$763,406	*
Miami Dade Parks and Recreation	Government	Florida - FL	Construction and grounds maintenance equipment - Kubota equipment purchases	\$25,000-\$50,000	\$498,766	*
City of Greensboro	Government	North Carolina - NC	Construction and grounds maintenance equipment - Kubota equipment purchases	\$25,000-\$50,000	\$384,395	*
Town of Fallsburg	Government	New York - NY	Construction and grounds maintenance equipment - Kubota equipment purchases	\$25,000-\$50,000	\$355,798	*
City of Athens	Government	Alabama - AL	Construction and grounds maintenance equipment - Kubota equipment purchases	\$25,000-\$50,000	\$342,345	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcwell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number

of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
23	Sales force.	Kubota's sales force is strong and contains employees of our company as well as that of our dealer network numbering over 1,100 locations. Sales coverage is in place for all 50 states as well as Canada by both our dealers and Kubota commercial sales team. Our typical dealer averages four sales representatives leading to dealer sales representation that conservatively averages over 4,000 representatives. Kubota in Canada has 154 dealer locations with similar sales force averages. Additionally Kubota directly employs 51 region sales managers, five district sales managers, and five division sales managers. This Kubota sales force is essential for educating and instructing dealers in promoting and supporting government and education entities. This combined sales effort will also drive new Sourcewell member growth and engagement.	*
24	Dealer network or other distribution methods.	Kubota has five divisions in the United States that is served by three distribution warehouse in Georgia, Kansas, and California. These centers serve and support over 1,100 Kubota dealers serving all fifty states in the United States. In Canada, Kubota has 154 dealers who serve all of Canada.	*
25	Service force.	Kubota places a high level of importance on quality, dependability, and service support. In fact, Kubota dealers average over twice as many service technicians as sales representatives. With each Kubota dealer averaging 9 service technicians, Kubota's dealer network averages over nine thousand service representatives in the United States. Many of these have mobile service vehicles. Kubota's Canadian dealer network has similar averages of service technicians in its 154 dealerships. Kubota internally employs approximately 50 field-based technical service representatives to assist the dealer network with ensuring maximum up time and value for Kubota users. Kubota has stringent dealer requirements to provide strong customer service support and obligations are high. Each dealership is required to have a factory trained service technician on staff at all times. This factory training is facilitated by the Kubota corporate technical service center in Grapevine, TX. A corporate service training staff ensures dealers have access to, and take advantage of, world-class service training. Every dealer is also required to participate annually in service training school which last multiple days. These requirements ensure Kubota dealers meet our stated service goals and expectations.	*
26	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	Kubota has created a one-step process for customer service for Sourcewell members. Sourcewell members with one call or email can easily access parts, service, warranty work, or training locally with their servicing dealer. Kubota dealers are ready to make the process simple and quick for Sourcewell members. Dealers are responsible to in turn work with Kubota directly to provide the best parts and service turnkey solution for Sourcewell members. Our customer service model places the responsibility on the dealer, not the Sourcewell member, to understand and deal with the processes behind the scenes. Kubota's high expectations of its dealer networks extend to customer service and helping Sourcewell members with this quick and easy customer service process.	*
27	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	Kubota will provide service and support to Sourcewell members in all 50 states in the United States.	*
28	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	Kubota Canada Ltd. is able to provide to Sourcewell members service and support in Canada.	*
29	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	There are no geographic restrictions in the United States or Canada. There are no participating Sourcewell entities that Kubota will not be fully serving.	*
30	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	There are no participating Sourcewell entities that Kubota will not be fully serving. Kubota will support all Sourcewell members equally and fully.	*
31	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	There are no restrictions to supporting Sourcewell members in Alaska and Hawaii. Kubota has dealers located in both states to support Sourcewell members.	*

Table 7: Marketing Plan

Line Item	Question	Response *
32	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	Growth in government, non-profit, and education verticals has become a priority for Kubota corporately. Part of our strategy to grow these verticals is to track performance in these areas. Performance is now measured and is a key performance indicator for the Kubota corporate and region sales team and incorporated into their individual management plans. This demonstrates Kubota's commitment and desire for marketing our Sourcewell contracts locally, regionally, and nationally. We will leverage our extensive dealer network and corporate sales team to promote Sourcewell at all levels. For local marketing, Kubota will ensure our 1,100 plus dealers are made aware immediately of this contract if awarded. An electronic dealer sales bulletin will be issued that will update our entire dealer network as soon as possible. This puts several thousand Kubota dealer sales team members into motion marketing our contract locally if a contract is awarded. Further, Kubota will incorporate the new Sourcewell Supplier Portal into our dealer training and encourage dealers to utilize this tool. This portal will help our dealers sales teams as well as Kubota's corporate sales team get what they need, when they need it for information regarding our Sourcewell contracts. Engaging and supporting our dealers will drive marketing Sourcewell on a local level. Kubota's in-house, full-time marketing team will assist in creating engaging marketing materials as needed for dealers. Setting up dealers for success will ensure successful marketing at the local level. To this previous point, dealer training will be a priority in marketing this contract. We will incorporate this contract, if awarded, into our web-based dealer training. An important part of this training is leveraging our dedicated web-based dealer quote tool specifically designed for our Sourcewell contracts. This quote tool is prepopulated by Kubota with the agreed upon products and pricing to help eliminate errors in pricing to Sourcewell members. This helps dealers focus solely on marketing to Sourcewell members and building quick and accurate turn-key solutions. Part of contract engagement is also making our dealers aware of and encouraging dealers to participate in local Sourcewell events. Our corporate national accounts team attends local, regional, and national Kubota dealer meetings to market Sourcewell and make sure our dealers are fully equipped to support Sourcewell members. Kubota corporately will take ownership of marketing Sourcewell on a regional and national basis. Our dedicated National Account Manager for Municipal and New Business will drive our marketing, promoting, and supporting events in government entities; public and private, K-12 schools, colleges, universities, and non-profit organizations. Kubota is an eco-system of high expectations. We will carry these high expectation into marketing Sourcewell solutions.
33	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Kubota has integrated digital resources into dealer training and education to support current Sourcewell contracts and this current proposed solution. Training videos are available online to help dealers understand and identify how to serve Sourcewell members and grow our business utilizing the Sourcewell contract. Dealers are instructed in how the process works and can be integrated into their individual dealer sales plans. Additionally, we have created dealer facing quotation tools dedicated to our Sourcewell contract to ensure ease of use and accuracy of information provided to Sourcewell members.
34	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	Kubota views Sourcewell as a partner in promoting a contract that would arise from this RFP. Kubota's experience is in the products, services and turnkey solutions we have created for the Grounds Maintenance contract. Sourcewell's experience is in facilitating competitive solicitations leading to solutions that empower community success. This partnership between Sourcewell and Kubota would deliver a world class, turnkey solution to Sourcewell members if a contract arises from this RFP. Sourcewell is our partner for contract adoption, promotion, and education. Kubota will partner with Sourcewell in seeking state adoption and acceptance of Sourcewell solutions. Sourcewell partnering with us in GTKU's has been and will continue to be effective in dealer sales education. We expect Sourcewell to continue creating content and marketing material we can use to promote Sourcewell in general and our solution specifically. We expect Sourcewell to continue engaging our dealers in person at our annual dealer meetings. Lastly, we will continue to expect to rely on our contract manager for input and guidance regarding our solutions. We expect a partnership in promoting, educating, and engagement so both organizations grow together.
35	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	An e-procurement system is not currently in place. However, Kubota does use an e-quoting tool to ensure speed and accuracy for Sourcewell members. The complexity and customization involved in building solutions for Sourcewell members requires a consultative approach to best design individualized solutions for Sourcewell members. Working with dealers to fully understand the local terrain and environment, as well as taking advantage of the expertise of our local dealer network best serves Sourcewell members. The ability to use local dealers to tailor local member requirements with the available products, options, and services for Sourcewell members provides a distinct advantage over e-procurement.

Table 8: Value-Added Attributes

Line Item	Question	Response *
36	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Training is available for all products found in this contract through our dealer network. Training is tailored to the Sourcewell member's existing knowledge and requirements. Operator training is provided for every member upon delivery of each product. More advanced levels of training are available upon request. Other training such as additional on-site training may be requested by Sourcewell members. This training may be discussed with dealers and provided as an additional line-item in a Sourcewell member quote.
37	Describe any technological advances that your proposed products or services offer.	Innovation in technology is common and ongoing within our company. Kubota utilizes fuel efficient engine systems (water cooled diesel common rail systems and gasoline EFI). This is advanced electronic fuel injection systems which is an advancement from carburetors. EFI systems are more fuel efficient, constantly adjusting for air to fuel ratios. This burns less fuel and creates less pollutants and waste. Kubota also uses electronic fuel injection, otherwise known as common rail systems, in our diesel engines. Common rail systems and our Kubota Eco-Plus system prioritizes fuel economy, lowers noise and excess vibration providing for the health of the operator and our environment. Because of our technological advances, many of our competitors choose to use Kubota engines in their products. Concerning lawn, garden, and grounds maintenance care, Kubota's mulching systems on all products improve grass health, not requiring disposal. Kubota's technological advances are focused on fuel efficiency, reducing waste, pollution, and improving not just products performance, but improving our environment.
38	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	Kubota's has a deep commitment to green initiatives. In 1995 Kubota began the internal Environmental Audit System for environmental protection in accordance with standards stricter than existing laws and regulations and towards continuous environmental improvement. All domestic establishments achieved ISO 14001 environmental certifications from the International Organization for Standardization. In 2010 Kubota was certified as an Eco-First Company by Japan's Ministry for the Environment. The Kubota Group has established a Kubota Group Environmental Charter as well as involvement with environmental conservation activities and setting medium and long-term environmental conservation targets. These targets have resulted in actions that have achieved results. 2019 in comparison to 2014 has achieved the following results. CO2 emission per unit produced has been reduced by -17.1%. Energy use per unit of production was reduced by -14.3%. Waste discharge has reduced by -10% per unit of production. Water consumption per unit of production was reduced by -19.5%. VOC's (volatile organic compounds) was reduced per unit of production by -38.1%. Our long-range plans and immediate actions of the present demonstrate Kubota's commitment to reducing CO2 and VOC emissions, reducing waste, conserving water, and preserving our environment. "For Earth, For Life", it is more than our motto, it is what we do. https://www.kubota.com/sustainability/environment/active/index.html
39	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	All products in the proposed solution meet or exceed the highest applicable Environmental Protections Agency requirements and certifications.
40	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	No proposal for this section.

41	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	A unique attribute to Kubota is its blending of commitment to the environment with its commitment to improving our products. Progress and advancements in technology, design, and safety enhancement, go hand in hand in product improvements with environmental considerations in mind. Kubota designs safety into our products. 3M activity or method, man, machinery is employed in our design. Further, ISE or inherently safe equipment is a better choice compared to machinery lacking similar design considerations. This is, machinery designed with fewer ways of causing harm. Seeking continuous improvement is foundational to Kubota's philosophy and practice. Our company employs DRBFM, a cross functional disciplined process to evaluate proposed changes to designs. Kubota self-audits quality, quality compliance, cross audits, and audits at short notice. This focus on auditing and compliance is to achieve operational excellence and continuous improvement. 5-gen and PDCA (plan, do, check, act) continuous improvement is used in manufacturing and operations. Hydrostatic power steering, common rail systems, and reverse awareness systems and cameras, are just a few of the many, many features, all introduced and interwoven as a result of a focus on enhanced safety, performance, and concern for the environment. This is a unique attribute in our industry. Lastly, Kubota manufactures and/or markets products in more than 130 countries. This footprint that extends around the globe allows our company to pool "best practices" from across many languages, cultures, and geographic regions. We pool these ideas and innovations and share them across the entire business. This unique attribute of viewing people, products, and the environment as interrelated and global, is a unique attribute shared with Sourcewell members. Kubota is more than part of a supply chain; Kubota is part of a global value chain.	*
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Table 9: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
42	Do your warranties cover all products, parts, and labor?	Yes. Warranty documents providing detail are included in this proposal.	*
43	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	Warranty details are provided in the warranty guide. The warranty guide is fully instructive in warranty details. Abuse and neglect for example are not covered under warranty.	*
44	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Travel time and mileage are not under the coverage of warranty. However, if Kubota issues a recall there may be reimbursement for travel time and/or mileage paid to the dealer/technician.	*
45	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Every authorized Kubota dealer is required to have one factory trained technician on staff. With 1,100 dealers in the United States with coverage in all 50 states as well as 154 dealers in Canada, Kubota dealers are well positioned to serve Sourcewell members with factory trained technicians. Kubota dealers are responsible to service and support all sales made by the dealer. Service for warranty repairs for Sourcewell members are made by the servicing dealer. Should, on a rare occasion, a dealer have difficulty due to remoteness or other circumstance, Kubota and the servicing dealer will work together to find resolution.	*
46	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	No items in our proposal are made by other manufacturers. Kubota is the sole manufacturer for all products in our proposal. All Kubota products are covered by a Kubota warranty.	*
47	What are your proposed exchange and return programs and policies?	All sales are final. However, at its discretion, Kubota may choose to work with a Sourcewell member if they purchase a product that is not matched to their needs. Kubota reserves the right to accept or deny any request for returns or exchanges. Please note, Kubota's number one dealer rating six years in a row by The North American Dealers Association (NAEDA) Dealers-Manufacturers survey speaks to our ability and willingness to resolve most any issue that arises. Lastly, any items found to be warrantable will be provided for under the terms of the warranty statement.	*
48	Describe any service contract options for the items included in your proposal.	Service contract options will be quoted as Open-Market items by local Kubota dealers.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
49	What are your payment terms (e.g., net 10, net 30)?	Terms of sale are net thirty days.	*
50	Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?	Kubota offers financing and leasing options to Sourcewell members through Kubota Credit Corporation.	*
51	Briefly describe your proposed order process. Include enough detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell participating entities' purchase orders.	The proposed order process is established to best support Sourcewell members by letting members work closely with their local supporting Kubota dealers throughout the order process. Kubota dealers are included in our response. The process flow below describes both the Sourcewell member order process as well as the internal order process between Kubota and dealers. Sourcewell member process flow: • Sourcewell members contact their local Kubota dealer or Kubota Tractor Corporation directly for a quote. Additionally, Kubota dealers proactively marketing the Sourcewell contract may become aware of a need or quote request. If non-Sourcewell members request a quote, dealers have been instructed how to help prospective and qualifying non-members become a Sourcewell member. • The local Kubota dealer will provide the existing or new Sourcewell member with a Kubota authorized Sourcewell quote. This quote is created using the Kubota authorized dealer quote tool. • If Sourcewell members decide to move forward and acquire a Kubota product, Sourcewell members will issue a purchase order made to the Kubota dealer. • The servicing dealer will fulfill the order either from their dealer inventory, or the dealer will order the product from Kubota in the event the product is not located in the servicing dealer inventory. • The product is shipped to the Kubota dealer for the required inspections and any preparation needed for the Sourcewell member. • Delivery is coordinated with the Sourcewell member and upon delivery, operating instructions are reviewed and dealers assist with all needs and questions by the Sourcewell member. Sourcewell member satisfaction is ensured before the process moves on. The process continues and turns internally between Kubota and dealers. Kubota/Dealer process flow: • Dealers will settle the purchased unit indicating the sale is to a Sourcewell member in order to receive credit for the sale. • The supporting dealer will provide Kubota the quote as well as the Sourcewell member purchase order for reference. • Kubota will create quarterly reports for dealer sales to Sourcewell members. Kubota will submit this report to Sourcewell quarterly. • Kubota makes payment to Sourcewell based on the agreed upon administrative fee. For reference, this process is the currently established process for Sourcewell contract 040319.	*
52	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Kubota dealers may, at their discretion, accept the P-card procurement and payment process. Kubota encourages dealers to accept the P-card and encourages Sourcewell members to consult with their local supporting dealer for participation.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
53	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Kubota will offer a specific discount from published list price for each series and product family in our proposed solution. These discounts from MSRP can be found in the supporting pricing documentation submitted in the documents step.	*
54	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	Kubota will offer a specific discount from published list price for each series and product family in our proposed solution. These discounts from MSRP can be found in the supporting pricing documentation submitted in the documents step. The discount from published list price is as follows: Tractors B series – 22% BX series – 22% L series – 22% M series – 22% Turf F series – 22% GR series – 22% T series – 22% Z series – 22% TLB series - B26, L47 & M62 – 22% Land Management Disc mowers – 22% Rotary tedders – 22% Rotary rakes – 22% Spreaders – 22%	*
55	Describe any quantity or volume discounts or rebate programs that you offer.	Kubota offers best and last pricing for individual units without requiring Sourcewell members to buy in volume or apply for rebates after the sale.	*
56	Propose a method of facilitating “sourced” products or related services, which may be referred to as “open market” items or “nonstandard options”. For example, you may supply such items “at cost” or “at cost plus a percentage,” or you may supply a quote for each such request.	Requests for open market “sourced” or non-standard items can be added to Sourcewell members quotes at their request. Acceptance of these quoted sourced/non-standard items will be at the discretion of Sourcewell members.	*
57	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Pre-delivery inspections and freight will be shown on all Sourcewell member quotes to ensure complete costs transparency prior to acquisition. These items will be shown clearly as line items on the quote form. All common accessories and attachments have a standard labor time associated with the installation of accessories. Dealer labor rate will vary due to regional economic differences (e.g. Seattle, WA labor rates are typically higher than Greenville, SC). Kubota reviews all dealer labor rate differences and ensures that all dealer rates are justified and compliant with normal regional economic conditions. Kubota strives to maintain a labor rate relative to \$100/hr. All charges will be turnkey solutions with no hidden costs and will be clearly identified on all Sourcewell members quotes prior to solution acquisition.	*
58	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Freight charges will be shown on every Sourcewell member quote prior to acquisition. Kubota's proposed solution includes many various models with great weight and size disparities (e.g. a BX1880 tractor weighs 1,407lbs, an M6 tractors weighs 11,387lbs). These will be shipped from east coast, west coast, and central US warehouses to all 50 states, territories, Canada, and wherever Sourcewell members are located. A flat rate charge to ensure costs are covered would be prohibitively and artificially high. Our solution is a freight pricing model of showing freight charges tailored by size, model, weight, to a specific location. This solution best address the logistical variances in supporting all Sourcewell members equally.	*
59	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	The freight pricing model for Alaska Hawaii, Canada, and all offshore deliveries will be to show all freight charges on Sourcewell member quotes prior to acquisition. Freight in Canada by Kubota Canada Ltd. will follow this process. Freight for Hawaii and Alaska will be provided by a freight forwarder and shown on all quotes prior to acquisition.	*

60	Describe any unique distribution and/or delivery methods or options offered in your proposal.	A unique aspect of Kubota's distribution method is having new forward inventory placed within our Kubota dealer network. Many products, attachments, accessories, and solutions are already in place and close to Sourcewell members within our 1,100+ location dealer network. This allows for Sourcewell members to visit local dealers and many times have a hands-on opportunity with a solution prior to acquisition. While Kubota does ship products from its three US warehouses (California, Georgia, and Kansas) and one in Canada (greater Toronto area), this access to solutions locally is an added benefit to Sourcewell members. Additionally, have a local, servicing dealer allows for specialization of products to meet local and unique Sourcewell member needs and requirements prior to delivery (e.g. dealers based in and familiar with local subzero winterization requirements).	*
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Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
61	b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
62	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell.	Kubota self-audits multiple product group's regularly reviewing and auditing pricing along with our digital marketing group that manages our electronic pricing database. In addition, the National Accounts group regularly reviews dealer quoting for pricing accuracy. These multiple layers of self-audit and review elevate accuracy and compliance. Kubota dealers are not paid for their sales using the Sourcewell program without submitting all of the required information to report accurately on the Sourcewell contract usage reports. This information is in turn downloaded to create our usage reports for the Sourcewell program. This series of overlapping auditing for pricing and reporting drives contract compliance.	*
63	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	Kubota proposes paying a 1.5% administrative fee of total sales less freight, assembly fees, and pre-delivery inspection fees for Kubota products only.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
64	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	The solutions being proposed by Kubota are broad and encompassing of professional grounds maintenance requirements. Kubota's turnkey solutions of whole goods, equipment, attachments, accessories, and related services as they relate to grounds maintenance is well established around the world for both professionals and consumers. Kubota offers in this proposal turf management with walk-behind mowers as small as 21 inches in cutting width up to over 13 feet in cutting width using disc mowers and many various sizes in between. This solves for mower cutting jobs as small as imaginable while providing extensive cutting widths across the range of 21 inches to 13 feet. Our solutions solve for the smallest and tightest areas (zero turn mowers) in grounds maintenance in and around walkways, landscaping, lawn and garden maintenance, up through large tracts of acreage needing to be maintained. This proposal includes small walk behind mowers, small riding mowers, mid-size lawn and garden tractors, commercial zero-turn mowers in both gas and diesel. All of these products are built by Kubota and Kubota engineered for professional performance. This proposal also includes a wide variety of tractors, attachments, and accessories. These tractors range in size from 1,407lbs to 11,387lbs. This range empowers Sourcewell members with a comprehensive selection of tractors and attachments suited to their specific needs. The tractors come with a sweeping assortment of accessories and attachments. These include but is not limited to, loaders, backhoes, buckets, grapple buckets, snow blowers, sweepers, a wide range of mower decks and grass mulching and catchers, forklift attachments, straight blades, angled blades. The loaders and backhoe options in this proposal offer ground engaging ability to dig, push and move material in professional grounds maintenance. Fork lift attachments for tractors provide forklift capability for moving product as needed. Lastly, while our mowing solutions maintain small to medium land size, our land management solutions solve for maintenance of large swaths of acreage. This is done with next generation disc mowing that moves on from sickle bar mowing. Disc mowing is better suited to fine-stemmed grasses leaving a clean evenly maintained area. With our many models, sizes, and series, of disc mowers, tedders, rakes, etc., along with options, accessories, attachments, and services, this proposal is broad in scope and robust enough to support any professional grounds maintenance requirements.
65	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	Along with the many various whole goods in this proposal is a long list of attachments, accessories, options, and services. These may be referred to as subcategories. The literature provided in additional documents shows these subcategories in better detail.

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments
66	Lawn and garden equipment, tools, attachments, and accessories	☒ Yes ☐ No	Full spectrum of lawn, sod, grounds, and garden equipment and tools.
67	Irrigation systems, equipment, parts, and related installation and maintenance services	☒ Yes ☐ No	Our solutions (ground engaging) can be used to install irrigation systems
68	Beach and waterfront maintenance equipment and accessories	☒ Yes ☐ No	The products we offer in our proposed solution can be used for grounds maintenance along waterfront areas.
69	Accessories, parts, and services related to the solutions described above, including maintenance or repair, and warranty programs	☒ Yes ☐ No	Full assortment and wide variety of attachments and accessories for grounds maintenance as well as service and training.

Table 15: Industry Specific Questions

Line Item	Question	Response *
70	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	Kubota produces multiple sales reports on a monthly basis including our sales volume numbers for the Sourcewell contract. Our main report is the National Accounts Month End report. This report lists all of our sales through the national accounts programs in terms of dollar volume and model mix. Kubota Executives, Middle Management and Field Sales reps review the report(s) and monitor their dealer and dealer group performance with the Sourcewell contract. We also produce a contract usage report that is sorted by Region Sales manager so that each RSM has visibility to the dealers under his responsibility that are and are not using the contract to its fullest potential. Corrective action in the form of sales training is created for underperforming dealers. Sourcewell is a specific call out line item on all National Account sales reports and is thoroughly reviewed by all levels of management for increased monthly/yearly performance.
71	Describe the serviceability of the products included in your proposal (parts availability, warranty and technical support, etc.).	Serviceability in the way of after sale support for Sourcewell members is easy and robust. With an extensive dealer network across the United States and Canada waiting to support Sourcewell members, the serviceability of the solutions proposed by Kubota is comprehensive. Local dealers will provide local expertise for parts, warranty work as well as regular service internals as needed. Our dealers are experts in our products. Sourcewell members will be able to sit down with these localized experts and map out any turnkey solution needed. Every Kubota dealer is required to have a factory trained technician on staff. To support this, Kubota dealers are required to participate annually in service school training. To also help ensure a high level of serviceability for parts, Kubota has added a parts component to measuring our dealers performance. The goal is to incentivize Kubota dealers to have parts on the shelf when needed. Parts on the shelf, factory trained technicians, and local experts in the solutions in this proposal ensure a high level of serviceability and dependability waiting for Sourcewell members.
72	Describe advancements reflected in the equipment or products offered in your proposal, such as safety, longevity or life cycle cost measures.	Advancements are ongoing and constant as is total operational improvement. Some examples of our advancements follow here. Kubota has developed Reverse Awareness Systems for our GR series of mowers. These advancements enhance safety when mowing in reverse. Regarding life-cycle and longevity, Kubota offers multiple year warranties as standard for many products. For products with standard one year warranty's, most all products have extended warranty's available to Sourcewell members. Another advancement is Kubota's exclusive "Swift-Tach" loaders which allow for safe and easy removal and installation. "Swift-Connect" backhoes are likewise designed and performance matched for ease and safety. Another example of an advancement is the industry-exclusive optional one-lever quick couplers found on the LX series of tractors in this proposal. Likewise is the industry-exclusive mechanical self-leveling kit for easier material handling capabilities. Kubota engines with their next generation common rail systems and electronic fuel injections are examples of advancements that improve fuel cost savings and environmental enhancement. Throughout Kubota's product offering, our products are engineered to provide durable long life that reduce down time as well as minimize lifetime costs. The previous are but a few of the product advancements that will serve Sourcewell members.

Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

Proposer's Affidavit**PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE**

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 - a. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 - b. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or

- c. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Rusty Pugh, National Account Manager Municipal and New Business, Kubota Tractor Corporation

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_11_Grounds_Maintenance_Equipment_RFP_031121 Thu March 4 2021 06:08 PM	☒	2
Addendum_10_Grounds_Maintenance_Equipment_RFP_031121 Thu February 25 2021 01:00 PM	☒	1
Addendum_9_Grounds_Maintenance_Equipment_RFP_031121 Tue February 23 2021 10:33 AM	☒	1
Addendum_8_Grounds_Maintenance_Equipment_RFP_031121 Mon February 22 2021 10:21 AM	☒	2
Addendum_7_Grounds_Maintenance_Equipment_RFP_031121_CDR_Suggests Wed February 17 2021 09:01 AM	☒	1
Addendum_6_Grounds_Maintenance_Equipment_RFP_031121 Tue February 16 2021 11:03 AM	☒	1
Addendum_5_Grounds_Maintenance_Equipment_RFP_031121 Fri February 12 2021 03:14 PM	☒	1
Addendum_4_Grounds_Maintenance_Equipment_RFP_031121 Tue February 2 2021 02:12 PM	☒	1
Addendum_3_Grounds_Maintenance_Equipment_RFP_031121 Thu January 21 2021 03:47 PM	☒	2
Addendum_2_Grounds_Maintenance_Equipment_RFP_031121 Wed January 20 2021 02:02 PM	☒	1
Addendum_1_Grounds_Maintenance_Equipment_RFP_031121 Tue January 19 2021 03:36 PM	☒	1

**AMENDMENT #1
TO
CONTRACT #031121-KBA**

THIS AMENDMENT is effective upon the date of the last signature below by and between **Sourcewell** and **Kubota Tractor Corporation** (Supplier).

Sourcewell awarded a contract to Supplier to provide Grounds Maintenance Equipment, Attachments, and Accessories with Related Services, to Sourcewell and its Participating Entities, effective April 28, 2021, through April 30, 2025 (Contract).

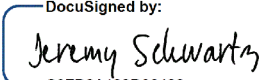
The parties wish to amend the following terms within the Contract.

1. Section 6. Participating Entity Use and Purchasing—Subsection B. Additional Terms and Conditions/Participating Addendum, of the Contract, is deleted in its entirety and replaced with the following:

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Vendor, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be worked out directly between Participating Entity and the Vendor, or its authorized dealers, distributors, or resellers, as applicable. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

Except as amended by this Amendment, the Contract remains in full force and effect.

Sourcewell

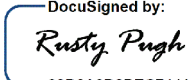
DocuSigned by:

By: _____
C0FD2A139D06489...
Jeremy Schwartz, Director of Operations/CPO
Date: 4/22/2022 | 11:25 AM CDT

Approved:

DocuSigned by:

By: _____
7E42B8F817A64CC...
Chad Coauette, Executive Director/CEO
Date: 4/22/2022 | 11:37 AM CDT

Kubota Tractor Corporation

DocuSigned by:

By: _____
89D8A8D8BEC744A...
Rusty Pugh, National Accounts Manager
Date: 4/22/2022 | 8:27 AM PDT

-- Standard Features --

-- Custom Options --



M Series

M6-141DTC-F-1

4WD FARM TRACTOR, ELECTRO-HYDRAULIC SHUTTLE
 TRANSMISSION & CAB

*** EQUIPMENT IN STANDARD MACHINE & SPECIFICATIONS ***

DIESEL ENGINE

Kubota V6108 Direct Injection
 6.1L (374 cu. In.) 4 Cyl
 EPA Tier 4 Final Compliant
 Common Rail Electronic Fuel Injection
 Electronic Engine Management
 Turbocharged
 w/Wastegate and Intercooled
 Fuel Tank Capacity: 50.2 Gal
 130 Amp Alternator Cab
 12V 1090 CCA Battery
 SAE Gross HP: 141.4
 Engine Net HP: 133.0
 Max. PTO HP: 114.0
 @ 2200 Engine RPM

EXHAUST EMISSION CONTROL TYPE

DPF System (Diesel Particulate Filter)
 SCR System

HYDRAULICS / HITCH / DRAWBAR

Open Center Gear Pump
 Max. Flow @ Rated Engine Speed:
 Power Steering: 14.6
 Impl. Flow: 20.4 gpm
 Total Flow: 35.0 gpm

REMOTE VALVES

(1) SCD (Self Canceling Detent)
 (1) FD (Float Detent)
 In-Cab Flow Control Adjustment

3 POINT HITCH & DRAWBAR

Cat II 3-point Hitch
 @ Lift Points: 8598 lbs
 @ 24" Behind: 6834 lbs
 2 External Lift Cylinders
 Electronic Position and Draft Control
 Telescoping Lower Links
 Stabilizers
 Swinging Drawbar - 4.5" Drop

POWER TAKE OFF (540)

Live-Independent Hyd. PTO
 SAE 1 3/8" Six Spline
 540 rpm @ 1994 Eng. rpm
 SAE 1 3/8" Twenty-One Spline
 1000 rpm @ 2050 Eng. rpm

LIGHTING

2 Headlights - Tail lights
 4 Hazard Flasher Lights w/ Turn Signals
 2 Grille Mounted Worklights
 2 Front Cab Halogen Worklights
 2 Rear Halogen Worklights

TRANSMISSION

24F/24R Intelli-Shift
 Three Range, 8-Speed Semi-
 Powershift
 Auto Shift Mode - Field & Road
 Auto 4WD Function
 Electro-Hydraulic Shuttle Shift
 Electro-Hydraulic Front & Rear Diff.
 Lock
 Clutch - Multi Plate Wet
 Planetary Final Drives
 Hydraulic Wet Disc Brakes

FRONT AXLE

Hydrostatic Power Steering
 4WD: Cast Iron, Bevel Gear Type
 Bi-Speed Turn Feature
 Planetary Final Drives
 Adj. (Rim) Tread Spacing

FLUID CAPACITY

Cooling System: 15.4 qts
 Crankcase: 14.6 qts
 Hydraulics/Trans: 17.2 gal

INSTRUMENTS

LCD readout for MPH and PTO rpm
 26 Mode LCD Readout
 Tachometer/Hour meter
 Oil Pressure
 Fuel Gauge
 Coolant Temperature
 Gear Speed Digital Light Indicator
 (2) USB Ports
 Digital Light Indicator F/R Direction

GRAND-X CAB

4-post, ROPS Certified
 RH & LH Doors
 Tinted Glass Doors and Windows
 In-roof window/vent
 Tilt and Telescoping Steering Wheel
 Deluxe Air Ride Seat
 Dual Level Air Conditioning & Heater
 Front and Rear Wiper/Washer
 Front Sun Visor
 Rear View Mirror
 LH & RH Telescoping Side Mirrors
 Radio Ready Cab
 Steps, Left and Right Side
 Interior Dome Light
 12V - 30-Amp 2 Wire Coupler
 12V - 3 Pin 30-Amp Coupler
 12V - Outlet
 Cup Holder
 Instructor Seat Ready
 Horn

SAFETY EQUIPMENT

Flip-Up PTO Shield
 Safety Start Switches
 Electric Key Shut Off
 Parking Brake
 Turn Signals

M6-141DTC-F-1 Base Price: \$121,943.00

(1) 3RD POSITION LEVER KIT M7629-3RD POSITION LEVER KIT	\$270.00
(1) FRONT LOADER /M6-131/M6-141 TRA PNF LA2255-FRONT LOADER /M6-131/M6-141 TRA PNF	\$10,034.00
(1) 84" 2 LEVER QUICK COUPLER BUCKET M1816-84" 2 LEVER QUICK COUPLER BUCKET	\$1,108.00
(1) FLOAT DETENT (FD) AUXILIARY VALVE PNF M7684A-FLOAT DETENT (FD) AUXILIARY VALVE PNF	\$1,018.00
(1) STANDARD LDR VALVE /LA2255/LA2255E PNF M6917-STANDARD LDR VALVE /LA2255/LA2255E PNF	\$1,495.00
Configured Price:	\$135,868.00
Sourcwell Discount:	(\$29,890.96)
SUBTOTAL:	\$105,977.04
Factory Assembly:	\$260.00
Dealer Assembly:	\$685.67
Freight Cost:	\$1,093.75
PDI:	\$400.00

Total Unit Price: \$108,416.46

Quantity Ordered: 1

Final Sales Price: \$108,416.46

**Final pricing will be based upon pricing at the time of
 final delivery to Sourcwell members.
 Purchase Order Must Reflect Final Sales Price.**

**To order, place your Purchase Order directly with the quoting
 dealer**

SMV Sign
7-Pin Electrical Trailer Connector

SELECTED TIRES
AMR8560A & AMR8571A
FRONT - 380/85R24 R1W GOODYEAR OPTTRAC WAF
REAR - 460/85R38 R1W GOODYEAR OPTTRAC CAST

***Some series of products are sold out for 2022. All equipment specifications are as complete as possible as of the date on the quote. Additional attachments, options, or accessories may be added (or deleted) at the discounted price.** All specifications and prices are subject to change. Taxes are not included. The PDI fees and freight for attachments and accessories quoted may have additional charges added by the delivering dealer. These charges will be billed separately. Prices for product quoted are good for 60 days from the date shown on the quote. All equipment as quoted is subject to availability.

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198.143.41.34

1. **Requested Motion:**

Meeting Date: June 5, 2023

Motion to authorize the Town Manager to approve Coastal Engineering Consultants, Inc. STA# 4 for Contract RFQ-21-09-EN to monitor shorebird nesting for the Emergency Berm Project.

Why the action is necessary:

The emergency berm project is placing sand onto shorebird nesting habitat during shorebird nesting season. The Biological Opinion for FEMA Emergency Berm Repair for the Florida Coast (2008) requires shorebird monitoring.

What the action accomplishes:

Shorebird Monitoring meets the Biological Opinion criteria for FEMA Emergency Berm Repair for the Florida Coast (2008)

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Emergency Berm Project is proceeding during shorebird nesting season. State and Federal guidelines require authorized personnel to monitor shorebird nesting activity in the emergency berm project area.

Attachments:

1. 20080403 FEMA USFWS BO Emergency Berm Repair
2. 22502_STA 4-Estero Island Emergency Berm 20230501

Financial Impact:

This expense is reimbursible by FEMA.

6. **Alternative Action**

Do not proceed with Emergency Berm during Shorebird Nesting Season.

7. **Management Recommendations:**

Authorize the Town Manager to approve the Coastal Engineering Consultants, Inc. STA# 4 for Contract RFQ-21-09-EN to monitor shorebird nesting for the Emergency Berm Project.

8. **Recommended Approval:**

Chadd Chustz, Environmental Services
Steve Poposki, Community Development Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 5/25/2023
Approved - 5/25/2023
Approved - 5/25/2023
Approved - 5/26/2023
Final Approval - 5/26/2023

COPY

**FEMA Emergency Berm Repair for the
Florida Coast**

**Biological Opinion
April 3, 2008**

**Prepared by:
U.S. Fish and Wildlife Service
Jacksonville Field Office
6620 Southpoint Drive, South
Jacksonville, Florida**



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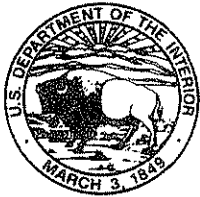
Acronyms

ABM	Alabama Beach Mouse
Act	Endangered Species Act
AIBM	Anastasia Island Beach Mouse
BIRNM	Buck Island Reef National Monument
BO	Biological Opinion
CAHA	Cape Hatteras National Seashore
CBM	Choctawhatchee Beach Mouse
CBIA	Coastal Barrier Improvement Act
CBRA	Coastal Barrier Resource Act
CCAFS	Cape Canaveral Air Force Station
Corps	U.S. Army Corps of Engineers
FAC	Florida Administrative Code
FDEP	Florida Department of Environmental Protection
FEMA	Federal Emergency Management Agency
FWC	Fish and Wildlife Conservation Commission
FWRI	Fish and Wildlife Research Institute
GOM	Gulf of Mexico
GPS	Global Positioning System
GTNERR	Guana Tolomoto Matanzas National Estuarine Research Reserve
HCP	Habitat Conservation Plan
INBS	Index Nesting Beach Survey

ITP	Incidental Take Permit
MHW	Mean High Water
MHWL	Mean High Water Line
MLW	Mean Low Water
NLAA	Not Likely to Adversely Affect
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
ORV	Off Road Vehicles
PBA	Programmatic Biological Assessment
PCE	Primary Constituent Elements
PKBM	Perdido Key Beach Mouse
PKSP	Perdido Key State Park
PSI	Per Square Inch
PHVA	Population and Habitat Viability Analysis
PVA	Population Viability Analysis
RPMs	Reasonable and Prudent Measures
SABM	St. Andrews Beach Mouse
SEBM	Southeastern Beach Mouse
Service	U.S. Fish and Wildlife Service
SNBS	Statewide Nesting Beach Survey
STSSN	Sea Turtle Stranding and Salvage Network
T&Cs	Terms and Conditions
TEDS	Turtle Excluder Devices

USDA United States Department of Agriculture

USVI U.S. Virgin Islands



United States Department of the Interior

FISH AND WILDLIFE SERVICE

6620 Southpoint Drive, South
Suite 310
Jacksonville, Florida 32216-0912

IN REPLY REFER TO:

April 3, 2008

COPY

Mr. Richard Myers
Environmental Liaison Officer
Federal Emergency Management Agency
Florida Long Term Recovery Office
U.S. Department of Homeland Security
36 Skyline Drive
Lake Mary, Florida 32746

Re: Service Federal Activity No: 41910-2007-F-0430
Applicant: Federal Emergency Management
Agency
Date Started: May 30, 2007
Project Title: FEMA Emergency Berm Repair and
Construction
Ecosystem: Florida Coastline
Counties: Nassau, Duval, St. Johns, Flagler,
Volusia, Brevard, Indian River, St. Lucie, Martin,
Palm Beach, Broward, Monroe, Miami-Dade,
Collier, Lee, Charlotte, Sarasota, Manatee, Pinellas,
Pasco, Franklin, Gulf, Bay, Walton, Okaloosa,
Santa Rosa, Escambia.

Dear Mr. Myers:

Enclosed is the U.S. Fish and Wildlife Service's (Service) biological opinion (BO) for Federal Emergency Management Agency (FEMA) emergency berm repair in Florida on nesting loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles, and the southeastern (*Peromyscus polionotus niveiventris*), Anastasia Island (*Peromyscus polionotus phasma*), Choctawhatchee (*Peromyscus polionotus allophrys*), St. Andrews (*Peromyscus polionotus peninsularis*), and Perdido Key (*Peromyscus polionotus trissyllepsis*) beach mice, non-breeding piping plover (*Charadrius melodus*) and designated critical habitat for the Perdido Key beach mouse (PKBM), Choctawhatchee beach mouse (CBM), and St. Andrews beach mouse (SABM) (**Table 1**).

FEMA has determined that the proposed project may affect but is not likely to adversely affect (NLAA) the roseate tern (*Sterna dougallii dougallii*), the beach jacquemontia (*Jacquemontia reclinata*), and the Garbers spurge (*Chamaesyce garberi*) (Table 2). Based on our discussions and our review of the project plans and the incorporation of the minimization measures listed in the Programmatic Biological Assessment (PBA) as conditions of the projects where these species are known to exist, we concur that the project is NLAA the above identified species.

Previous FEMA emergency berm repair and construction projects have not occurred or impacted the primary constituent elements within any piping plover critical habitat units in Florida. Given the ephemeral nature of optimal piping plover habitat and the fact that most units are publicly owned, minimal structures occur in these areas and therefore do not meet the criteria necessary for emergency berm placement. Proposed FEMA berm repair and construction projects that occur within piping plover critical habitat are not included in this programmatic BO and will be consulted on individually.

This BO is provided in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We have assigned Service Federal Activity number 41910-2007-F-0430 for this consultation.

This BO is based on the PBA, and information provided during meetings and discussions with FEMA and the FEMA's representative and information from the Florida Fish and Wildlife Research Institute (FWRI) sea turtle and shorebird nesting databases. A complete administrative record of this consultation is on file in the Service's North Florida, Panama City, and South Florida Ecosystem Field Offices.

Table 1. Status of Federally Listed Species within the Action Area that may be adversely affected by the Berm Construction Activities.

Species common name	Species scientific name	Status
Mammals		
Choctawhatchee beach mouse	<i>Peromyscus polionotus allophrys</i>	Endangered (CH)
Southeastern beach mouse	<i>Peromyscus polionotus niveiventris</i>	Threatened
Anastasia Island beach mouse	<i>Peromyscus polionotus phasma</i>	Endangered
St. Andrews beach mouse	<i>Peromyscus polionotus peninsularis</i>	Endangered (CH)
Perdido Key beach mouse	<i>Peromyscus polionotus trissyllepsis</i>	Endangered (CH)
Birds		
Piping Plover	<i>Charadrius melodus</i>	Threatened
Reptiles		
Green sea turtle	<i>Chelonia mydas</i>	Threatened

Species common name	Species scientific name	Status
Hawksbill sea turtle	<i>Eretmochelys imbricata</i>	Endangered
Kemp's ridley sea turtle	<i>Lepidochelys kempii</i>	Endangered
Leatherback sea turtle	<i>Dermochelys coriacea</i>	Endangered
Loggerhead sea turtle	<i>Caretta caretta</i>	Threatened

Table 2. Species and critical habitat evaluated for effects and those where the Service has concurred with a 'not likely to be adversely affected' determination by FEMA.

SPECIES/CRITICAL HABITAT	PRESENT IN ACTION AREA	PRESENT IN ACTION AREA BUT "NOT LIKELY TO BE ADVERSELY AFFECTED"
Roseate Tern	Yes	Yes
Beach jacquemontia	Yes	Yes
Garbers spurge	Yes	Yes

Consultation History

- September 1, 2006 The Department of Interior and FEMA entered into a cooperative funding agreement (HSFELA-06-X-0074) to streamline the Act's section 7 consultation process for FEMA funded actions for federally declared disaster response and recovery.
- February 21, 2007 The Service met with a representative of FEMA to discuss the PBA for FEMA berms and other activities.
- March 7, 2007 The Service discussed via email with a representative of FEMA the activities to be included in the PBA. It was concluded that FEMA would follow up on post- hurricane season 2004 and 2005 emergency consultations for previous activities and any future emergency related activities would be addressed in the PBA.
- March 26, 2007 The Service received via email and regular mail a draft of the PBA from FEMA.
- March 29, 2007 The Service provided comments via email and regular mail to FEMA on the draft PBA.
- April 6, 2007 The Service and a representative of FEMA conducted a conference call to discuss and clarify our comments on the PBA.

<u>April 11, 2007</u>	The Service provided FEMA with a history of previous activities and minimization measures that resulted in a “may affect but not likely to adversely affect” for federally listed species. The Service also provided a list of Reasonable and Prudent Measures and Terms and Conditions that have been included in biological opinions for previous FEMA berm repair.
<u>May 3, 2007</u>	The Service concurred with FEMA on the species to be included in the PBA consultation received on March 26, 2007, based on knowledge of species range.
<u>May 30, 2007</u>	The Service received via regular mail and email from FEMA, a PBA for the proposed work with a letter dated May 17, 2007 and amended on May 30, 2007.
<u>June 4, 2007</u>	The Service provided a letter via regular mail to FEMA acknowledging and concurring with their request for formal section 7 consultation.
<u>September 4, 2007</u>	The Service requested via email from FEMA an extension for submittal of the draft BO. No projected date for submittal was provided.
<u>September 6, 2007</u>	The Service received via email from FEMA a response concurring with our request for the deadline extension for the draft BO.
<u>September 12, 2007</u>	The Service provided via email a projected date of November 12, 2007 for the draft BO.
<u>November 16, 2007</u>	The Service submitted via email the draft BO to FEMA for review.
<u>November 20, 2007</u>	The Service participated in a conference call with FEMA on the draft BO.
<u>November 28, 2007</u>	The Service submitted via email revised Reasonable and Prudent Measures (RPMs) and Terms and Conditions (T&Cs) to FEMA.
<u>November 29, 2007</u>	The Service submitted via email a revised draft BO to FEMA.
<u>December 3-5, 2006</u>	The Service received via email from FEMA comments on the draft BO.
<u>December 6, 2007</u>	The Service submitted via email, revised RPMs and T&Cs.
<u>Dec 2007–Mar 2008</u>	The Service and FEMA discussed and corresponded via email on the RPMs and T&Cs in the draft BOs.
<u>March 5, 2008</u>	The Service received via email from FEMA additional comments on the draft BO and concurrence to finalize the BO.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

Emergency berm repair and construction projects covered by this BO are limited to those located landward of waters of the United States (ordinary or mean high water (MHW)) along the Atlantic Ocean and Gulf of Mexico (GOM)). Projects that would involve excavation or filling of waters or wetlands subject to regulatory overview by the U.S. Army Corps of Engineers (Corps) are not covered in this consultation. For this consultation, berms include any small, naturally occurring or man-made sand mounds located seaward of the primary dune (if present) and landward of the normal high tide line. Emergency berm repair is the re-creation of a previously existing beach berm utilizing the same or very similar footprint, elevation and slope, and using similar quality sand that is obtained from upland or other sources. Under FEMA regulations, emergency berm repair may also include creation of new berms. New berms must largely meet the preceding criteria for re-created berms. FEMA considers emergency beach berms as emergency protective measures to protect lives or improved property from waves and flooding. Work is limited to that which would provide protection from a 5-year storm event or would restore the facility to its pre-disaster design, whichever is less.

Construction typically involves placing sand (typically obtained from an upland source) along the path of the berm and shaping it with a bladed, crawler-type tractor. The berm size is limited to no more than six (6) cubic yards of sand per linear foot of berm. Equipment used for berm repair and construction generally includes dump trucks for sand delivery and placement, and small bulldozers (D5) for shaping the berm. Other small bladed tractors may also be used. Trucks entering at one beach access point generally follow the planned berm alignment and after dumping the sand they travel to and along the damp portion of the beach to a single exit point. The duration of construction depends on length of the berm. Normally, this requires less than one week. The most protracted project in Florida resulting from the 2004-05 hurricanes lasted approximately 30 days. Maintenance and repair of the berm, once completed, is not authorized. Prior to 2004-05, shoreline erosion and loss of barrier dunes and berms were addressed most exclusively by local, county, and state governments and by the Corps. In connection with the hurricanes of 2004 and 2005, FEMA has estimated they will provide grants for approximately 340 projects affecting beaches and dunes, of which involve about 40 emergency berm repair affecting approximately 75 miles of improved coastline.

Conservation Measures

The sediment placed on the beach will meet the Florida Department of Environmental Protection's (FDEP) sediment compatibility requirements for beach and nearshore placement (62B-41.007 (2) (j-k)) (<http://www.dep.state.fl.us/legal/Rules/mainrulelist.htm>) listed below:

(j) To protect the environmental functions of Florida's beaches, only beach compatible fill shall be placed on the beach or in any associated dune system. Beach compatible fill is material that maintains the general character and functionality of the material occurring on the beach and in

the adjacent dune and coastal system. Such material shall be predominately of carbonate, quartz or similar material with a particle size distribution ranging between 0.062mm (4.0φ) and 4.76mm (-2.25φ) (classified as sand by either the Unified Soils or the Wentworth classification), shall be similar in color and grain size distribution (sand grain frequency, mean and median grain size and sorting coefficient) to the material in the existing coastal system at the disposal site and shall not contain:

1. Greater than 5 percent^a, by weight, silt, clay or colloids passing the #230 sieve (4.0φ);
2. Greater than 5 percent¹, by weight, fine gravel retained on the #4 sieve (-2.25φ);
3. Coarse gravel, cobbles or material retained on the 3/4 inch sieve in a percentage or size greater than found on the native beach;
4. Construction debris, toxic material or other foreign matter; and
5. Material that results in cementation of the beach.

If rocks or other non-specified materials appear on the surface of the filled beach in excess of 50 percent of background in any 10,000 square foot area, then surface rock shall be removed from those areas. These areas shall also be tested for subsurface rock percentage and remediated as required. If the natural beach exceeds any of the limiting parameters listed above, then the fill material shall not exceed the naturally occurring level for that parameter.

Sea Turtles

1. The FEMA grant applicant will contact the local sea turtle nesting surveyor to conduct daily sea turtle nesting surveys and relocation of sea turtle nests that could be affected by the project construction;
2. For emergency berm construction and repair projects in Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward counties, Florida, emergency berm construction and repair will not be allowed during the main part of the nesting season (May 1 through October 31);
3. For some areas in Florida, emergency berm construction and repair projects construction will not be conducted at night during the main part of the nesting season (May 1 through October 31); and
4. The FEMA grant applicant will attend and receive Wildlife Lighting certification from the Florida Fish and Wildlife Conservation Commission (FWC).

Beach Mice

1. No construction, equipment storage, material storage, or heavy equipment access will occur within any existing vegetated dunes; and

^aThis can be 10 percent if the material is dredged from a sand trap or navigational channel.

2. All project lighting will be positioned so that vegetated dunes are not illuminated.

Piping Plover

1. If construction occurs within the period from February through September, shorebird surveys will be conducted in the project area; and
2. Within the project area, the FEMA grant applicant will establish a 300-foot wide buffer zone where piping plover congregate in significant numbers. Any and all construction will be prohibited in the buffer zone.

Nesting Shorebirds

1. If shorebird nesting occurs within the project area, a bulletin board will be placed and maintained in the construction area with the location map of the construction site showing the bird nesting areas and a warning "BIRD NESTING AREAS ARE PROTECTED BY THE FLORIDA THREATENED AND ENDANGERED SPECIES ACT AND THE FEDERAL MIGRATORY BIRD ACT TREATY;" and
2. All tilling will be done outside of shorebird nesting areas (February 15 through August 31);
3. If construction occurs within the period from February through September, shorebird surveys will be conducted in the project area; and
4. Within the project area, the FEMA grant applicant will establish a 300-foot wide buffer zone around any location where shorebirds have been engaged in courtship behavior. Any and all construction will be prohibited in the buffer zone.

Action Area

The Service has described the Action Area for nesting and hatchling sea turtles and beach mice to include the Atlantic Coast of Florida (Key West to Fernandina/ Kings Bay) and the Gulf Coast (Ten Thousand Islands to Alabama State Line) for reasons that will be explained and discussed in the "EFFECTS OF THE ACTION" section of this consultation.

The **Action Area** for piping plovers is all ocean-side and bay-side habitat along the Atlantic Ocean and GOM coastlines in the state of Florida. It begins at the mean low waterline (MLW) and includes intertidal areas, wrack lines, ephemeral ponds, inlets, lagoons and the upper sandy beach with sparse or no vegetation and bay-side sand and mud flats habitat as well as any overwash areas that occur adjacent or connecting the GOM or Atlantic Ocean coastline.

Florida's Dynamic Coastline

Of all the states and provinces in North America, Florida is most intimately linked with the sea. Florida's 1200-mile coastline (exclusive of the Keys) is easily the longest in the coterminous United States. Of the 1200 miles, 745 miles are sandy and mostly in the form of barrier islands. The coastline is dynamic constantly changing as a result of waves, wind, tides, currents, sea level change, and storms. The entire state lies within the coastal plain, with a maximum elevation of about 400 feet, and no part is more than 60 miles from the Atlantic Ocean or GOM.

The east coast of Florida consists of a dynamic shoreline, with a relatively sloped berm, coarse-grained sand, and moderate to high surf (Witherington 1986). The southeast coast of Florida consists of continuous, narrow, sandy barrier islands bordering a narrow continental shelf (Wanless and Maier 2007). The dynamics of the east coast shoreline is due to the occurrence of storm surges and seas from tropical storms that occur mainly during August through early October. More erosion events can also occur during late September through March due to nor'easters. The impacts of these two types of storms may vary from event to event and year to year.

Northwest (panhandle) Florida beaches are considered to be low energy beaches with a gradual offshore slope and low sloped fine grained quartz sand beaches. As along the east coast of Florida, the shoreline dynamics are shaped by tropical storms and hurricanes. Although Gulf beaches may experience winter erosion, they are largely protected from the severe nor'easters.

Coasts with greater tidal ranges are more buffered against storm surges than are those with low tidal ranges, except when the storm strikes during high tide. Mean tidal ranges decrease southward along the Atlantic coast from a mean of 7 feet at the Florida-Georgia line to less than 2 feet in Palm Beach County. The mean tidal range for along the Gulf Coast is less than 3 feet (microtidal) except in the extreme south where it ranges from 3 to 4 feet. Because of its lower elevation and lower wave energy regime, the West Coast of the peninsula is subject to major changes during storm events than is the east coast.

Microtidal coasts have a high vulnerability to sea level rise and barrier islands respond by migrating landward. Migration occurs as a result of overwash from extreme storms which flatten topography and deposit sand on the backside of the island, extending the island landward. These deposition areas become the foundation for the island as it moves landward (Young 2007 pers. communication). Significant widening can occur from a single storm event. Dauphin Island, a barrier island in Alabama, has nearly doubled its pre-Hurricane Ivan width (**Figure 1**).

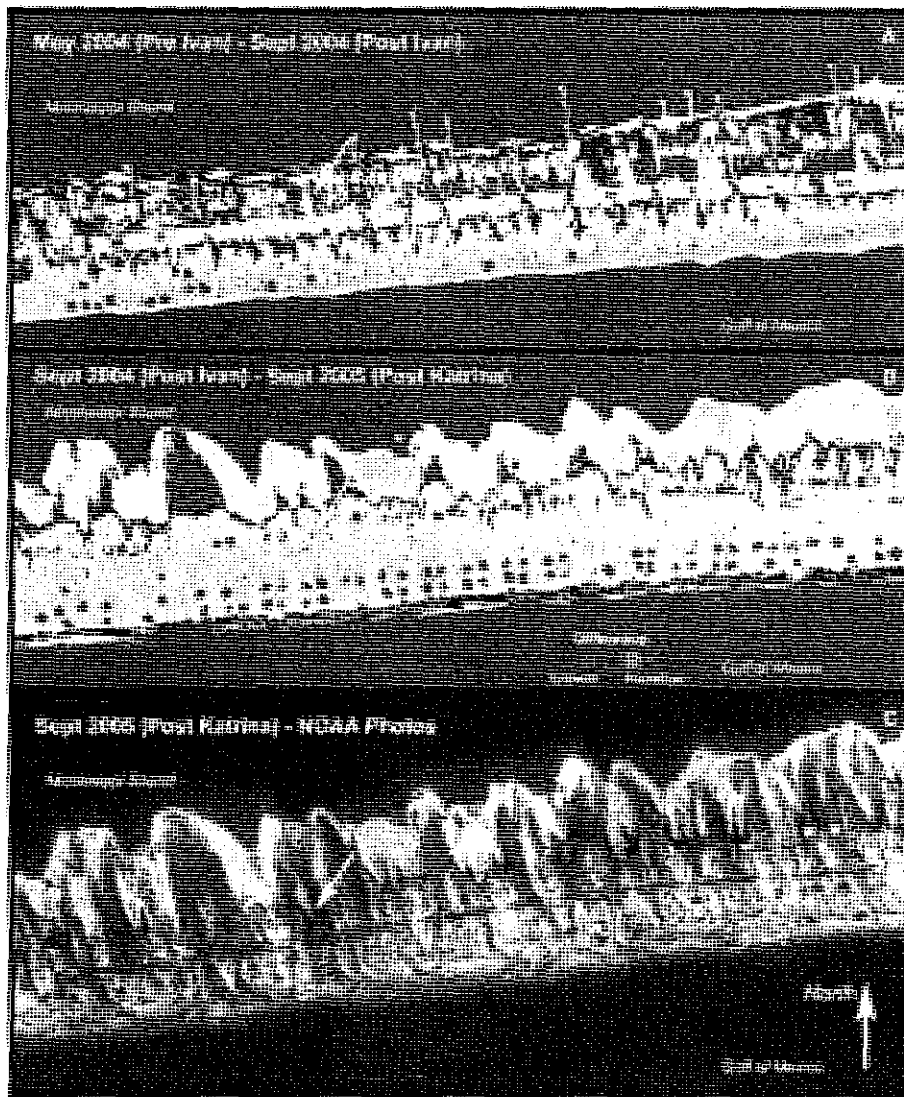


Figure 1. Views of coastal change on Dauphin Island, AL from Hurricanes Ivan and Katrina (USGS 2007).

Sea level has risen globally approximately 7.1 inches in the past century (Douglass 1997). Climate models predict a doubling of the rate of sea level rise over the next 100 years (Pendleton et al. 2004). Recent studies indicate a trend toward increasing hurricane number and intensity (Webster et al. 2005; Emanuel 2005). Barrier islands must be able to move and respond to these conditions. By locking in a barrier island's location with infrastructure, the island loses its ability to migrate to higher elevations which can lead to its eventual collapse (Moore 2007).

Overwash from lesser storms can positively affect island topography. Low natural berms can develop along beach fronts, but generally can be exceeded by overwash from frontal storms. The berm is an accretionary feature at the landward extreme of wave influence. Sediment is transported over the berm crest and is deposited in a nearshore overwash fan and in breach

corridors. Overwash deposition provides source sand for re-establishing dunes. Onshore winds transport the sediment from overwash fans to the dunes, gradually building back dune elevation during storm-free periods.

The interaction between the biology and geomorphology of barrier islands is complex. Just as the barrier island undergoes a process of continual change, so do the ecological communities present. Vegetation zones gradually re-establish following storms, and in turn affect physical processes such as sand accretion, erosion, and overwash. The beachfront, dunes, and overwash areas all provide important habitat components. Many barrier island species are adapted to respond positively to periodic disturbance. As the island widens, new feeding habitat (sand/mud flats) is created for shorebirds such as the piping plover. The beaches provide nesting habitat for sea turtles and roosting/feeding habitat for shorebirds. Early colonizer plants are favored as a food source by beach mice. These barrier island habitats are becoming increasingly rare as our Nation's coastlines rapidly develop.

SEA TURTLES

STATUS OF THE SPECIES/CRITICAL HABITAT

The Service has responsibility for implementing recovery of sea turtles when they come ashore to nest. This BO addresses nesting sea turtles, their nests and eggs, and hatchlings as they emerge from the nest and crawl to the sea. The National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) has jurisdiction over sea turtles in the marine environment.

Five species of sea turtles are analyzed in this BO: the loggerhead, green, leatherback, hawksbill, and the Kemp's ridley.

Loggerhead Sea Turtle

The loggerhead listed as a threatened species on July 28, 1978 (43 FR 32800), inhabits the continental shelves and estuarine environments along the margins of the Atlantic, Pacific, and Indian Oceans. Loggerheads nest within the continental U.S. from Louisiana to Virginia. Major nesting concentrations in the U.S. are found on the coastal islands of North Carolina, South Carolina, and Georgia, and on the Atlantic and Gulf coasts of Florida (Hopkins and Richardson 1984).

The loggerhead grows to an average weight of about 200 pounds and is characterized by a large head with blunt jaws. Adults and subadults have a reddish-brown carapace. Scales on the top of the head and top of the flippers are also reddish-brown with yellow on the borders. Hatchlings are a dull brown color (NOAA-Fisheries 2002a). The loggerhead feeds on mollusks, crustaceans, fish, and other marine animals.

Major loggerhead nesting beaches are located in the Sultanate of Oman, southeastern U.S., and eastern Australia. The species is widely distributed within its range. It may be found hundreds

of miles out to sea, as well as in inshore areas such as bays, lagoons, salt marshes, creeks, ship channels, and the mouths of large rivers. Coral reefs, rocky places, and ship wrecks are often used as feeding areas. Nesting occurs mainly on open beaches or along narrow bays having suitable sand, and often in association with other species of sea turtles.

No critical habitat has been designated for the loggerhead.

Green Sea Turtle

The green turtle was federally listed as a protected species on July 28, 1978 (43 FR 32800). Breeding populations of the green turtle in Florida and along the Pacific Coast of Mexico are listed as endangered; all other populations are listed as threatened. The green turtle has a worldwide distribution in tropical and subtropical waters. Major green turtle nesting colonies in the Atlantic occur on Ascension Island, Aves Island, Costa Rica, and Surinam. Within the U.S., green turtles nest in small numbers in the U.S. Virgin Islands and Puerto Rico, and in larger numbers along the east coast of Florida, particularly in Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward Counties (NOAA-Fisheries and Service 1991a). Nesting also has been documented along the Gulf coast of Florida from Escambia County through Franklin County in Northwest Florida and from Pinellas County through Collier County in Southwest Florida (FWC statewide nesting database). Green turtles have been known to nest in Georgia, but only on rare occasions (Georgia Department of Natural Resources statewide nesting database). The green turtle also nests sporadically in North Carolina and South Carolina (North Carolina Wildlife Resources Commission statewide nesting database; South Carolina Department of Natural Resources statewide nesting database). Unconfirmed nesting of green turtles in Alabama has also been reported (Bon Secour National Wildlife Refuge nesting reports).

Green turtles are generally found in fairly shallow waters (except when migrating) inside reefs, bays, and inlets. The green turtle is attracted to lagoons and shoals with an abundance of marine grass and algae. Open beaches with a sloping platform and minimal disturbance are required for nesting.

The green turtle grows to a maximum size of about 4 feet and a weight of 440 pounds. It has a heart-shaped shell, small head, and single-clawed flippers. The carapace is smooth and colored gray, green, brown and black. Hatchlings are black on top and white on the bottom (NOAA-Fisheries 2002b). Hatchling green turtles eat a variety of plants and animals, but adults feed almost exclusively on seagrasses and marine algae.

Critical habitat for the green turtle has been designated for the waters surrounding Culebra Island, Puerto Rico, and its outlying keys.

Leatherback Sea Turtle

The leatherback listed as an endangered species on June 2, 1970 (35 FR 8491), is distributed worldwide in tropical and temperate waters of the Atlantic, Pacific, and Indian Oceans. Non-breeding animals have been recorded as far north as the British Isles and the Maritime Provinces

of Canada and as far south as Argentina and the Cape of Good Hope (Pritchard 1992). Nesting grounds are distributed worldwide, with the Pacific Coast of Mexico supporting the world's largest known concentration of nesting leatherbacks. The largest nesting colony in the wider Caribbean region is found in French Guiana, but nesting occurs frequently, although in lesser numbers, from Costa Rica to Columbia and in Guyana, Surinam, and Trinidad (NOAA-Fisheries and Service 1992; National Research Council 1990a).

The leatherback regularly nests in the U.S. in Puerto Rico, the U.S. Virgin Islands, and along the Atlantic coast of Florida as far north as Georgia (NOAA Fisheries and Service 1992). Leatherback turtles have been known to nest in Georgia, South Carolina, and North Carolina, but only on rare occasions (North Carolina Wildlife Resources Commission; South Carolina Department of Natural Resources; and Georgia Department of Natural Resources statewide nesting databases). Leatherback nesting has also been reported on the northwest coast of Florida (LeBuff 1990; FWC statewide nesting database); and in southwest Florida a false crawl (non-nesting emergence) has been observed on Sanibel Island (LeBuff 1990).

This is the largest, deepest diving, and most migratory and wide ranging of all sea turtle species. The adult leatherback can reach 4 to 8 feet in length and weigh 500 to 2,000 pounds. The carapace is distinguished by a rubber-like texture, about 1.6 inches thick, made primarily of tough, oil-saturated connective tissue. Hatchlings are dorsally mostly black and are covered with tiny scales; the flippers are edged in white, and rows of white scales appear as stripes along the length of the back (NOAA-Fisheries 2002c). Jellyfish are the main staple of its diet, but it is also known to feed on sea urchins, squid, crustaceans, tunicates, fish, blue-green algae, and floating seaweed.

The leatherback nests on shores of the Atlantic, Pacific and Indian Oceans. Non-breeding leatherbacks have been recorded as far north as British Columbia, Newfoundland, the British Isles, and the Maritime Provinces of Canada and as far south as Argentina and the Cape of Good Hope (Pritchard 1992).

Adult females require sandy nesting beaches backed with vegetation and sloped sufficiently so the distance to dry sand is limited. Their preferred beaches have proximity to deep water and generally rough seas.

Marine and terrestrial critical habitat for the leatherback has been designated at Sandy Point on the western end of the island of St. Croix, U.S. Virgin Islands (50 CFR 17.95).

Hawksbill Sea Turtle

The hawksbill was listed as an endangered species on June 2, 1970 (35 FR 8491). The hawksbill is found in tropical and subtropical seas of the Atlantic, Pacific, and Indian Oceans. The species is widely distributed in the Caribbean Sea and western Atlantic Ocean. Within the continental U.S., hawksbill nesting is rare and is restricted to the southeastern coast of Florida (Volusia through Dade Counties) and the Florida Keys (Monroe County) (Meylan 1992; Meylan et al. 1995). However, hawksbill tracks are difficult to differentiate from those of loggerheads and

may not be recognized by surveyors. Therefore, surveys in Florida likely underestimate actual hawksbill nesting numbers (Meylan et al. 1995). In the U.S. Caribbean, hawksbill nesting occurs on beaches throughout Puerto Rico and the U.S. Virgin Islands (NOAA-Fisheries and Service 1993).

Hawksbills typically weigh around 176 pounds or less in the wider Caribbean; hatchlings average about 1.6 inches straight length and range in weight from 0.5 to 0.7 ounces. The carapace is heart shaped in young turtles, and becomes more elongated or egg-shaped with maturity. The top scutes are often richly patterned with irregularly radiating streaks of brown or black on an amber background. The head is elongated and tapers sharply to a point. The lower jaw is V-shaped (NOAA-Fisheries 2002d).

Critical habitat for the hawksbill has been designated for selected beaches and/or waters of Mona, Monito, Culebrita, and Culebra Islands, Puerto Rico.

Kemp's Ridley Sea Turtle

The Kemp's ridley was listed as endangered on December 2, 1970 (35 FR 18320). The range of the Kemp's ridley includes the Gulf coasts of Mexico and the U.S., and the Atlantic coast of North America as far north as Nova Scotia and Newfoundland. Most Kemp's ridleys nest on the coastal beaches of the Mexican states of Tamaulipas and Veracruz, although a small number of Kemp's ridleys nest along the Texas coast (Turtle Expert Working Group 1998; Frey et al. 2007). In addition, rare nesting events have been reported in Florida, Alabama, Georgia, South Carolina, and North Carolina. Hatchlings, after leaving the nesting beach, are believed to become entrained in eddies within the GOM, where they are dispersed within the Gulf and Atlantic by oceanic surface currents until they reach about 7.9 inches in length, at which size they enter coastal shallow water habitats (Ogren 1989). Outside of nesting, adult Kemp's ridleys are believed to spend most of their time in the GOM, while juveniles and subadults also regularly occur along the eastern seaboard of the United States (Service and NOAA-Fisheries 1992).

No critical habitat has been designated for the Kemp's ridley.

Life history

Loggerhead Sea Turtle

The basic life cycle of the loggerhead in the western North Atlantic consists of seven life stages (**Figure 1**) that are based on the size of the sea turtles at different ages (Bolten 2003; Crouse et al. 1987).

Loggerheads are known to nest from one to seven times within a nesting season (Talbert et al. 1980; Lenarz et al. 1981; Richardson and Richardson 1982; among others); the mean is approximately 4.1 nests (Murphy and Hopkins 1984). The interval between nesting events within a season varies around a mean of about 14 days (Dodd 1988). Mean clutch size varies from about 100 to 126 eggs along the southeastern United States coast (NOAA-Fisheries and

Service 1991b). Nesting migration intervals of 2 to 3 years are most common in loggerheads, but the number can vary from 1 to 7 years (Dodd 1988). Age at sexual maturity is believed to be about 20 to 30 years (Turtle Expert Working Group 1998).

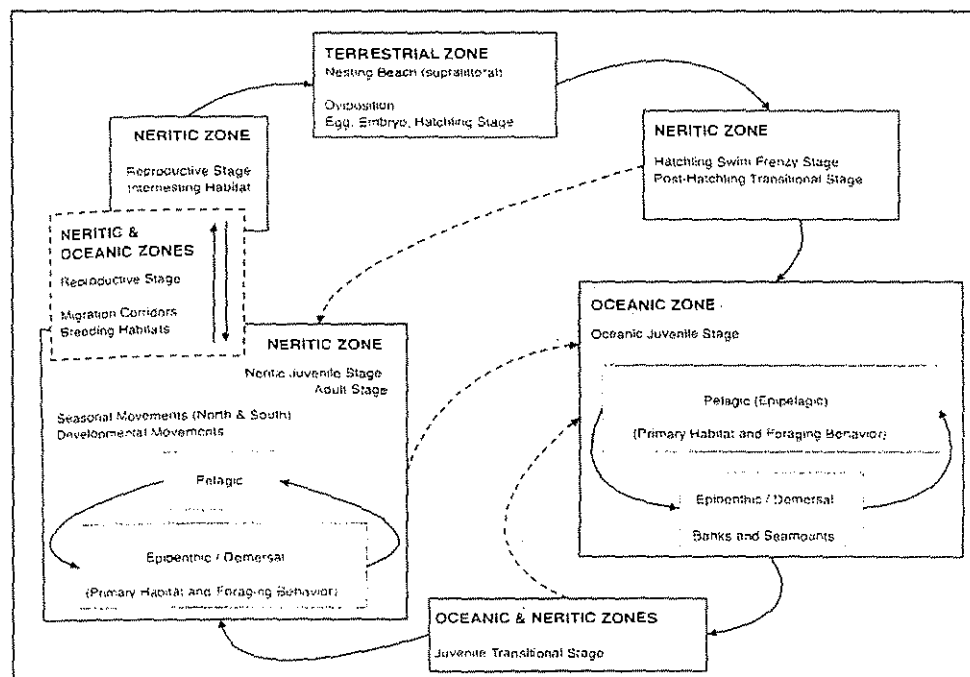


Figure 2. Life history stages of a loggerhead turtle. The boxes represent life stages and the corresponding ecosystems, solid lines represent movements between life stages and ecosystems, and dotted lines are speculative (Bolten 2003).

Green Sea Turtle

Green turtles deposit from one to nine clutches within a nesting season, but the overall average is about 3.3 nests. The interval between nesting events within a season varies around a mean of about 13 days (Hirth 1997). Mean clutch size varies widely among populations. Average clutch size reported for Florida was 136 eggs in 130 clutches (Witherington and Ehrhart 1989). Only occasionally do females produce clutches in successive years. Usually two, three, four or more years intervene between breeding seasons (NOAA-Fisheries and Service 1991a). Age at sexual maturity is believed to be 20 to 50 years (Hirth 1997).

Leatherback Sea Turtle

Leatherbacks nest an average of five to seven times within a nesting season, with an observed maximum of 11 nests (NOAA-Fisheries and Service 1992). The interval between nesting events within a season is about 9 to 10 days. Clutch size averages 80 to 85 yolked eggs, with the addition of usually a few dozen smaller, yolkless eggs, mostly laid toward the end of the clutch (Pritchard 1992). Nesting migration intervals of 2 to 3 years were observed in leatherbacks nesting on the Sandy Point National Wildlife Refuge, St. Croix, U.S. Virgin Islands (McDonald

and Dutton 1996). Leatherbacks are believed to reach sexual maturity in 6 to 10 years (Zug and Parham 1996).

Hawksbill Sea Turtle

Hawksbills nest on average about 4.5 times per season at intervals of approximately 14 days (Corliss et al. 1989). In Florida and the U.S. Caribbean, clutch size is approximately 140 eggs, although several records exist of over 200 eggs per nest (NOAA-Fisheries and Service 1993). On the basis of limited information, nesting migration intervals of 2 to 3 years appear to predominate. Hawksbills are recruited into the reef environment at about 14 inches in length and are believed to begin breeding about 30 years later. However, the time required to reach 14 inches in length is unknown and growth rates vary geographically. As a result, actual age at sexual maturity is unknown.

Kemp's Ridley Sea Turtle

Nesting occurs from April into July during which time the turtles appear off the Tamaulipas and Veracruz coasts of Mexico. Precipitated by strong winds, the females swarm to mass nesting emergences, known as *arribadas* or *arribazones*, to nest during daylight hours. Clutch size averages 100 eggs (Service and NOAA-Fisheries 1992). Some females breed annually and nest an average of 1 to 4 times in a season at intervals of 10 to 28 days. Age at sexual maturity is believed to be between 7 to 15 years (Turtle Expert Working Group 1998).

Population dynamics

Loggerhead Sea Turtle

Approximately 53,000 to 92,000 loggerhead nests are laid per year in the southeastern United States and the GOM, with an estimated total number of nesting females between 32,000 to 56,000 (FWC/FWRI statewide nesting database 2004, Georgia Department of Natural Resources statewide nesting database 2004, South Carolina Department of Natural Resources statewide nesting database 2004, North Carolina Wildlife Resources Commission statewide nesting database 2004). In 1998, 85,988 nests were documented in Florida alone.

From a global perspective, the southeastern U.S. nesting aggregation is of paramount importance to the survival of the species and is second in size only to that which nests on islands in the Arabian Sea off Oman (Ross 1982; Ehrhart 1989; NOAA-Fisheries and Service 1991b). The status of the Oman loggerhead nesting population, reported to be the largest in the world (Ross 1979), is uncertain because of the lack of long-term standardized nesting or foraging ground surveys and its vulnerability to increasing development pressures near major nesting beaches and threats from fisheries interactions on foraging grounds and migration routes (Earl Possardt, Service 2005 pers. communication). The loggerhead nesting aggregations in Oman, the southeastern U.S., and Australia have been estimated to account for about 88 percent of nesting worldwide (NOAA-Fisheries and Service 1991b). About 80 percent of loggerhead nesting in the

southeastern U.S. occurs in six Florida counties (Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward counties) (NOAA-Fisheries and Service 1991b).

Green Sea Turtle

About 150 to 3,000 females are estimated to nest on beaches in the continental U.S. annually (FWC 2007). In the U.S. Pacific, over 90 percent of nesting throughout the Hawaiian archipelago occurs at the French Frigate Shoals, where about 200 to 700 females nest each year (NOAA Fisheries and Service 1998a). Elsewhere in the U.S. Pacific, nesting takes place at scattered locations in the Commonwealth of the Northern Marianas, Guam, and American Samoa. In the western Pacific, the largest green turtle nesting aggregation in the world occurs on Raine Island, Australia, where thousands of females nest nightly in an average nesting season (Limpus et al. 1993). In the Indian Ocean, major nesting beaches occur in Oman where 30,000 females are reported to nest annually (Ross and Barwani 1995).

Leatherback Sea Turtle

Recent estimates of global nesting populations indicate 26,000 to 43,000 nesting females annually (Spotila et al. 1996). The largest nesting populations at present occur in the western Atlantic in French Guiana (4,500 to 7,500 females nesting/year) and Colombia (estimated several thousand nests annually), and in the western Pacific in West Papua (formerly Irian Jaya) and Indonesia (about 600 to 650 females nesting/year). In the United States, small nesting populations occur on the Florida east coast (100 females/year) (FWC 2007), Sandy Point, U.S. Virgin Islands (50 to 190 females/year) (Alexander et al. 2002), and Puerto Rico (30 to 90 females/year).

Hawksbill Sea Turtle

About 15,000 females are estimated to nest each year throughout the world with the Caribbean accounting for 20 to 30 percent of the world's hawksbill population. Only five regional populations remain with more than 1,000 females nesting annually (Seychelles, Mexico, Indonesia, and two in Australia) (Meylan and Donnelly 1999). Mexico is now the most important region for hawksbills in the Caribbean with about 3,000 nests/year (Meylan 1999). Other significant but smaller populations in the Caribbean still occur in Martinique, Jamaica, Guatemala, Nicaragua, Grenada, Dominican Republic, Turks and Caicos Islands, Cuba, Puerto Rico, and U.S. Virgin Islands. In the U.S. Caribbean, about 150 to 500 nests per year are laid on Mona Island, Puerto Rico and 70 to 130 nests/year are laid on Buck Island Reef National Monument, U.S. Virgin Islands. In the U.S. Pacific, hawksbills nest only on main island beaches in Hawaii, primarily along the east coast of the island of Hawaii. Hawksbill nesting has also been documented in American Samoa and Guam (NOAA-Fisheries and Service 1998b).

Kemp's Ridley Sea Turtle

The 40,000 nesting females estimated from a single mass nesting emergence in 1947 reflected a much larger total number of nesting turtles in that year than exists today (Carr 1963; Hildebrand

1963). However, nesting in Mexico has been steadily increasing in recent years -- from 702 nests in 1985 to over 10,000 nests in 2005 (Service 2005a). Despite protection for the nests, turtles have been and continue to be lost to incidental catch by shrimp trawls (Service and NOAA-Fisheries 1992).

Status and Distribution

Loggerhead Sea Turtle

Genetic research involving analysis of mitochondrial DNA has identified five different loggerhead subpopulations/nesting aggregations in the western North Atlantic: (1) the Northern Subpopulation occurring from North Carolina to around Cape Canaveral, Florida (about 29° N.); (2) South Florida Subpopulation occurring from about 29° N. on Florida's east coast to Sarasota on Florida's west coast; (3) Dry Tortugas, Florida, Subpopulation, (4) Northwest Florida Subpopulation occurring at Eglin Air Force Base and the beaches near Panama City; and (5) Yucatán Subpopulation occurring on the eastern Yucatán Peninsula, Mexico (Bowen 1994; 1995; Bowen et al. 1993; Encalada et al. 1998; Pearce 2001). These data indicate that gene flow between these five regions is very low. If nesting females are extirpated from one of these regions, regional dispersal will not be sufficient to replenish the depleted nesting subpopulation.

The Northern Subpopulation has declined substantially since the early 1970s. Recent estimates of loggerhead nesting trends from standardized daily beach surveys showed significant declines ranging from 1.5 percent to 2.0 percent annually (Mark Dodd, Georgia Department of Natural Resources 2005 pers. communication). Nest totals from aerial surveys conducted by the South Carolina Department of Natural Resources showed a 3.3 percent annual decline in nesting since 1980. Overall, there is strong statistical evidence to suggest the Northern Subpopulation has sustained a long-term decline.

Data from all beaches where nesting activity has been recorded indicate that the South Florida Subpopulation has shown significant increases over the last 25 years. However, an analysis of nesting data from the Florida INBS Program from 1989 to 2002 (a period encompassing index surveys that are more consistent and more accurate than surveys in previous years), has shown no detectable trend and, more recently (1998 through 2002), has shown evidence of a declining trend (Blair Witherington, FWC 2004 pers. communication). Given inherent annual fluctuations in nesting and the short time period over which the decline has been noted, caution is warranted in interpreting the decrease in terms of nesting trends.

A near census of the Florida Panhandle Subpopulation undertaken from 1989 to 2002 reveals a mean of 1,028 nests per year, which equates to about 251 females nesting per year (FWC 2007). However, preliminary analysis for nine years (1997 to 2006) of INBS data for the Florida Panhandle subpopulation shows a declining trend (Blair Witherington, FWC 2007 pers. communication).

A near census of the Dry Tortugas Subpopulation undertaken from 1995 to 2001, reveals a mean of 213 nests per year, which equates to about 50 females nesting per year (FWC 2007). The

trend data for the Dry Tortugas Subpopulation are from beaches that were not included in Florida's INBS program prior to 2004, but have moderately good monitoring consistency. There are 7 continuous years (1995 to 2001) of data for this Subpopulation, but the time series is too short to detect a trend (Blair Witherington, FWC 2005 pers. communication).

Nesting surveys in the Yucatán Subpopulation has been too irregular to date to allow for a meaningful trend analysis (Turtle Expert Working Group 1998, 2000).

Recovery criteria

The southeastern U.S. loggerhead population can be considered for delisting where, over a period of 25 years, the following conditions are met:

1. The adult female population in Florida is increasing and in North Carolina, South Carolina, and Georgia, it has returned to pre-listing levels (NC - 800, SC - 10,000, and GA - 2,000 nests per season). The above conditions shall be met with the data from standardized surveys which would continue for at least five years after delisting.
2. At least 25 percent (348 miles) of all available nesting beaches (1,400 miles) are in public ownership, distributed over the entire nesting range and encompassing at least 50 percent of the nesting activity in each state.
3. All priority one tasks identified in the recovery plan have been successfully implemented.

Green Sea Turtle

Total population estimates for the green turtle are unavailable, and trends based on nesting data are difficult to assess because of large annual fluctuations in numbers of nesting females. For instance, in Florida, where the majority of green turtle nesting in the southeastern U.S. occurs, estimates range from 150 to 2,750 females nesting annually (FWC 2007). Populations in Surinam and Tortuguero, Costa Rica, may be stable, but there is insufficient data for other areas to confirm a trend.

Recovery criteria

The U.S. population of green turtles can be considered for delisting when, over a period of 25 years, the following conditions are met:

1. The level of nesting in Florida has increased to an average of 5,000 nests per year for at least six years. Nesting data shall be based on standardized surveys.
2. At least 25 percent (65 miles) of all available nesting beaches (260 miles) are in public ownership and encompass at least 50 percent of the nesting activity.

3. A reduction in stage class mortality is reflected in higher counts of individuals on foraging grounds.
4. All priority one tasks identified in the recovery plan have been successfully implemented.

Leatherback Sea Turtle

Declines in leatherback nesting have occurred over the last two decades along the Pacific coasts of Mexico and Costa Rica. The Mexican leatherback nesting population, once considered to be the world's largest leatherback nesting population (historically estimated to be 65 percent of worldwide population), is now less than one percent of its estimated size in 1980. Spotila et al. (1996) estimated the number of leatherback sea turtles nesting on 28 beaches throughout the world from the literature and from communications with investigators studying those beaches. The estimated worldwide population of leatherbacks in 1995 was about 34,500 females on these beaches with a lower limit of about 26,200 and an upper limit of about 42,900. This is less than one third the 1980 estimate of 115,000. Leatherbacks are rare in the Indian Ocean and in very low numbers in the western Pacific Ocean. The largest population is in the western Atlantic. Using an age-based demographic model, Spotila et al. (1996) determined that leatherback populations in the Indian Ocean and western Pacific Ocean cannot withstand even moderate levels of adult mortality and that even the Atlantic populations are being exploited at a rate that cannot be sustained. They concluded that leatherbacks are on the road to extinction and further population declines can be expected unless action is taken to reduce adult mortality and increase survival of eggs and hatchlings.

Recovery criteria

The U.S. population of leatherbacks can be considered for delisting when the following conditions are met:

1. The adult female population increases over the next 25 years, as evidenced by a statistically significant trend in the number of nests at Culebra, Puerto Rico, St. Croix, U.S. Virgin Island, and along the east coast of Florida.
2. Nesting habitat encompassing at least 75 percent of nesting activity in U.S. Virgin Islands, Puerto Rico, and Florida is in public ownership.
3. All priority one tasks identified in the recovery plan have been successfully implemented.

Hawksbill Sea Turtle

The hawksbill has experienced global population declines of 80 percent or more during the past century and continued declines are projected (Meylan and Donnelly 1999). Most populations are

declining, depleted, or remnants of larger aggregations. Hawksbills were previously abundant, as evidenced by high-density nesting at a few remaining sites and by trade statistics.

Recovery criteria

The U.S. population of hawksbills can be considered for delisting when the following conditions are met:

1. The adult female population is increasing, as evidenced by a statistically significant trend in the annual numbers of nests on at least five index beaches, including Mona Island and Buck Island Reef National Monument (BIRNM).
2. Habitat for at least 50 percent of the nesting activity that occurs in the U.S. Virgin Islands (USVI) and Puerto Rico is protected in perpetuity.
3. Numbers of adults, subadults, and juveniles are increasing, as evidenced by a statistically significant trend on at least five key foraging areas within Puerto Rico, USVI, and Florida.
4. All priority one tasks have been successfully implemented.

Kemp's Ridley Sea Turtle

Today, under strict protection, the population appears to be in the early stages of recovery. The recent nesting increase can be attributed to full protection of nesting females and their nests in Mexico resulting from a bi-national effort between Mexico and the U.S. to prevent the extinction of the Kemp's ridley, and the requirement to use Turtle Excluder Devices (TEDs) in shrimp trawls both in the United States and Mexico.

The Mexico government also prohibits harvesting and is working to increase the population through more intensive law enforcement, by fencing nest areas to diminish natural predation, and by relocating most nests into corrals to prevent poaching and predation. While relocation of nests into corrals is currently a necessary management measure, this relocation and concentration of eggs into a "safe" area is of concern since it makes the eggs more susceptible to reduced viability.

Recovery criteria

The goal of the Recovery Plan is for the species to be reduced from endangered to threatened status. The Recovery Team members feel that the criteria for a complete removal of this species from the endangered species list need not be considered now, but rather left for future revisions of the plan. Complete removal from the Federal list would certainly necessitate that some other instrument of protection, similar to the Marine Mammal Protection Act, be in place and be international in scope. Kemp's ridley can be considered for downlisting to threatened when the following four criteria are met:

1. Protection of the known nesting habitat and the water adjacent to the nesting beach (concentrating on the Ranch Nuevo area) and continuation of the bi-national project.
2. Elimination of the mortality from incidental catch from commercial shrimping in the U.S. and Mexico through the use of TEDs and full compliance with the regulations requiring TED use.
3. Attainment of a population of at least 10,000 females nesting in a season.
4. All priority one recovery tasks in the recovery plan are successfully implemented.

Common threats to sea turtles

Loggerhead Sea Turtle

Anthropogenic (human) factors that impact hatchlings and adult female turtles on land, or the success of nesting and hatching include: beach erosion, armoring and nourishment; artificial lighting; beach cleaning; increased human presence; recreational beach equipment; beach driving; coastal construction and fishing piers; exotic dune and beach vegetation; and poaching. An increased human presence at some nesting beaches or close to nesting beaches has led to secondary threats such as the introduction of exotic fire ants, feral hogs, dogs, and an increased presence of native species (e.g., raccoons, armadillos, and opossums), which raid and feed on turtle eggs. Although sea turtle nesting beaches are protected along large expanses of the western North Atlantic coast, other areas along these coasts have limited or no protection.

Loggerhead turtles are affected by a completely different set of anthropogenic threats in the marine environment. These include oil and gas exploration and transportation; marine pollution; underwater explosions; hopper dredging, offshore artificial lighting; power plant entrainment and/or impingement; entanglement in debris; ingestion of marine debris; marina and dock construction and operation; boat collisions; poaching and fishery interactions. In the oceanic environment, loggerheads are exposed to a series of longline fisheries that include the U.S. Atlantic tuna and swordfish longline fisheries, an Azorean longline fleet, a Spanish longline fleet, and various fleets in the Mediterranean Sea (Aguilar et al 1995; Bolten et al 1994; Crouse 1999). There is particular concern about the extensive incidental take of juvenile loggerheads in the eastern Atlantic by longline fishing vessels. In the neritic environment in waters off the coastal U.S., loggerheads are exposed to a suite of fisheries in federal and state waters including trawl, purse seine, hook and line, gillnet, pound net, longline, dredge, and trap fisheries.

Green Sea Turtle

A major factor contributing to the green turtle's decline worldwide is commercial harvest for eggs and food. Fibropapillomatosis, a disease of sea turtles characterized by the development of multiple tumors on the skin and internal organs, is also a mortality factor and has seriously

impacted green turtle populations in Florida, Hawaii, and other parts of the world. The tumors interfere with swimming, eating, breathing, vision, and reproduction, and turtles with heavy tumor burdens may die. Other threats include loss or degradation of nesting habitat from coastal development and beach armoring; disorientation of hatchlings by beachfront lighting; excessive nest predation by native and non-native predators; degradation of foraging habitat; marine pollution and debris; watercraft strikes; and incidental take from channel dredging and commercial fishing operations.

Leatherback Sea Turtles

The crash of the Pacific leatherback population is believed primarily to be the result of exploitation by humans for the eggs and meat, as well as incidental take in numerous commercial fisheries of the Pacific. Other factors threatening leatherbacks globally include loss or degradation of nesting habitat from coastal development; disorientation of hatchlings by beachfront lighting; excessive nest predation by native and non-native predators; degradation of foraging habitat; marine pollution and debris; and watercraft strikes.

Hawksbill Sea Turtle

The decline of this species is primarily due to human exploitation for tortoiseshell. While the legal hawksbill shell trade ended when Japan agreed to stop importing shell in 1993, a significant illegal trade continues. It is believed that individual hawksbill populations around the world will continue to disappear under the current regime of exploitation for eggs, meat, and tortoiseshell, loss of nesting and foraging habitat, incidental capture in fishing gear, ingestion of and entanglement in marine debris, oil pollution, and boat collisions. Hawksbills are closely associated with coral reefs, one of the most endangered of all marine ecosystem types.

Kemp's Ridley Sea Turtle

The decline of this species was primarily due to human activities, including the direct harvest of adults and eggs and incidental capture in commercial fishing operations. Nest relocation has assisted in increasing the population of this species; however, egg relocation has its own host of problems due to movement-induced mortality, disease vectors, catastrophic events like hurricanes, and marine predators once the predators learn where to concentrate their efforts.

All Sea Turtles

Coastal Development

Loss of nesting habitat related to coastal development has had the greatest impact on nesting sea turtles in Florida. Beachfront development not only causes the loss of suitable nesting habitat, but can result in the disruption of powerful coastal processes accelerating erosion and interrupting the natural shoreline migration (National Research Council 1990b). This may in turn cause the need to protect upland structures and infrastructure by armoring, groin placement,

beach emergency berm construction and repair, and beach nourishment which cause changes in, additional loss or impact to the remaining sea turtle habitat.

Hurricanes

Hurricanes were probably responsible for maintaining coastal beach habitat upon which sea turtles depend through repeated cycles of destruction, alteration, and recovery of beach and dune habitat. Hurricanes generally produce damaging winds, storm tides and surges, and rain and can result in severe erosion of the beach and dune systems. Overwash and blowouts are common on barrier islands. Hurricanes and other storms can result in the direct or indirect loss of sea turtle nests, either by erosion or washing away of the nests by wave action or inundation or “drowning” of the eggs or hatchlings developing within the nest or indirectly by loss of nesting habitat. Depending on their frequency, storms can affect sea turtles on either a short-term basis (nests lost for one season and/or temporary loss of nesting habitat) or long term, if frequent (habitat unable to recover). How hurricanes affect sea turtle nesting also depends on its characteristics (winds, storm surge, rainfall), the time of year (within or outside of the nesting season), and where the northeast edge of the hurricane crosses land.

Because of the limited remaining nesting habitat, frequent or successive severe weather events could threaten the ability of certain sea turtle populations to survive and recover. Sea turtles evolved under natural coastal environmental events such as hurricanes. The extensive amount of pre-development coastal beach and dune habitat allowed sea turtles to survive even the most severe hurricane events. It is only within the last 20 to 30 years that the combination of habitat loss to beachfront development and destruction of remaining habitat by hurricanes has increased the threat to sea turtle survival and recovery. On developed beaches, typically little space remains for sandy beaches to become re-established after periodic storms. While the beach itself moves landward during such storms, reconstruction or persistence of structures at their pre-storm locations can result in a major loss of nesting habitat.

The 2004 hurricane season was the most active storm season in Florida since weather records began in 1851. Hurricanes Charley, Frances, Ivan, and Jeanne, along with Tropical Storm Bonnie, damaged the beach and dune system, upland structures and properties, and infrastructure in the majority of Florida’s coastal counties. The cumulative impact of these storms exacerbated erosion conditions throughout the state.

The 2005 hurricane season was a record breaking season with 27 named storms. Florida was impacted by Hurricanes Dennis, Katrina, Ophelia, Rita, and Wilma, and Tropical Storms Arlene and Tammy. The cumulative impact of these storms exacerbated erosion conditions in south and northwest Florida.

Erosion

The designation of a Critically Eroded Beach is a planning requirement of the State's Beach Erosion Control Funding Assistance Program. A segment of beach shall first be designated as critically eroded in order to be eligible for State funding. A critically eroded area is a segment of

the shoreline where natural processes or human activity have caused or contributed to erosion and recession of the beach or dune system to such a degree that upland development, recreational interests, wildlife habitat, or important cultural resources are threatened or lost. Critically eroded areas may also include peripheral segments or gaps between identified critically eroded areas which, although they may be stable or slightly erosional now, their inclusion is necessary for continuity of management of the coastal system or for the design integrity of adjacent beach management projects (FDEP 2007). It is important to note, that for an erosion problem area to be critical, there shall exist a threat to or loss of one of four specific interests – upland development, recreation, wildlife habitat, or important cultural resources. The total of critically eroded beaches statewide in Florida for 2007 is 388 miles of 497 miles of shoreline. Seventy-eight (78) percent of the State’s shoreline is considered to be critically eroded.

Beachfront Lighting

Artificial beachfront lighting may cause disorientation (loss of bearings) and misorientation (incorrect orientation) of sea turtle hatchlings. Visual signs are the primary sea-finding mechanism for hatchlings (Mrosovsky and Carr 1967; Mrosovsky and Shettleworth 1968; Dickerson and Nelson 1989; Witherington and Bjørndal 1991). Artificial beachfront lighting is a documented cause of hatchling disorientation and misorientation on nesting beaches (Philibosian 1976; Mann 1977; FWC 2008). The emergence from the nest and crawl to the sea is one of the most critical periods of a sea turtle’s life. Hatchlings that do not make it to the sea quickly become food for ghost crabs, birds, and other predators or become dehydrated and may never reach the sea. Some types of beachfront lighting attract hatchlings away from the sea while some lights cause adult turtles to avoid stretches of brightly illuminated beach. Research has documented significant reduction in sea turtle nesting activity on beaches illuminated with artificial lights (Witherington 1992). During the 2006 sea turtle nesting season in Florida, over 71,000 turtle hatchlings were disoriented (**Table 3**). Exterior and interior lighting associated with condominiums had the greatest impact causing disorientation/misorientation of 86 percent. Other causes included urban sky glow and street lights (http://www.myfwc.com/seaturtle/Lighting/Light_Disorient.htm).

Table 3. Documented Disorientations along the Florida coast (FWC 2008).

Year	Total Number of Hatchling Disorientation Events	Total Number of Hatchlings Involved in Disorientation Events	Total Number of Adult Disorientation Events
2001	743	28,674	19
2002	896	43,226	37
2003	1,446	79,357	18
2004	888	46,487	24
2005	976	41,521	50
2006	1,521	71,798	40

Predation

Depredation of sea turtle eggs and hatchlings by natural and introduced species occurs on almost all nesting beaches. Depredation by a variety of predators can considerably decrease sea turtle nest hatching success. The most common predators in the southeastern United States are ghost crabs (*Ocypode quadrata*), raccoons (*Procyon lotor*), feral hogs (*Sus scrofa*), foxes (*Urocyon cinereoargenteus* and *Vulpes vulpes*), coyotes (*Canis latrans*), armadillos (*Dasypus novemcinctus*), cats (*Felis catus*), and fire ants (*Solenopsis* spp.) (Dodd 1988; Stancyk 1995). Raccoons are particularly destructive on the Atlantic coast and may take up to 96 percent of all nests deposited on a beach (Davis and Whiting 1977; Hopkins and Murphy 1980; Stancyk et al. 1980; Talbert et al. 1980; Schroeder 1981; Labisky et al. 1986). As nesting habitat dwindles, it is essential that nest production be naturally maximized so the turtles may continue to exist in the wild.

In response to increasing depredation of sea turtle nests by coyote, fox, hog, and raccoon, multi-agency cooperative effort have been initiated and are ongoing throughout Florida, in particular on public lands.

Driving on the Beach

The operation of motor vehicles on the beach affects sea turtle nesting by: interrupting a female turtle approaching the beach; headlights disorienting or misorienting emergent hatchlings; vehicles running over hatchlings attempting to reach the ocean; and vehicle tracks traversing the beach which interfere with hatchlings crawling to the ocean. Apparently, hatchlings become diverted not because they cannot physically climb out of the rut (Hughes and Caine 1994), but because the sides of the track cast a shadow and the hatchlings lose their line of sight to the ocean horizon (Mann 1977). The extended period of travel required to negotiate tire tracks and ruts may increase the susceptibility of hatchlings to dehydration and depredation during migration to the ocean (Hosier et al. 1981). Driving directly above or over incubating egg clutches or on the beach can cause sand compaction which may result in adverse impacts on nest site selection, digging behavior, clutch viability, and emergence by hatchlings, decreasing nest success and directly killing pre-emergent hatchlings (Mann 1977; Nelson and Dickerson 1987; Nelson 1988).

The physical changes and loss of plant cover caused by vehicles on dunes can lead to various degrees of instability, and therefore encourage dune migration. As vehicles move either up or down a slope, sand is displaced downward, lowering the trail. Since the vehicles also inhibit plant growth, and open the area to wind erosion, dunes may become unstable, and begin to migrate. Unvegetated sand dunes may continue to migrate across stable areas as long as vehicle traffic continues. Vehicular traffic through dune breaches, or low dunes on an eroding beach may cause accelerated rate of overwash and beach erosion (Godfrey et al. 1978). If driving is required, the area where the least amount of impact occurs is the beach between the low and high tide water lines. Vegetation on the dunes can quickly re-establish provided the mechanical impact is removed.

In 1985, the Florida Legislature severely restricted vehicular driving on Florida's beaches, except that which is necessary for cleanup, repair, or public safety. This legislation also allowed an exception for five counties to continue to allow vehicular access on coastal beaches due to the availability of less than 50 percent of its peak user demand for off-beach parking. The counties affected by this exception are Volusia, St. Johns, Gulf, Nassau, and Flagler counties, as well as limited vehicular access on Walton County beaches for boat launching.

Sea Turtle Strandings

NOAA-Fisheries leads the Sea Turtle Stranding and Salvage network (STSSN). In Florida, strandings are documented by the FWRI staff biologists and by a network of permitted participants located around the state. Since the start of the program in 1980, loggerhead strandings (dead or debilitated turtles) documented by the Florida STSSN have increased significantly from 1989 to 2005 with the two highest yearly totals occurring in 2003 and 2005.

Analysis of the species/critical habitat likely to be affected

The threatened loggerhead, the endangered green, the endangered leatherback, the endangered hawksbill, and the endangered Kemp's ridley are currently listed because of their low and declining population sizes caused by over harvest and habitat loss with continuing anthropogenic threats from commercial fishing, disease, and degradation of remaining habitat. The proposed action has the potential to adversely affect nesting females of these species, their nests, and hatchlings within the proposed material excavation area. Other projects, which include beach nourishment, military missions, coastal development that have affected the conservation of sea turtles in northwest Florida are included in the Service's evaluation of the species current status (**Appendix A**).

ENVIRONMENTAL BASELINE

Status of the species/critical habitat within the action area

In accordance with the Act, the Service completes consultations with federal agencies (including ourselves) for actions that may adversely affect sea turtles. In Florida consultations have included military missions and operations, beach nourishment and other shoreline protection, and actions related to protection of coastal development (**Appendix A**).

Loggerhead Sea Turtle

An updated analysis by FWRI reveals a continuing decline in loggerhead nest numbers around the State of Florida. Loggerhead nest counts decreased approximately 50 percent from 1998 to 2007 (http://research.myfwc.com/features/view_article.asp?id=27537). Nest numbers dropped in 2001 and 2002 to below 70,000, in 2003 below 60,000, in 2004 below 50,000, and in 2005 just above 50,000 and in 2006 below 50,000 nests.

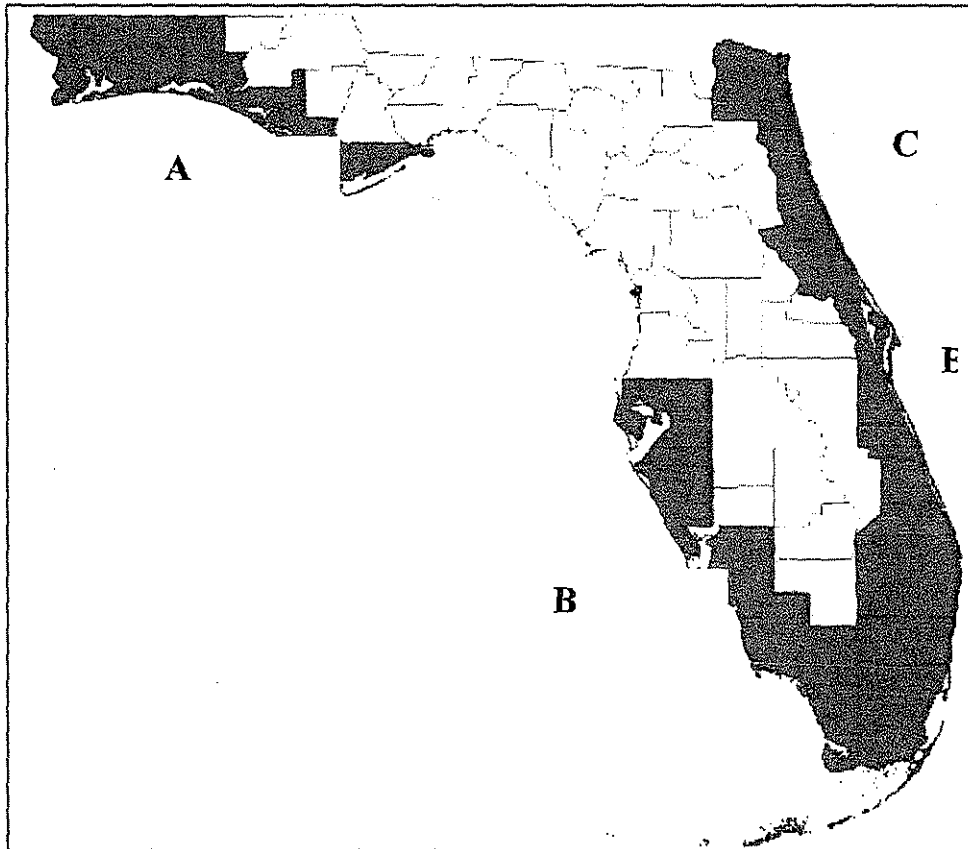


Figure 3. Distribution of loggerhead nesting in Florida.

There are five loggerhead nesting subpopulations. Three of the five nesting subpopulations are in the nesting range of the proposed Action Area.

Subpopulations	Nesting Range
A	Escambia to Franklin counties
B	Pinellas to South Brevard counties
C	North Brevard to Nassau counties

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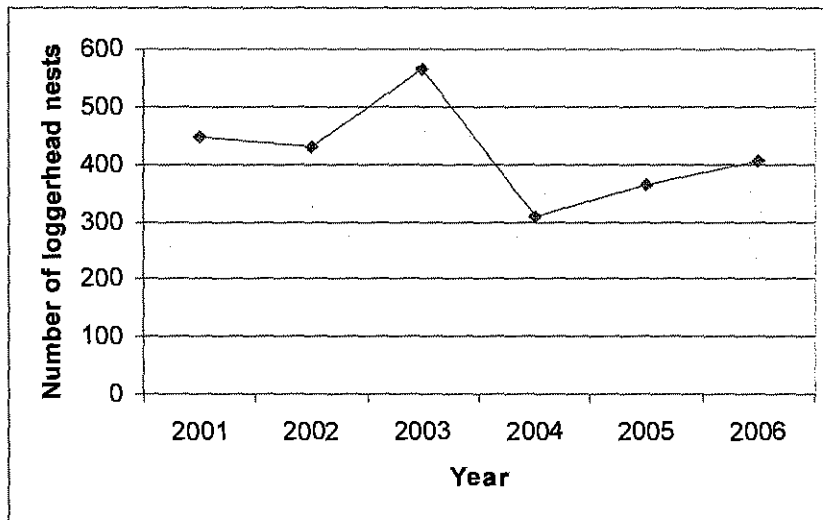


Figure 4. Number of nests in loggerhead subpopulation A from 2001 to 2006 in Florida according to SNBS.

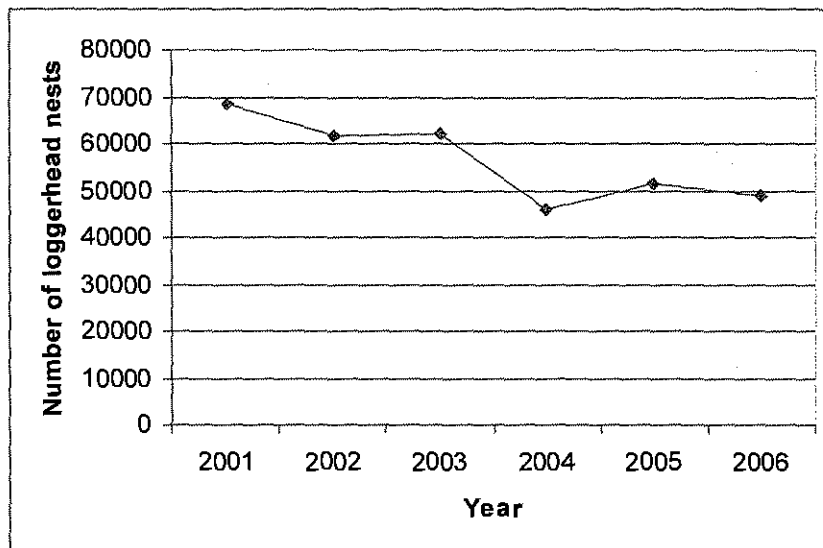


Figure 5. Number of nests in loggerhead subpopulation B from 2001 to 2006 in Florida according to SNBS.

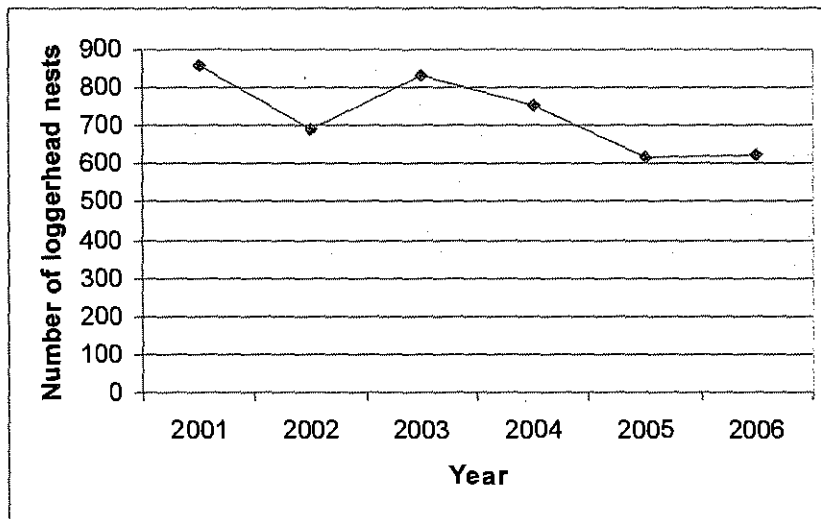


Figure 6. Number of nests in loggerhead subpopulation C from 2001 to 2006 in Florida according to SNBS.

Green Sea Turtle

Green nest numbers are increasing in Florida with a record number of nests being recorded during the 2007 season (FWC/FWRI 2007, http://research.myfwc.com/features/view_article.asp?id=27537).

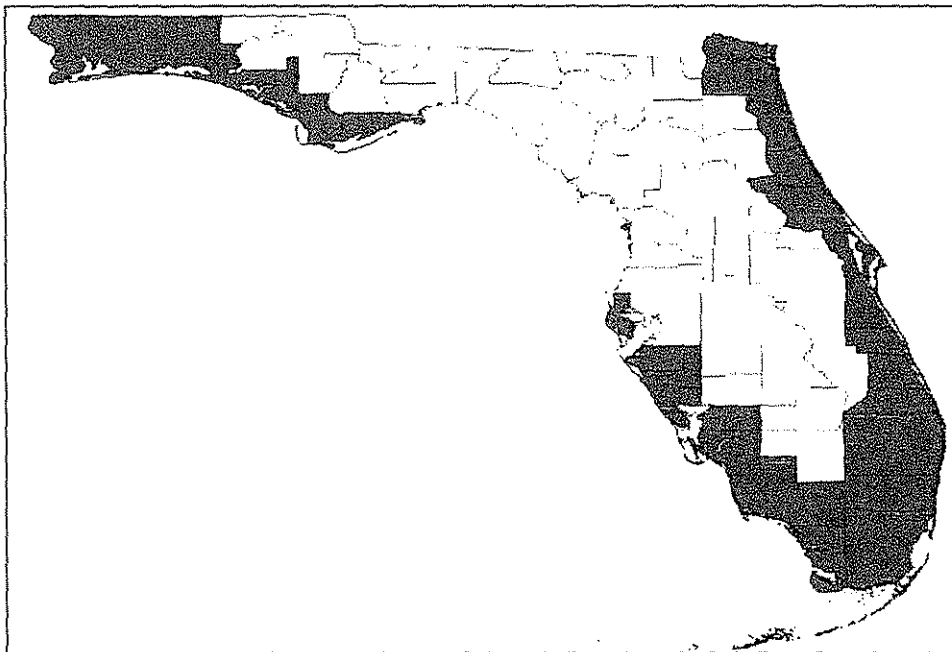


Figure 7. Distribution of green turtle nesting in Florida.

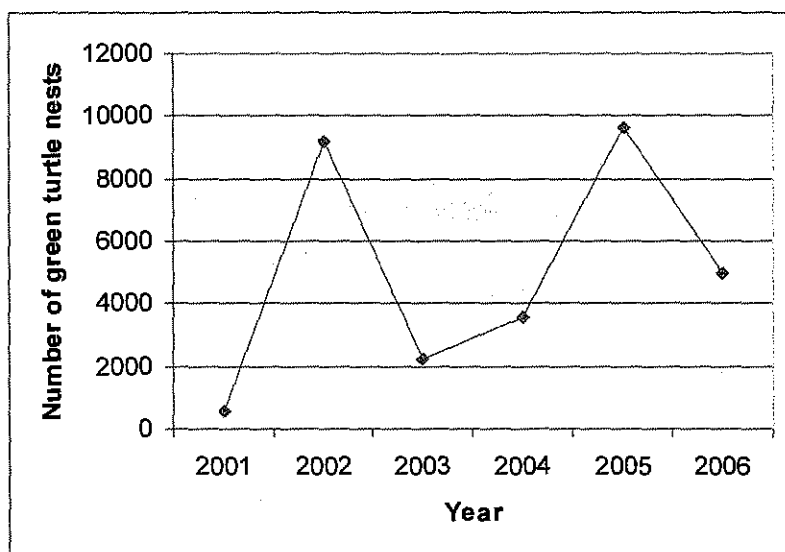


Figure 8. Number of green nests from 2001 to 2006 in Florida, according to SNBS.

Leatherback Sea Turtle

Leatherback nest numbers are increasing in Florida with a record number of leatherback nests being recorded during the 2007 season (FWC/FWRI 2007, http://research.myfwc.com/features/view_article.asp?id=27537).

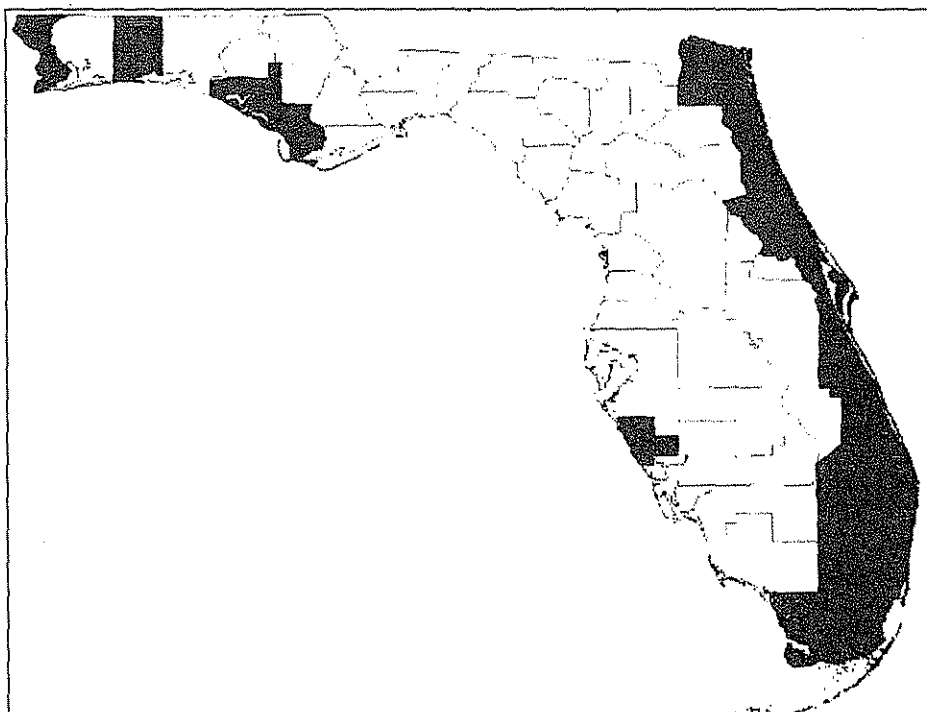


Figure 9. Distribution of leatherback turtle nesting in Florida.

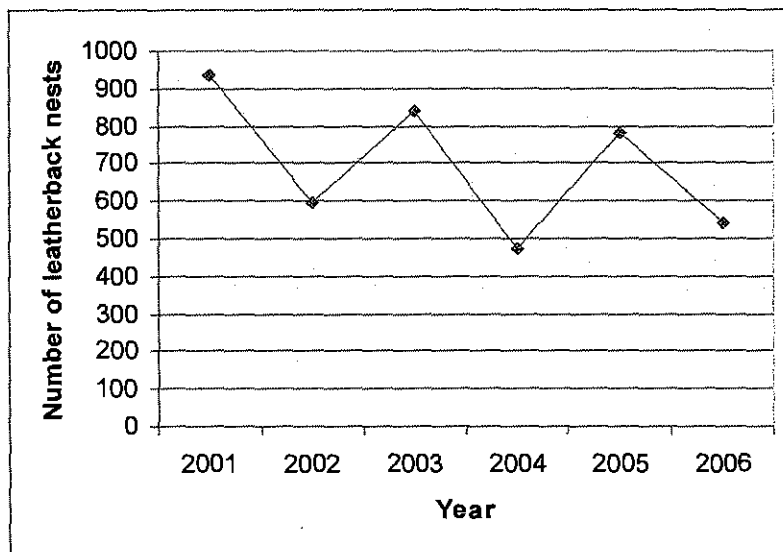


Figure 10. Number of leatherback nests in Florida 2000-2006 according to SNBS.

Hawksbill Sea Turtle

Thirty-eight hawksbill nests have been documented in Florida since 1979 in Broward, Manatee, Martin, Miami-Dade, Monroe, Palm Beach, and Volusia counties (FWC/FWRI statewide nesting database 2006).

Kemp's Ridley Sea Turtle

Twenty-six Kemp's ridley nests have now been documented in Florida in Brevard, Escambia, Gulf, Lee, Martin, Palm Beach, Pinellas, Santa Rosa, Sarasota, and Volusia counties (FWC 2007).

Factors affecting species habitat within the Action Area

The beaches along the coast of Florida are part of the State INBS. For the past 18 years, the Index Nesting Beach Survey (INBS) has coordinated a detailed monitoring program in addition to the Statewide Nesting Beach Survey (SNBS). Of the 190 SNBS surveyed areas, 33 participate in the INBS program (30 percent of the total beaches). The INBS program was established with a set of standardized data-collection criteria to measure seasonal nesting, and to allow accurate comparisons between both beaches and years. The reliability of these comparisons results from the uniformity of beach-survey effort in space and time, from the spatial and temporal detail of surveys (or, the space and time of the surveys), and from the specialized annual training of beach surveyors. Under the core INBS program, 178 miles of nesting beach have been divided into zones, known as core index zones, averaging one-half ($\frac{1}{2}$) mile in length. These beaches are monitored daily during beginning May 15 and ending August 31. On all index beaches, researchers record nests and nesting attempts by species, the location of the nest, and date.

Nest hatching surveys may continue into mid-November depending on nest incubation. Surveys begin at sunrise. Turtle crawls are identified as a true nesting crawl or false crawl. Nests are marked with stakes and some are surrounded with surveyor flagging tape, and if needed screened to prevent predation. The marked nests are monitored throughout the incubation period for storm damage, predation, hatching activity and hatching and emerging success. All monitoring is conducted in accordance with guidelines provided by the FWC.

Loggerhead Sea Turtle

The loggerhead nesting and hatching season is as follows:

Table 4. Loggerhead nesting and hatching season for Florida.

BEACH	COUNTIES	SEA TURTLE NESTING SEASON THROUGH HATCHING SEASON ¹
Northern Gulf of Mexico beaches	Escambia through Pasco	May 1 through October 31
Southern Gulf of Mexico beaches	Pinellas through Monroe Counties	April 1 through November 30
Southern Florida Atlantic beaches	Brevard through Dade	March 1 through November 30
Northern Florida Atlantic beaches	Nassau through Volusia	April 15 through November 30

¹Incubation ranges from about 45 to 95 days.

Hurricane Effects on Loggerhead Nesting

A common question is whether the 2004 and 2005 hurricanes seasons contributed to low nest numbers. Although Florida has been subject to numerous hurricanes in recent years, these storm events cannot account for the decline observed in the number of loggerhead nests on Florida beaches. The hurricanes have a very limited effect on nesting activity of adult female turtles. Because loggerheads that hatch on Florida beaches require some 20 to 30 years to reach maturity, storm impacts would not manifest themselves for many years. Moreover, hurricane impacts to nests tend to be localized and often occur after the main hatching season for the loggerhead is over.

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Green Sea Turtle

The green nesting and hatching season is as follows:

Table 5. Green sea turtle nesting and hatching season for Florida.

BEACH	COUNTIES	SEA TURTLE NESTING SEASON THROUGH HATCHING SEASON ¹
Northern Gulf of Mexico beaches	Escambia through Pasco	May 15 through October 31
Southern Gulf of Mexico beaches	Pinellas through Monroe Counties	May 15 through October 31
Southern Florida Atlantic beaches	Brevard through Dade	May 1 through November 30
Northern Florida Atlantic beaches	Nassau through Volusia	May 15 through November 15

¹Incubation ranges from about 45 to 75 days.

Leatherback Sea Turtle

The leatherback sea turtle nesting and hatching season is as follows:

Table 6. Leatherback sea turtle nesting and hatching season for Florida.

BEACH	COUNTIES	SEA TURTLE NESTING SEASON THROUGH HATCHING SEASON ¹
Northern Gulf of Mexico beaches	Escambia through Pasco	May 1 through September 30
Southern Florida Atlantic beaches	Brevard through Dade	February 15 through November 30
Northern Florida Atlantic beaches	Nassau through Volusia	April 15 through September 30

¹Incubation ranges from about 55 to 75 days.

Hawksbill Sea Turtle

The hawksbill sea turtle nesting and hatching season is as follows:

Table 7. Hawksbill sea turtle nesting and hatching season for Florida.

BEACH	COUNTIES	SEA TURTLE NESTING SEASON THROUGH HATCHING SEASON ¹
Southern tip of Florida	Monroe	June 1 through December 31
Southern Florida Atlantic beaches	Brevard through Dade	June 1 through December 31
Northeast Florida	Volusia	June 1 through December 31

¹Incubation lasts about 60 days.

Other activities have affected the conservation of sea turtles and required consultation with the Service. These are located within and outside of the Action Area and are important in the Service's overall evaluation of the current status of each subspecies. Consultations that have occurred within Florida are listed in **Appendix A**.

EFFECTS OF THE ACTION

Factors to be considered

The proposed project will occur within habitat that is used by sea turtles for nesting and may be constructed during a portion of the sea turtle nesting season. Long-term and permanent impacts from the emergency beach berm repair, construction and placement could include a change in the nest incubation environment from the berm material. Short-term and temporary impacts to sea turtle nesting activities could result from berm work occurring on the nesting beach during the active nesting or hatching period, changes in the physical characteristics of the beach from the placement of the berm material and change the nest incubation environment from the material.

Proximity of action: The emergency beach berm activities would occur within and adjacent to nesting habitat for sea turtles and dune habitats that ensure the stability and integrity of the nesting beach. Specifically, the project would potentially impact nesting and hatchling loggerhead, green, leatherback, hawksbill, and Kemp's ridley sea turtles.

Distribution: The emergency beach berm activities that may impact nesting and hatchling sea turtles would occur along GOM and Atlantic Ocean coasts.

Timing: The timing of the emergency beach berm could directly and indirectly impact nesting and hatchling sea turtles when conducted between April 15 and November 30.

Nature of the effect: The effects of the emergency berm construction and repair activities may change the nesting behavior of adult female sea turtles or diminish the nesting success, change the behavior of hatchling sea turtles, and result in nests or hatching events being missed during the daily survey of the Action Area. Any decrease in productivity and/or survival rates would contribute to the vulnerability of the Florida subpopulations of loggerhead sea turtles.

Duration: The emergency berm construction and repair will be done only in emergency situations. The berms are constructed to withstand 5-year storms. Thus, they are not expected to remain on the beach for very long. Time to complete the project construction may vary depending on the project length, weather, and other factors (contractor and equipment availability, regulatory permitting). However, it is anticipated for most projects work could take from a week to 30 days to complete. The direct effects will be sporadic depending on the erosion conditions of the specific shoreline and short-term in duration. Indirect effects from the activity may continue to impact nesting and hatchling sea turtles in subsequent nesting seasons if the berm material remains in place.

Disturbance frequency: The three Florida loggerhead sea turtle nesting subpopulations, greens, leatherback, hawksbill, and Kemp's ridleys may experience decreased nesting success, hatching success and hatchling emergence that could result from the emergency berm construction and repair activities being conducted at night during one nesting season or during the earlier or latter parts of two nesting seasons.

Disturbance intensity and severity: Depending on the need (number of disasters) and the timing of the emergency berm construction and repair activities during sea turtle nesting season, effects to the loggerhead, green, leatherback, hawksbill, and Kemp's ridley sea turtle populations of Florida, and potentially the U.S. populations could be important.

Analyses for effects of the action

Repair and replacement of a beach berm may have similar impacts as a beach nourishment to sea turtles because the action may occur during the sea turtle nesting season, sandy material is being placed in sea turtle nesting habitat, and the material may migrate and be redistributed along the beach. Thus, most of the following discussions concerning impacts of beach berm construction will use findings from beach nourishment research, studies, and the Service's experience from previous nourishment and berm replacement projects.

Beneficial effects

The need for a beach berm replacement is a result of a natural disaster when the wet and dry beach has been eroded and the elevation lowered. It is likely that post disaster beaches may not provide optimal habitat for sea turtle nests. Placement of sand on a beach may increase sea turtle nesting habitat quality if the placed sand is highly compatible (*i.e.*, grain size, shape, color, etc.) with naturally occurring beach sediments in the area, and compaction and escarpment remediation measures are incorporated into the project. In addition, placement of a berm that is designed and constructed to mimic the pre-disaster beach system while the beach is naturally restoring, may benefit sea turtles in the interim.

Direct effects

Direct effects are those direct or immediate effects of a project on the species or its habitat. Placement of sand on a beach in and of itself may not provide suitable nesting habitat for sea turtles. Although, the placement of a beach berm may enhance the quality of nesting habitat immediately post disaster; significant negative impacts to sea turtles may result if protective measures are not incorporated during project construction. Placement of sand during the nesting season, particularly on or near high density nesting beaches, can cause increased loss of eggs and hatchlings and, along with other mortality sources, may significantly impact the long-term survival of the species if not completed correctly. For instance, projects conducted during the nesting and hatching season could result in the loss of sea turtle nests by burial or crushing of nests or hatchlings. While a nest monitoring and egg relocation program would reduce these impacts, nests may be inadvertently missed (when crawls are obscured by rainfall, wind, and/or tides) or misidentified as false crawls during daily patrols. Even under the best of conditions,

about 7 percent of the nests can be misidentified as false crawls by experienced sea turtle nest surveyors (Schroeder 1994).

1. *Nest relocation*

Following disasters and once the beach is deemed safe, the sea turtle surveyors commence nesting surveys. There may be a short period of time when the beaches are not surveyed and nests are missed. Aerial photography following Hurricane Dennis in 2005 showed sea turtle crawls within 48 hours of the storm's passage. Besides the potential for missing nests during surveys and a nest relocation program, there is a potential for eggs to be damaged by nest movement or relocation, particularly if eggs are not relocated within 12 hours of deposition (Limpus et al. 1979). Nest relocation can have adverse impacts on incubation temperature (and hence sex ratios), gas exchange parameters, hydric environment of nests, hatching success, and hatchling emergence (Limpus et al. 1979; Ackerman 1980; Parmenter 1980; Spotila et al. 1983; McGehee 1990). Relocating nests into sands deficient in oxygen or moisture can result in mortality, morbidity, and reduced behavioral competence of hatchlings. Water availability is known to influence the incubation environment of the embryos and hatchlings of turtles with flexible-shelled eggs, which has been shown to affect nitrogen excretion (Packard et al. 1984), mobilization of calcium (Packard and Packard 1986), mobilization of yolk nutrients (Packard et al. 1985), hatchling size (Packard et al. 1981; McGehee 1990), energy reserves in the yolk at hatching (Packard et al. 1988), and locomotory ability of hatchlings (Miller et al. 1987).

In a 1994 Florida study comparing loggerhead hatching and emergence success of relocated nests with *in situ* nests, Moody (1998) found that hatching success was lower in relocated nests at 9 of 12 beaches evaluated. In addition, emergence success was lower in relocated nests at 10 of 12 beaches surveyed in 1993 and 1994.

2. *Equipment*

The use of heavy machinery on the beach during a construction project may also have adverse effects on sea turtles. Equipment left on the nesting beach overnight can create barriers to nesting females emerging from the surf and crawling up the beach, causing a higher incidence of false crawls and unnecessary energy expenditure.

3. *Artificial lighting*

Visual cues are the primary sea-finding mechanism for hatchling sea turtles (Mrosovsky and Carr 1967; Mrosovsky and Shettleworth 1968; Dickerson and Nelson 1989; Witherington and Bjorndal 1991). When artificial lighting is present on or near the beach, it can misdirect hatchlings once they emerge from their nests and prevent them from reaching the ocean (Philibosian 1976; Mann 1977; FWC sea turtle disorientation database). In addition, a significant reduction in sea turtle nesting activity has been documented on beaches illuminated with artificial lights (Witherington 1992). Therefore, construction lights along a project beach and on the dredging vessel may deter females from coming ashore to nest, misdirect females trying to return to the surf after a nesting event, and misdirect emergent hatchlings from adjacent non-project beaches. Construction of the beach berms is only to occur during daylight hours.

Thus, lighting associated with berm construction is not expected to impact nesting or hatchling sea turtles.

Indirect effects

Indirect effects are those effects that are caused by or result from the proposed action, are later in time, and are reasonably certain to occur. Effects from the proposed project may continue to affect sea turtle nesting on the project beach and adjacent beaches in future years.

Many of the direct effects of emergency berm construction and repair may persist over time and become indirect impacts. These indirect effects include increased susceptibility of relocated nests to catastrophic events, the consequences of potential increased beachfront development, changes in the physical characteristics of the beach, the formation of escarpments, and future sand migration.

1. Increased susceptibility to catastrophic events

Relocation of sea turtle nests from the berm construction area may concentrate eggs in an area making them more susceptible to future disaster events. Hatchlings released from concentrated areas also may be subject to greater predation rates from both land and marine predators, because the predators learn where to concentrate their efforts (Glenn 1998; Wyneken et al. 1998).

2. Increased beachfront development

Pilkey and Dixon (1996) state that beach replenishment frequently leads to more development in greater density within shorefront communities that are then left with a future of further replenishment or more drastic stabilization measures. Dean (1999) also notes that the very existence of a beach nourishment project can encourage more development in coastal areas. Following completion of a beach nourishment project in Miami during 1982, investment in new and updated facilities substantially increased tourism there (National Research Council 1995). Increased building density immediately adjacent to the beach often accommodated more beach users than the replaced older buildings. This may also be the issue for the replacement of berms on the beach. Property owners may be provided a false sense of security in regard to protection of their property. Overall, shoreline management creates an upward spiral of initial protective measures resulting in increased and more expensive development, which leads to the need for more and larger protective measures. Increased shoreline development may adversely affect sea turtle nesting success. Greater development may support larger populations of mammalian predators, such as foxes and raccoons, than undeveloped areas (National Research Council 1990a), and can also result in greater adverse effects due to artificial lighting, as discussed above.

3. Changes in the physical environment

Replacing a beach berm may result in changes in sand density (compaction), beach shear resistance (hardness), beach moisture content, beach slope, sand color, sand grain size, sand grain shape, and sand grain mineral content if the placed sand is dissimilar from the original beach sand (Nelson and Dickerson 1988a). These changes could result in adverse impacts on

nest site selection, digging behavior, clutch viability, and emergence by hatchlings (Nelson and Dickerson 1987; Nelson 1988). The beach berm material is required to meet the State of Florida's beach sand compatibility requirements under 62B-41.007, Florida Administrative Code (FAC), for beach placement.

Beach compaction and unnatural beach profiles that may result from beach berm replacement activities could negatively impact sea turtles regardless of the timing of projects. Very fine sand and/or the use of heavy machinery can cause sand compaction on the beaches (Nelson et al. 1987; Nelson and Dickerson 1988a). Significant reductions in nesting success (*i.e.*, false crawls occurred more frequently) have been documented on severely compacted nourished beaches (Fletemeyer 1980; Raymond 1984; Nelson and Dickerson 1987; Nelson et al. 1987), and increased false crawls may result in increased physiological stress to nesting females. Sand compaction may increase the length of time required for female sea turtles to excavate nests and also cause increased physiological stress to the animals (Nelson and Dickerson 1988b). Nelson and Dickerson (1988c) concluded that, in general, beaches nourished from offshore borrow sites are harder than natural beaches, and while some may soften over time through erosion and accretion of sand, others may remain hard for 10 years or more. The sand used for the beach berm repair or replacement may be dredged from offshore or obtained from an upland source.

These impacts can be minimized by using suitable sand and by tilling compacted sand after project completion. The level of compaction of a beach can be assessed by measuring sand compaction using a cone penetrometer (Nelson 1987). Tilling of a nourished beach with a root rake may reduce the sand compaction to levels comparable to unnourished beaches. However, a pilot study by Nelson and Dickerson (1988c) showed that a tilled nourished beach will remain uncompacted for up to 1 year. Multi-year beach compaction monitoring and, if necessary, tilling, would ensure that project impacts on sea turtles are minimized. While the berms are considered as temporary (withstand 5-year storms) the material may remain on the beach over a year or more.

A change in sediment color on a beach could change the natural incubation temperatures of nests in an area, which, in turn, could alter natural sex ratios. To provide the most suitable sediment for nesting sea turtles, the color of the nourished sediments shall resemble the natural beach sand in the area. Natural reworking of sediments and bleaching from exposure to the sun would help to lighten dark nourishment sediments; however, the timeframe for sediment mixing and bleaching to occur could be critical to a successful sea turtle nesting season. Meeting the State of Florida criteria for beach quality sand would ensure that the material color is compatible to pre-disaster conditions on the beach.

4. *Escarpment formation*

On nourished beaches, steep escarpments may develop along their water line interface as they adjust from an unnatural construction profile to a more natural beach profile (Coastal Engineering Research Center 1984; Nelson et al. 1987). These escarpments can hamper or prevent access to nesting sites (Nelson and Blihovde 1998). Researchers have shown that female turtles coming ashore to nest can be discouraged by the formation of an escarpment, leading to situations where they choose marginal or unsuitable nesting areas to deposit eggs (*e.g.*, in front

of the escarpments, which often results in failure of nests due to prolonged tidal inundation). Designing the berm to reduce the seaward slope would provide a more natural slope for sea turtle approach and decrease the time needed for the shoreline profile to equilibrate. This impact can also be minimized by leveling any escarpments prior to the nesting season.

Species' response to a proposed action

The following summary illustrates sea turtle responses to and recovery from a nourishment project. A significantly larger proportion of turtles emerging on nourished beaches abandoned their nesting attempts than turtles emerging on natural or pre-nourished beaches. This reduction in nesting success is most pronounced during the first year following project construction and is most likely the result of changes in physical beach characteristics associated with the nourishment project (*e.g.*, beach profile, sediment grain size, beach compaction, frequency and extent of escarpments). During the first post-construction year, the time required for turtles to excavate an egg chamber on untilled, hard-packed sands increases significantly relative to natural and background conditions. However, tilling is effective in reducing sediment compaction to levels that did not significantly prolong digging times. As natural processes reduced compaction levels on nourished beaches during the second post-construction year, digging times returned to background levels (Ernest and Martin 1999; Crain et al. 1995; Trindell et al. 2000).

During the first post-construction year, nests on nourished beaches are deposited significantly seaward of the toe of the dune and significantly landward of the tide line than nests on natural beaches. As the width of nourished beaches decreased during the second year, nest placement diminishes. More nests are washed out on the wide, flat nourished beaches than on the narrower steeply sloped natural beaches. This phenomenon may persist through the second post-construction year resulting from the placement of nests near the seaward edge of the beach berm where dramatic profile changes occurred, caused by erosion and scarping, as the beach equilibrated to a more natural contour.

The principal effect of nourishment on sea turtle reproduction is a reduction in nesting success during the first year following project construction. Although most studies have attributed this phenomenon to an increase in beach compaction and escarpment formation, Ernest and Martin (1999) indicated that changes in beach profile may be more important. Regardless, as a nourished beach is reworked by natural processes in subsequent years and adjusts from an unnatural construction profile to a more natural beach profile, beach compaction and the frequency of escarpment formation decline, and nesting and nesting success return to levels found on natural beaches. Because of the similarities of beach nourishment and beach berm construction we anticipate similar impacts to occur from the repair and replacement of beach berms following a disaster.

BEACH MICE

STATUS OF THE SPECIES/CRITICAL HABITAT

Species/critical habitat description

The formal taxonomic classification of beach mouse subspecies follows the geographic variation in pelage and skeletal measurements documented by Bowen (1968). This peer-reviewed, published classification was also accepted by Hall (1981). The taxonomic validity of the beach mouse subspecies came into question when three of the Gulf Coast subspecies, PKBM, ABM, and CBM were proposed for listing (1984-1985). Two unpublished letters (Dawson 1983; Griswold undated) were submitted to the Service for consideration in response to the proposed listing. The conclusion reached by these authors was that three of the eight beach mouse subspecies did not differ sufficiently from inland populations to warrant their recognition as subspecies. Close consideration of the Dawson and Griswold unpublished papers by Service biologists determined that neither paper constituted completed studies. Furthermore, Dawson clearly expressed the need for further taxonomic studies to adequately answer the questions concerning subspecific taxonomy of beach mice. To date, Bowen's (1968) work is the latest published comprehensive review of beach mice and is the taxonomy on which the Service continues to rely.

Since the listing of the beach mice, further research concerning the taxonomic validity of the subspecific classification of beach mice has been initiated and/or conducted. Preliminary results from these studies support the separation of beach mice from inland forms, and support the currently accepted taxonomy (Bowen 1968) (*i.e.*, each beach mouse group represents a unique and isolated subspecies). Recent research using mitochondrial DNA data illustrates that Gulf Coast beach mouse subspecies form a well-supported and independent evolutionary cluster within the global population of the mainland or inland old field mice (Van Zant and Wooten 2006 pers. communication).

The old-field mouse (*Peromyscus polionotus*) is different in form and structure as well as being genetically diverse throughout its range in the southeastern United States (Bowen 1968; Selander et al. 1971). Currently there are sixteen recognized subspecies of old-field mice (Hall 1981). Eight subspecies of the old-field mouse occupy coastal rather than inland habitat and are referred to as beach mice (Bowen 1968). Two existing subspecies of beach mouse and one extinct subspecies are known from the Atlantic coast of Florida and five subspecies of the beach mice live along the Gulf coast of Alabama and northwestern Florida.

Rivers and various inlets bisect the Gulf and Atlantic beaches and naturally isolate habitats in which the beach mice live. The outer coastline and barrier islands are typically separated from the mainland by lagoons, swamps, tidal marshes, and flatwood areas with hardpan soil conditions. However, these dispersal barriers are not absolute; sections of sand peninsulas may from time to time be cut off by storms and shift over time due to wind and current action. Human development has also fragmented the ranges of the subspecies, and as a consequence of

coastal development and the dynamic nature of the coastal environment, beach mouse populations are generally comprised of various disjunct populations.

Atlantic Coast Beach Mice

The Southeastern Beach Mouse (SEBM) was listed as a threatened species under the Act in 1989 (54 FR 20598). Critical habitat was not designated for this subspecies. SEBM is also listed as threatened by the State of Florida. The original distribution of the SEBM was from Ponce Inlet, Volusia County, southward to Hollywood, Broward County, and possibly as far south as Miami in Dade County. It is currently restricted to Volusia, Brevard, and Indian River counties. Formerly, this subspecies occurred along about 175 miles of Florida's southeast coast; it now occupies about 50 miles, a significant reduction in range (**Figure 11**).

This subspecies uses both beach dunes and inland areas of scrub vegetation. The most seaward vegetation typically consists of sea oats (*Uniola paniculata*), dune panic grass (*Panicum amarulum*), railroad vine (*Ipomoea pes-caprae*), beach morning glory (*Ipomoea stolonifera*), and camphor weed (*Heterotheca subaxillaris*). Further landward, vegetation is more diverse, including beach tea (*Croton punctatus*), prickly pear cactus (*Opuntia humifusa*), saw palmetto (*Serenoa repens*), wax myrtle (*Myrica cerifera*), and sea grape (*Coccoloba uvifera*).

The Anastasia Island beach mouse (AIBM) was listed as endangered under the Act in 1989 (54 FR 20598). Critical habitat was not designated for the subspecies. AIBM is also listed as endangered species by the State of Florida. The distribution of the AIBM has declined significantly, particularly in the northern part of its range. Historically, it was reported to occur from the vicinity of the Duval-St. Johns County line southward to Matanzas Inlet, St. Johns County, Florida (Humphrey and Frank 1992a). It currently occurs only on Anastasia Island, primarily at the north (Anastasia State Park) and south (Fort Matanzas National Monument) ends of the island, although beach mice still occur at low densities in remnant dunes along the entire length of the island (Service 1993). The original distribution consisted of about 50 linear miles of beach; current populations occupy about 14 linear miles of beach with possibly only 3 miles supporting viable populations (Service 1993) (**Figure 12**).

In 1992 to 1993, the Service funded the reintroduction of AIBM to Guana Tolomoto Matanzas National Estuarine Research Reserve (GTMNERR) in St. Johns County where historical habitat for the subspecies existed (Service 1993). GMTNERR-Guana River is 9 miles north of the existing population of beach mice at Anastasia State Park. Fifty-five mice (27 females and 28 males) were trapped at Fort Matanzas National Monument and Anastasia State Park from September 24, to November 12, 1992, and placed in soft-release enclosures at the State Park on September 27, and November 12, 1992. During follow-up trapping conducted in February 1993, beach mice occupied the entire 4.2 miles length of the park; 34 were captured and it was estimated that the population totaled 220. The reintroduction has been successful thus far, despite several hurricanes and northeasterly storms that have caused beach erosion. Due to the limited dune habitat at the park it is not known if it will be able to maintain a stable population.

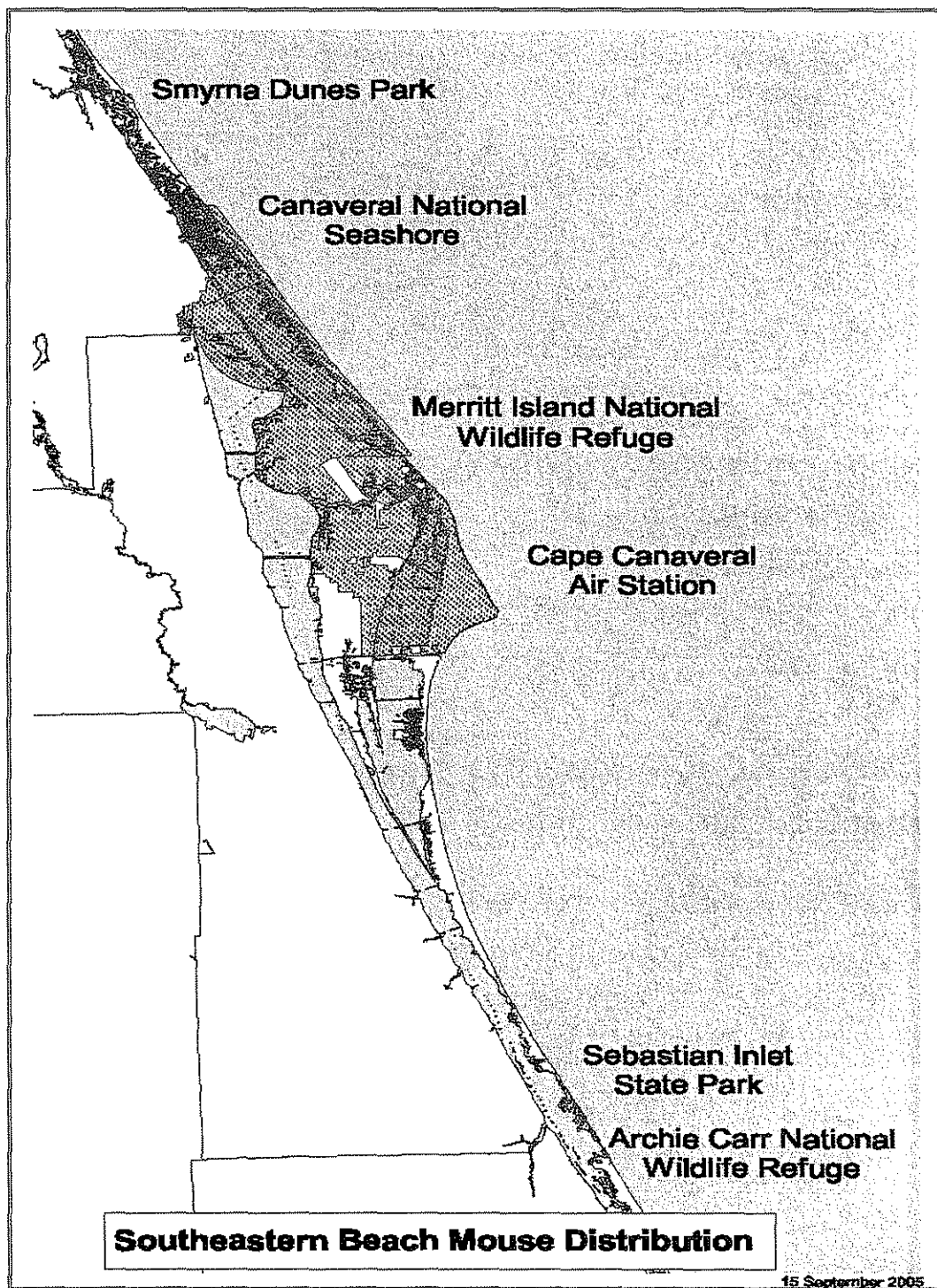


Figure 11. The distribution of the southeastern beach mouse.

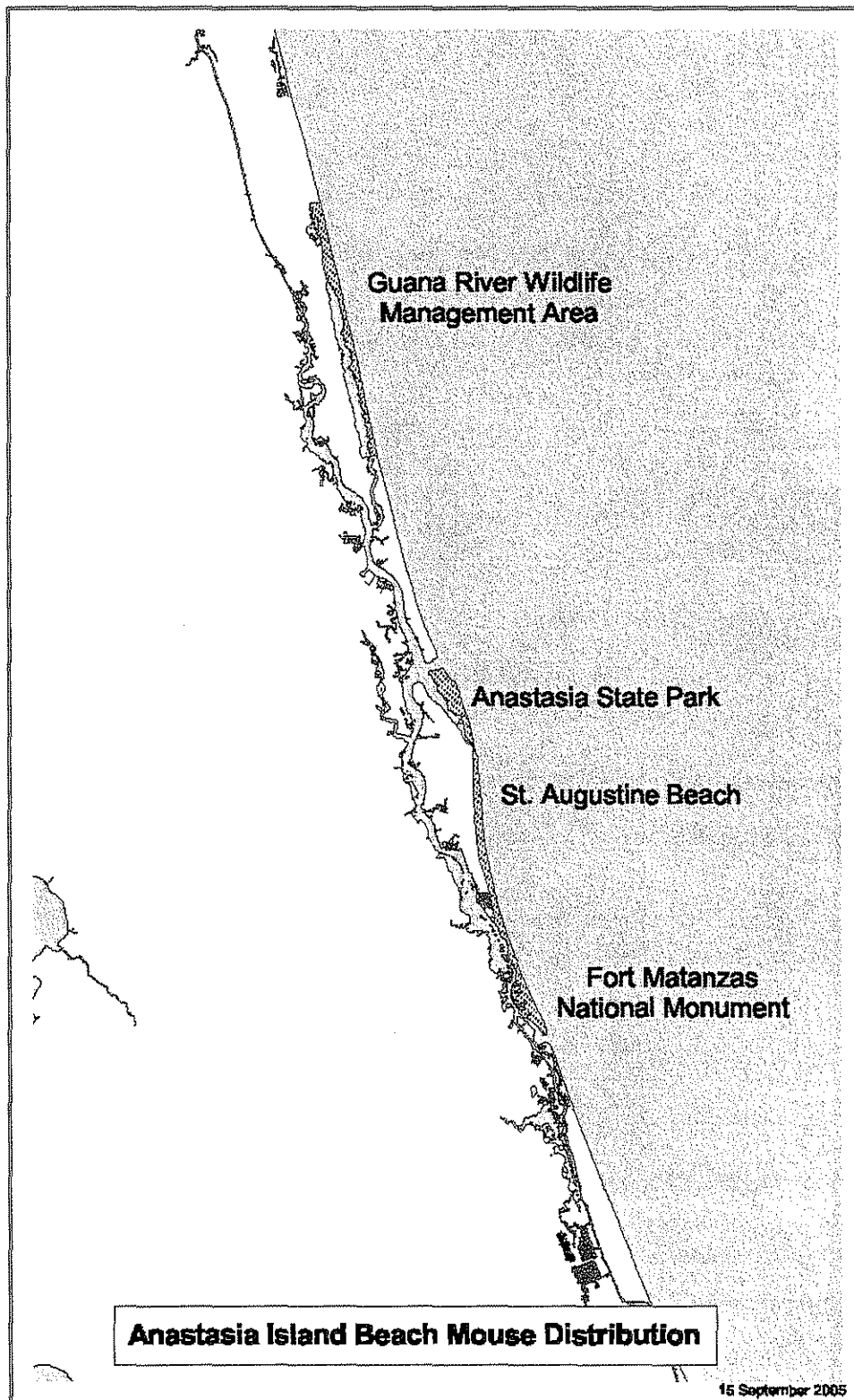


Figure 12. The distribution of the Anastasia Island beach mouse.

Gulf Coast Beach Mice

The CBM and the PKBM were listed with the Alabama beach mouse (ABM), *Peromyscus polionotus ammobates*, as endangered species under the Act in 1985 (50 FR 23872). The SABM was listed under the Act in 1998 (63 FR 70053). CBM, SABM, and PKBM are also listed as endangered species by the State of Florida. Critical habitat was designated for the CBM and PKBM at the time of listing; however, critical habitat was revised in 2006 (71 FR 60238). Critical habitat was also designated for the SABM in the 2006 (71 FR 60238).

The historic range of the CBM extended 53 miles between the Destin Pass, Choctawhatchee Bay in Okaloosa County and East Pass in St. Andrew Bay, Bay County in Florida. PKBM historically ranged along the entire length of Perdido Key for 16.9 miles in Alabama and Florida, between Perdido Bay, Alabama (Perdido Pass) and Pensacola Bay, Florida (Bowen 1968). The historic range of the SABM extended 38 miles between Money Bayou in Gulf County, and Crooked Island at the East Pass of St. Andrews Bay, Bay County, Florida including the St. Joseph Peninsula and the coastal mainland adjacent to St. Joseph Bay, in Florida (**Figure 13**).

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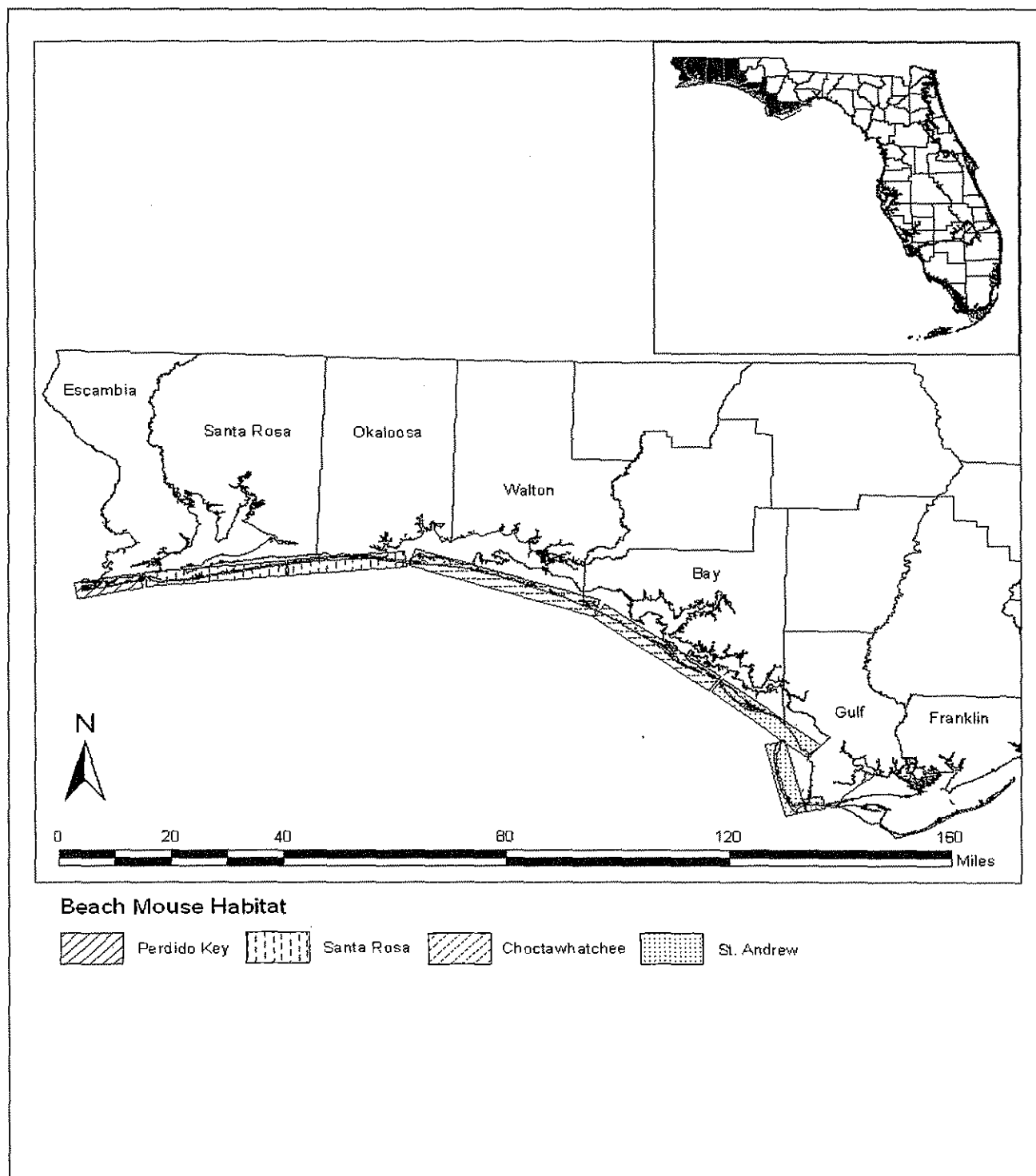


Figure 13. Historic range of Gulf Coast beach mouse subspecies.

Critical habitat

Since the listing of the PKBM and CBM in 1985, research has refined previous knowledge of Gulf Coast beach mouse habitat requirements and factors that influence their use of habitat. The findings most pertinent to the revision of critical habitat and determination (prudence) to revise the critical habitat designation involved the role of scrub dune habitat. Coastal dune habitat is generally categorized as: primary dunes (characterized by sea oats and other grasses), secondary dunes, similar to primary dunes, but also frequently include such plants as woody goldenrod (*Chrysoma pauciflosculosa*), false rosemary (*Conradina canescens*), and interior or scrub dunes (often dominated by scrub oaks (*Quercus geminata* spp.) and yaupon holly (*Ilex vomitoria*)). Contrary to the early belief that beach mice were restricted to (Howell 1909; 1921; Ivey 1949), or preferred the frontal dunes (Blair 1951; Pournelle and Barrington 1953; Bowen 1968), more recent research has shown that scrub habitat serves an invaluable role in the persistence of beach mouse populations (Swilling et al. 1998; Sneckenberger 2001). Beach mice occupy scrub dunes on a permanent basis and studies have found no detectable differences between scrub and frontal dunes in beach mouse body mass, home range size, dispersal, reproduction, survival, food quality, and burrow site availability (Swilling et al. 1998; Swilling 2000; Sneckenberger 2001). While seasonally abundant, the availability of food resources in the primary and secondary dunes fluctuates (Sneckenberger 2001). In contrast, the scrub habitat provides a more stable level of food resources, which becomes crucial when food is scarce or nonexistent in the primary and secondary dunes. This suggests that access to primary, secondary and scrub dune habitat is essential to beach mice at the individual level.

Based on the current knowledge of the life history, biology, and ecology of the subspecies and the requirements of the habitat to sustain the essential life history functions of the species, the primary constituent elements (PCE) of critical habitat for Gulf Coast beach mice consist of:

1. A contiguous mosaic of primary, secondary and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites.
2. Primary and secondary dunes, generally dominated by sea oats, that, despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes provide abundant food resources, burrow sites, and protection from predators.
3. Scrub dunes, generally dominated by scrub oaks, that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane induced storm surge.
4. Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and recolonization of locally extirpated areas.

5. A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth and viability of all life stages.

Thirteen coastal dune areas (units) in southern Alabama and the panhandle of Florida have been determined to be essential to the conservation of PKBM, CBM, and SABM and are designated as critical habitat (**Figures 14 through 16**). These 13 units include five units for PKBM, five units for CBM, and three units for the SABM. These units total 6,194 acres of coastal dunes, and include 1,300 acres for the PKBM in Escambia County, Florida and Baldwin County, Alabama (**Table 8**); 2,404 acres for the CBM, in Okaloosa, Walton, and Bay counties, Florida (**Table 9**); and 2,490 acres for the SABM in Bay and Gulf counties, Florida (**Table 10**).

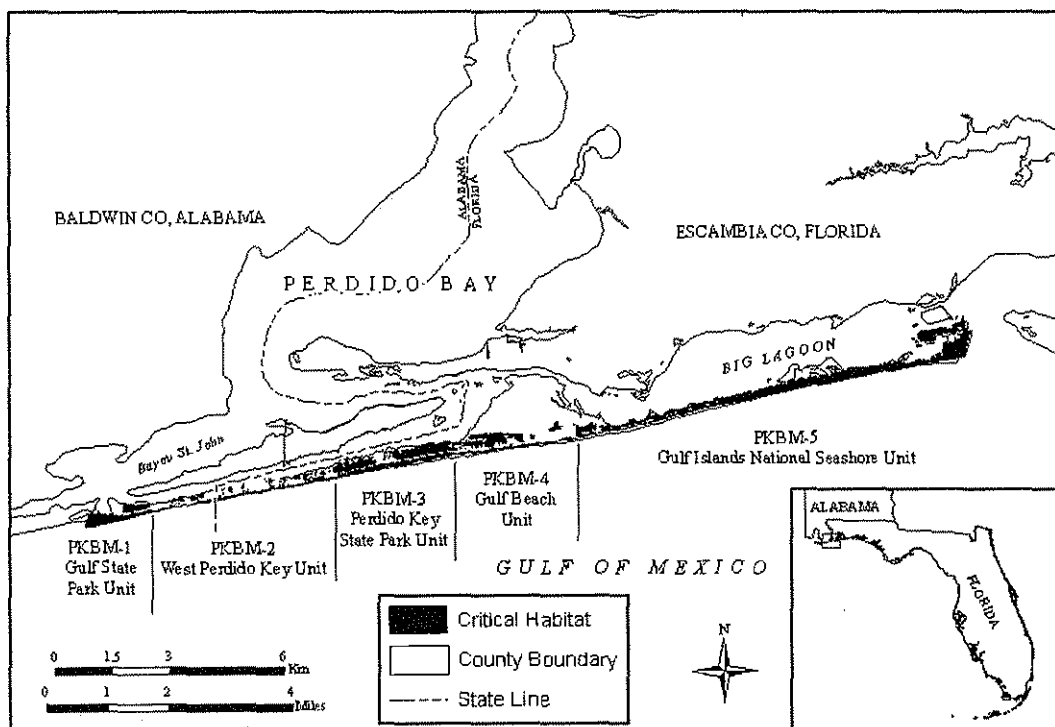


Figure 14. Critical habitat units designated for the Perdido Key beach mouse.

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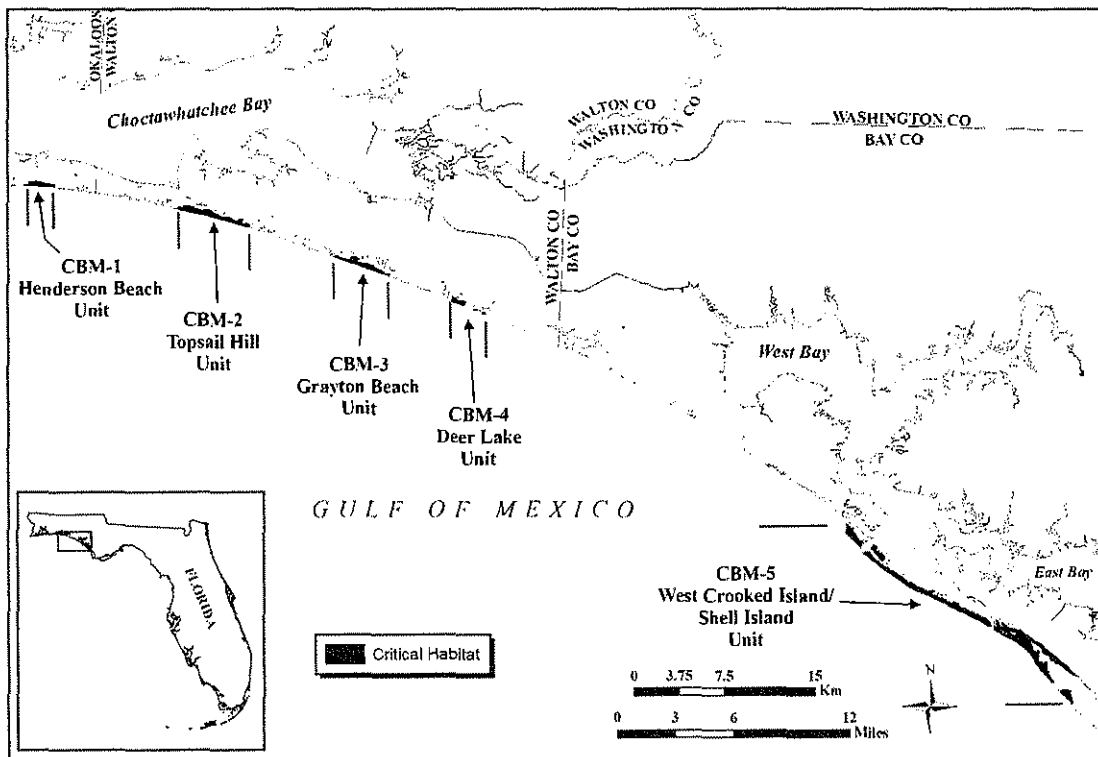


Figure 15. Critical habitat units designated for the Choctawhatchee beach mouse.

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Figure 16. Critical habitat units designated for the St. Andrew beach mouse.

Table 8. Critical habitat units designated for the Perdido Key beach mouse.

Perdido Key Beach Mouse Critical Habitat Units	Federal Acres	State Acres	Local and Private Acres	Total Acres
1. Gulf State Park Unit	0	115	0	115
2. West Perdido Key Unit	0	0	147	147
3. Perdido Key State Park Unit	0	238	0	238
4. Gulf Beach Unit	0	0	162	162
5. Gulf Islands National Seashore Unit	638	0	0	638
Total	638	353	309	1300

Table 9. Critical habitat units designated for the Choctawhatchee beach mouse.

Choctawhatchee Beach Mouse Critical Habitat Units	Federal Acres	State Acres	Local and Private Acres	Total Acres
1. Henderson Beach Unit	0	96	0	96
2. Topsail Hill Unit	0	277	31	308
3. Grayton Beach Unit	0	162	17	179
4. Deer Lake Unit	0	40	9	49
5. W. Crooked Island/Shell Island Unit	1333	408	30	1771
Total	1333	982	87	2404

Table 10. Critical habitat units designated for the St. Andrew beach mouse.

St. Andrew Beach Mouse Critical Habitat Units	Federal Acres	State Acres	Local and Private Acres	Total Acres
1. East Crooked Island Unit	649	0	177	826
2. Palm Point Unit	0	0	162	162
3. St. Joseph Peninsula Unit	0	1280	222	1502
Total	649	1280	561	2490

The Gulf State Park Unit (PKBM-1) consists of 115 acres in southern Baldwin County, Alabama, on the westernmost region of Perdido Key. This unit encompasses essential features of beach mouse habitat within the boundary of Gulf State Park from the west tip of Perdido Key at Perdido Pass east to approximately 1.0 mile west of where the Alabama-Florida State line bisects Perdido Key and the area from the mean high water line (MHWL) north to the seaward extent of the maritime forest. This unit was occupied by the species at the time of listing. PKBM were known to inhabit this unit during surveys in 1979 and 1982, and by 1986 this was the only known existing population of the subspecies (Humphrey and Barbour 1981; Holler et al. 1989). This population was a core population and was the donor site for the reestablishment of PKBM into Gulf Islands National Seashore in 1986. This project ultimately saved PKBM from extinction as the population at Gulf State Park was considered extirpated in 1998 due to tropical storms and predators (Auburn University 1999).

Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat. Because scrub habitat is separated from the frontal dunes by a highway in some areas, the population inhabiting this unit can be especially vulnerable to hurricane impacts, and therefore further linkage to scrub habitat and/or habitat management would improve connectivity. This unit is managed by the Alabama Department of Conservation and Natural Resources and provides PCEs 2, 3, 4, and 5. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, and/or a decrease in

habitat quality. This unit, which contains interior scrub habitat as well as primary and secondary dunes, serves as an expansion of the original critical habitat designation (50 FR 23872).

The West Perdido Key Unit (PKBM-2) consists of 114 acres in southern Escambia County, Florida, and 33 acres in southern Baldwin County, Alabama. This unit encompasses essential features of beach mouse habitat from approximately 1.0 mile west of where the Alabama-Florida State line bisects Perdido Key east to 2.0 miles east of the State line and areas from the MHWL north to the seaward extent of human development or maritime forest. This unit consists of private lands and ultimately includes essential features of beach mouse habitat between Perdido Key State Park (PKBM-3) and Gulf State Park (PKBM-1). Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat and provides PCEs 2, 3, and 4.

Habitat fragmentation and other threats specific to this unit are mainly due to development. Consequently, threats to this unit that may require special management considerations include habitat fragmentation and habitat loss, artificial lighting, presence of feral cats as well as other predators at unnatural levels, excessive foot traffic and soil compaction, and damage to dune vegetation and structure. At the time of listing, it was not known that beach mice occupied this area. While no trapping has been conducted on these private lands to confirm absence for sections 7 and 10 permitting, sign of beach mouse presence was confirmed in 2005 through observations of beach mouse burrows and tracks (Sneckenberger, Service 2005 pers. communication), and this unit is adjacent to contiguous, occupied beach mouse habitat (PKBM-3). Therefore, this unit is considered currently occupied. This unit provides essential connectivity between two core population areas (Perdido Key State Park and Gulf State Park), provides habitat for expansion, natural movements, and recolonization, and is therefore essential to the conservation of the species. Specifically, this unit may have historically provided for the recolonization of Gulf State Park (PKBM-1) and/or may facilitate similar recolonization in the future as the habitat recovers from recent hurricane events.

The Perdido Key State Park Unit (PKBM-3) consists of 238 acres in southern Escambia County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Perdido Key State Park from approximately 2.0 miles east of the Alabama-Florida State line to 4.0 miles east of the State line and the area from the MHWL north to the seaward extent of the maritime forest. Beach mouse habitat in this unit consists of primary, secondary and scrub dune habitat. Trapping efforts in this area were limited in the past. In 2000, a relocation program began to reestablish mice at Perdido Key State Park. This project is considered a success and the population occupying this unit now considered a core population. This unit provides PCEs 2, 3, 4, and 5 and is essential to the conservation of the species. Improving and/or restoring habitat connections would increase habitat quality and provide more functional connectivity for dispersal, exploratory movements, and population expansion. The Florida Park Service manages this unit. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality. This unit, which contains interior scrub habitat as well as primary and secondary dunes, serves as an expansion of the original critical habitat designation (50 FR 23872).

The Gulf Beach Unit (PKBM-4) consists of 162 acres in southern Escambia County, Florida. This unit includes essential features of beach mouse habitat between Gulf Islands National Seashore and Perdido Key State Park from approximately 4.0 miles east of the Alabama–Florida State line to 6.0 miles east of the State line and areas from the MHWL north to the seaward extent of human development or maritime forest. This unit consists of private lands. Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat. Habitat fragmentation and other threats specific to this unit are mainly due to development. Consequently, threats to this unit that may require special management considerations include habitat fragmentation and habitat loss, artificial lighting, presence of feral cats as well as other predators at unnatural levels, excessive foot traffic and soil compaction, and damage to dune vegetation and structure. While not known as occupied habitat at the time of listing, presence of beach mice has recently been confirmed within the unit as a result of trapping efforts in conjunction with permitting (Lynn 2004b). This unit provides PCEs 2, 3, and 4 and is essential to the conservation of the species. This unit includes high-elevation scrub habitat and serves as a refuge during storm events and as an important repopulation source if storms extirpate or greatly reduce local populations. This unit currently provides essential connectivity between two populations (PKBM-3 and PKBM-5) and provides essential habitat for expansion, natural movements, and recolonization (PCE 4).

The Gulf Islands National Seashore Unit (PKBM-5) consists of 638 acres in southern Escambia County, Florida, on the easternmost region of Perdido Key. This unit encompasses essential features of beach mouse habitat within the boundary of Gulf Islands National Seashore–Perdido Key Area (also referred to as Johnson Beach) from approximately 6.0 miles east of the Alabama–Florida State line to the eastern tip of Perdido Key at Pensacola Bay and the area from the MHWL north to the seaward extent of the maritime forest. Beach mouse habitat in this unit consists mainly of primary and secondary dune habitat, but provides the longest contiguous expanse of frontal dune habitat within the historic range of the PKBM. PKBM were known to inhabit this unit in 1979, though the population was impacted by Hurricane Frederic (1979) and no beach mice were captured during surveys in 1982 and 1986 (Humphrey and Barbour 1981; Holler et al. 1989) therefore, the unit was unoccupied at the time of listing. In 1986, PKBM were reestablished at this unit as a part of Service recovery efforts. This reestablishment project was identified as the most urgent recovery need for the mouse (Service 1987; Holler et al. 1989). The project is considered a success, as the population inhabiting this unit is considered a core population. In 2000 and 2001, PKBM captured from this site served as donors to re-establish beach mice at Perdido Key State Park (PKBM-3).

PKBM-5, in its entirety, possesses all five PCEs and is essential to the conservation of the species. However, most of this unit consists of frontal dunes, making the population inhabiting this unit particularly threatened by storm events. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality. The National Park Service–Gulf Islands National Seashore manages this unit. This unit was included in the initial critical habitat designation (50 FR 23872).

The Henderson Beach unit (CBM-1) consists of 96 acres in Okaloosa County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Henderson Beach State Park from 0.5 mi east of the intersection of Highway 98 and Scenic Highway 98 to 0.25 mi west of Matthew Boulevard and the area from the MHWL north to the seaward extent of the maritime forest. This westernmost unit provides primary, secondary, and scrub dune habitat (PCEs 2 and 3). This unit is within the historic range of the subspecies; however, it was not known to be occupied at the time of listing and current occupancy is unknown because no recent efforts have been made to document beach mouse presence or absence. Because this unit includes protected, high-elevation scrub habitat, it may serve as a refuge during storm events and as an important source population if storms extirpate or greatly reduce local populations or populations to the east.

This unit is managed by the Florida Park Service and is essential to the conservation of the species. Threats specific to this unit that may require special management considerations include habitat fragmentation, Park development, artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

The Topsail Hill Unit (CBM-2) consists of 308 acres in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Topsail Hill Preserve State Park, as well as adjacent private lands from 0.1 mi east of the Gulf Pines subdivision to 0.6 mi west of the inlet of Oyster Lake and the area from the MHWL north to the seaward extent of human development or maritime forest. This unit provides primary, secondary, and scrub dune habitat and possesses all five PCEs. Its large, contiguous, high-quality habitat allows for natural movements and population expansion. CBM were confirmed present in the unit in 1979 (Humphrey 1992), were present at the time of listing, and are still present. Beach mice have been captured on Stallworth County Park and Stallworth Preserve subdivision, a private development within the unit, east of the Park (Service 2003a). The population of CBM inhabiting this unit appears to harbor unique genetic variation and displays a relatively high degree of genetic divergence considering the close proximity of this population to other populations (Wooten and Holler 1999).

This unit has portions with different ownership, purposes, and mandates. Threats specific to this unit that may require special management considerations include Park and residential development, artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

Lands containing the features essential to the conservation of the CBM within the area covered under the HCP for the Stallworth County Preserve (4 acres) are excluded from critical habitat designation under section 4(b)(2) of the Act.

The Grayton Beach Unit (CBM-3) consists of 179 acres in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Grayton Beach State Park, as well as adjacent private lands and inholdings, from 0.3 mi west of the inlet of Alligator Lake east to 0.8 mi west of Seagrove Beach and the area from the MHWL north to the

seaward extent of human development or maritime forest. This unit provides primary, secondary, and scrub dune habitat (PCEs 2 and 3), habitat connectivity (PCE 4) and is essential to the conservation of the species. This unit also provides a relatively natural light regime (PCE 5). Beach mice were not detected in the unit in 1979 (Holler 1992a); however, they were found to be present in 1995 after Hurricane Opal (Moyers et al. 1999). While it seems likely that beach mice were present at the time of listing (and may have been present, but not detected, in 1979), we do not have data to confirm this assumption. Therefore, we consider this unit to be unoccupied at the time of listing. A program to strengthen and reestablish the population began in 1989 and yielded a persistent population at the State Park. Recent evidence of beach mice on State Park land was documented in 2004 (Service 2004). Beach mice are also known to currently occupy the private lands immediately east of the park.

This unit has portions with different ownership, purposes, and mandates. Threats specific to this unit that may require special management considerations include hurricane impacts that may require dune restoration and revegetation, excessive open, unvegetated habitat due to recreational use or storm impacts that may require revegetation, Park development, artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

Lands containing the features essential to the conservation of the Choctawhatchee beach mouse within the area covered under the Habitat Conservation Plan for the Watercolor development (4 acres) are excluded from critical habitat designation under section 4(b)(2) of the Act.

The Deer Lake Unit (CBM-4) consists of 49 acres in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Deer Lake State Park as well as adjacent private lands from approximately 1 mi east of the Camp Creek Lake inlet west to approximately 0.5 mi west of the inlet of Deer Lake and the area from the MHWL north to the seaward extent of maritime forest or human development. This unit provides primary, secondary, and scrub dune habitat (PCEs 2 and 3), habitat connectivity to adjacent lands (PCE 4), and is essential to the conservation of the species. This unit also provides a relatively natural light regime (PCE 5). Because live-trapping efforts in this area have been limited to incidental trapping, and beach mice were not detected in 1998 (Auburn University 1999), we consider this unit to be unoccupied at the time of listing. Choctawhatchee beach mice were translocated from Topsail Hill Preserve State Park to private lands adjacent to this unit in 2003 and 2005 (Service 2003b, 2005a, 2005b, 2005c, 2005d). Tracking within the adjacent State park lands have indicated expansion of the population into the park.

This unit has portions with different ownership, purposes, and mandates. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

Lands containing the features essential to the conservation of the CBM within the area covered under the HCP for Watersound (71 acres) are excluded from critical habitat designation under section 4(b)(2) of the Act (see Application of Section 4(a)(3) and Exclusions Under Section

4(b)(2) of the Act section below). This excluded area is 0.5 mi west of the Camp Creek Lake inlet to 0.5 mi east of the Camp Creek Lake inlet.

The West Crooked Island/ Shell Island Unit (CBM-5) consists of 1,771 acres in Bay County, Florida. This unit encompasses essential features of beach mouse habitat within the boundaries of St. Andrew State Park mainland from 0.1 mi east of Venture Boulevard east to the entrance channel of St. Andrew Sound, Shell Island east of the entrance of St. Andrew Sound east to East Pass, and West Crooked Island southwest of East Bay and east of the entrance channel of St. Andrew Sound, and areas from the MHWL north to the seaward extent of the maritime forest. Shell Island consists of State lands, Tyndall AFB lands, and small private inholdings. CBM were known to inhabit the majority of Shell Island in 1987 (Holler 1992b) and were again confirmed present in 1998 (Auburn University 1999), 2002, and 2003 (Lynn 2003a, 2003b). Because beach mice inhabited nearly the entire suitable habitat on the island less than two years prior to listing and were reconfirmed after listing, we consider this area to be occupied at the time of listing. The West Crooked Island population is the result of a natural expansion of the Shell Island population after the two islands became connected in 1998 and 1999, a result of Hurricanes Opal and Georges (Service 2003b). Shell Island was connected to the mainland prior to the 1930s when a navigation inlet severed the connection on the western end. Beach mice were documented at St. Andrew State Park mainland as late as the 1960s (Bowen 1968), though no records of survey efforts exist again until Humphrey and Barbour (1981) and Meyers (1983) at which time beach mice were not detected. Therefore, it seems likely that this area was not occupied at the time of listing. Current beach mouse population levels at this site are unknown, and live-trapping to document the absence of mice has not been conducted. Similar to the original designation, this Park was designated as critical habitat because it has features essential to the CBM. It is also within the historic range of the mouse. This unit supports the easternmost population of CBM, with the next known population 22 miles to the west.

This unit provides primary, secondary, and scrub dune habitat and possesses all five PCEs. Portions of this unit are managed by the Florida Park Service, while the remaining areas are federally (Tyndall AFB) and privately owned. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high residential or recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

The East Crooked Island Unit (SABM-1) consists of 826 acres in Bay County, Florida. This unit encompasses essential features of beach mouse habitat on East Crooked Island from the entrance of St. Andrew Sound to 1 mi west of Mexico Beach, and the area from the MHWL to the seaward extent of the maritime forest (not including Raffield Peninsula). Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat and possesses all five PCEs. St. Andrew beach mice were known to inhabit the unit in 1986 and 1989 (James 1992), though the population was presumably extirpated after 1989 due to impacts from hurricanes. The East Crooked Island population was reestablished with donors from St. Joseph State Park in 1997. This unit was occupied at the time of listing. Recent live-trapping confirms present occupation of mice (Moyers and Shea 2002; Lynn 2002a; Slaby 2005). This unit maintains connectivity along the island and this unit is essential to provide a donor population following storm events.

The majority of this unit is federally owned (Tyndall AFB), while the remaining habitat is privately owned. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational and military use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

The Palm Point Unit (SABM-2) consists of 162 acres of private lands in Gulf County, Florida. This unit encompasses habitat from Palm Point 1.25 mi northwest of the inlet of the Gulf County Canal to the southeastern boundary of St. Joe Beach and the area from the MHWL to the seaward extent of the maritime forest. St. Andrew beach mice were documented in the area by Bowen (1968) and were considered to have been present in this unit at the time of listing. Since St. Andrew beach mouse habitat is limited to only two other areas, protecting this mainland site located within the species' historic range is needed for the subspecies' long-term persistence. As other viable opportunities are limited or nonexistent, this unit is essential to reduce the threats of stochastic events to this subspecies. Furthermore, as this unit is on the mainland, it is somewhat buffered from the effects of storm events. This area provides frontal and scrub dune habitat (PCEs 2 and 3), but may provide limited connectivity between habitats. Threats specific to this unit that may require special management considerations include habitat fragmentation, habitat loss, artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high residential use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

The St. Joseph Peninsula Unit (SABM-3) consists of 1,502 acres in Gulf County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of St. Joseph Peninsula State Park (Park) as well as south of the Park to the peninsula's constriction north of Cape San Blas (also known as the "stumphole" region) and area from the MHWL to the seaward extent of the maritime forest. Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat, and provides a relatively contiguous expanse of habitat within the historic range of the St. Andrew beach mouse. This unit possesses all five PCEs and was occupied at the time of listing. St. Andrew beach mice were known to inhabit this unit in 1986 and 1987 (James 1992), 1989, 1992, 1993, and 1994, 1995), and 2005, (Gore 1994; Moyers et al. 1999; Slaby 2005). In addition, recent tracking efforts suggest that mice continue to occupy private lands south of the Park (Slaby 2005). The Park alone does not provide sufficient habitat to allow for population expansion along the peninsula, which may be necessary for a population anchored by the tip of a historically dynamic peninsula. A continuous presence of beach mice along the peninsula is the species' best defense against local and complete extinctions due to storm events. The population of SABM inhabiting this unit appears to possess unique genetic variation, and displays greater than expected genetic divergence from other populations (Wooten and Holler 1999).

The Florida Park Service manages portions of this unit, while the remaining area is privately owned. Threats specific to this unit that may require special management considerations include artificial lighting, habitat fragmentation and habitat loss, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality. The population inhabiting this unit may

also be particularly susceptible to hurricanes due to its location within St. Joseph Bay (the peninsula is a thin barrier peninsula with a north–south orientation).

Life history (All subspecies of beach mice)

Beach mice are differentiated from the inland subspecies by the variety of fur (pelage) patterns on the head, shoulders, and rump. The overall dorsal coloration, in coastal subspecies, is lighter in color and less extensive than on those of the inland subspecies (Sumner 1926; Bowen 1968). Similarly, beach mouse subspecies can be differentiated from each other by pelage pattern and coloration.

The SEBM averages 5.47 inches in total length (range of 10 individuals = 5.03 inches, with a 2.04-inch tail length (Osgood 1909; Stout 1992). Females are slightly larger than males. These beach mice are slightly darker in appearance than some other subspecies of beach mice, but paler than inland populations of *P. polionotus* (Osgood 1909). SEBM have pale, buffy coloration from the back of their head to their tail, and their underparts are white. The white hairs extend up on their flanks, high on their jaw, and within 0.07 to 0.12 inches of their eyes (Stout 1992). There are no white spots above the eyes as with AIBM (Osgood 1909). Their tail is also buffy above and white below. Juvenile SEBM are more grayish in coloration than adults; otherwise they are similar in appearance (Osgood 1909).

The AIBM averages 5.45 inches in total length (range of 10 individuals); with 2.05 inches mean tail length (James 1992). This subspecies has a very pale, buff-colored head and back with extensive white coloration underneath the sides (Howell 1939). Bowen (1968) noted two distinct rump color pigmentations, one tapered and the other a squared pattern, which extended to the thighs.

The SABM has head and body lengths averaging 2.95 inches, and tail mean lengths averaging 2.05 inches (James 1992). This subspecies has a very pale, buff-colored head and back with extensive white coloration underneath and along the sides (Howell 1939). Bowen (1968) noted two distinct rump color pigmentations, one tapered and the other a squared pattern, which extended to the thighs.

The PKBM is slightly smaller than the other Gulf coast beach mouse subspecies (Bowen 1968). Head and body length ranges from 2.7 to 3.3 inches (Holler 1992b). The pigmentation of PKBM is gray to gray-brown with the underparts white and coloration on the head is less pronounced. The line between pigmented and unpigmented pelage runs dorsally posterior above the eyes and behind the ears. Pigmentation patterns on the rump are either squared or squared superimposed on a tapered pattern (Bowen 1968). There is no tail stripe.

CBM have head and body lengths ranging from 2.7 to 3.5 inches (Holler 1992a). This beach mouse is distinctly more orange-brown to yellow-brown than the other Gulf coast beach mouse subspecies (Bowen 1968). Pigmentation on the head either extends along the dorsal surface of the nose to the tip, or ends posterior to the eyes leaving the cheeks white. A dorsal tail stripe is either present or absent.

Behavior

Peromyscus polionotus is the only member of the genus that digs an extensive burrow. Beach mice are semifossorial, using their complex burrows as a place to rest during the day and between nightly foraging bouts, escape from predators, have and care for young, and hold limited food caches. Burrows of *P. polionotus* generally consist of an entrance tunnel, nest chamber, and escape tunnel. Burrow entrances are usually placed on the sloping side of a dune at the base of a shrub or clump of grass. The nest chamber is formed at the end of the level portion of the entrance tunnel at a depth of 23.6 to 35.4 inches, and the escape tunnel rises from the nest chamber to within 9.8 inches of the surface (Blair 1951). Nests of beach mice are constructed in the nest chamber of their burrows, a spherical cavity about 1.5 to 2.5 inches in diameter. The nest comprises about one fourth of the size of the cavity and is composed of sea oat roots, stems, leaves and the chaffy parts of the panicles (Ivey 1949). Beach mice have been found to select burrow sites based on a suite of biotic and abiotic features including dune slope, soil compaction, vegetative cover, and height above sea level (Lynn 2000a; Sneckenberger 2001). A shortage of potential burrow sites is considered to be a possible limiting resource.

Reproduction and Demography

Studies on *Peromyscus* species in peninsular Florida suggest that these species may achieve greater densities and undergo more significant population fluctuations than their temperate relatives, partially because of their extended reproductive season (Bigler and Jenkins 1975). Subtropical beach mice can reproduce throughout the year; however their peak reproductive activity is generally during late summer, fall, and early winter. Extine (1980) reported peak reproductive activity for SEBM on Merritt Island during August and September, based on external characteristics of the adults. This peak in the timing and intensity of reproductive activity was also correlated to the subsequent peak in the proportion of juveniles in the population in early winter (Extine 1980). Peak breeding season for Gulf Coast beach mice is autumn and winter, declining in spring, and falling to low levels in summer (Rave and Holler 1992).

Sex ratios in beach mouse populations are generally 1:1 (Extine 1980; Rave and Holler 1992). Beach mice are believed to be generally monogamous (Smith 1966; Foltz 1981; Lynn 2000a). While a majority of individuals appear to pair for life, paired males may sire extra litters with unpaired females. Beach mice are considered sexually mature at 55 days of age; however some are capable of breeding earlier (Weston 2007). Gestation averages 28 to 30 days (Weston 2007) and the average litter size is four pups (Fleming and Holler 1990). Littering intervals may be as short as 26 days (Bowen 1968). Peak breeding season for beach mice is autumn and winter, declining in spring, and falling to low levels in summer (Blair 1951). However, pregnant and lactating beach mice have been observed in all seasons (Moyers et al. 1999).

Apparent survival rate estimates (products of true survival and site fidelity) of beach mice along the Gulf Coasts of Florida and Alabama have demonstrated that their average life span is about nine months (Swilling 2000). Other research indicated that 63 percent of Alabama beach mice lived (or remained in the trapping area) for four months or less, 37 percent lived five months or

greater and 2 percent lived 12 to 20 months (Rave and Holler 1992). Less than half (44 percent) of beach mice captured for the first time were recaptured the next season (Holler et al. 1997). Greater than ten percent of mice were recaptured three seasons after first capture; and four to eight percent were recaptured more than one year after initial capture. Beach mice held in captivity have lived three years or more (Blair 1951; Holler 1995).

Habitat and Movement

Beach mice inhabit coastal dune ecosystems on the Atlantic and Gulf Coasts of Florida and the Gulf Coast of Alabama. The dune habitat is generally categorized as: primary dunes (characterized by sea and other grasses), secondary dunes (similar to primary dunes, but also frequently include such plants as woody goldenrod, false rosemary, and interior or scrub dunes (often dominated by scrub oaks and yaupon holly. While seasonally abundant, the availability of food resources in the primary and secondary dunes fluctuates (Sneckenberger 2001). In contrast, the scrub habitat provides a more stable level of food resources, which becomes crucial when food is scarce or nonexistent in the primary and secondary dunes. This suggests that access to primary, secondary and scrub dune habitat is essential to beach mice at the individual level.

The sea oat zone of primary dunes is considered essential habitat of beach mice on the Atlantic Coast (Humphrey and Barbour 1981; Humphrey et al. 1987; Stout 1992). The SEBM has also been reported from sandy areas of adjoining coastal strand/scrub vegetation (Extine 1980; Extine and Stout 1987), which refers to a transition zone between the fore dune and the inland plant community (Johnson and Barbour 1990). Beach mouse habitat is heterogeneous, and distributed in patches that occur both parallel and perpendicular to the shoreline (Extine and Stout 1987). Because this habitat occurs in a narrow band along Florida's coast, structure and composition of the vegetative communities that form the habitat can change dramatically over distances of several feet.

Primary dune vegetation described from SEBM habitat includes sea oats, dune panic grass, railroad vine, beach morning glory, salt meadow cordgrass (*Spartina patens*), lamb's quarters (*Chenopodium album*), saltgrass (*Distichlis spicata*), and camphor weed (Extine 1980). Coastal strand and inland vegetation is more diverse, and can include beach tea, prickly pear cactus, saw palmetto, wax myrtle, rosemary, sea grape, oaks and sand pine (Extine and Stout 1987). Extine (1980) observed this subspecies as far as 0.62 mile inland on Merritt Island; he concluded that the dune scrub communities he found them in represent only marginal habitat for the SEBM. SEBM have been documented in coastal scrub more than a mile from the beach habitat at Kennedy Space Center/Merritt Island NWR and Cape Canaveral Air Force Station (CCAFS) (Stout, University of Central Florida 2004 pers. communication). Extine (1980) and Extine and Stout (1987) reported that the SEBM showed a preference for areas with clumps of palmetto, sea grape, and expanses of open sand.

Essential habitat of the AIBM is characterized by patches of bare, loose, sandy soil (Humphrey and Frank 1992a). Although they are mainly found in the sea oat zone of the primary zone, they will occur in sandy areas with broomsedge (*Andropogon* sp.) (Service 1993). Ivy (1949) reported AIBM to occur in woody vegetation as far as 500 feet inland. Pournelle and Barrington (1953) found this subspecies in scrub as far as 1800 feet from the dunes. Because this habitat

occurs in a narrow band along Florida's coast, structure and composition of the vegetative communities that form the habitat can change dramatically over distances of only a few feet. Much of the habitat within the range of the ABM has been converted to condominiums and housing developments. The majority of the high quality habitat, densely occupied by beach mice, remains along the length of both Anastasia State Park and Fort Matanzas National Monument, at either end of Anastasia Island.

Two main types of movement have been identified for small mammals: within home-range activity and long-range dispersal. Such movements are influenced by a suite of factors, such as availability of mates, predation risk, and habitat quality. Movement and home range studies have been conducted for most beach mouse subspecies, but are limited to natural habitat (*i.e.*, research has been conducted on public lands within contiguous beach mouse habitat, not within a development or in a fragmented landscape). Novak's (1997) study of the home range of CBM on Shell Island indicated males had a mean home range of 1.0 plus or minus ($\pm$) 4.1 acres and females had a mean home range of 0.81 ± 2.18 acres. Lynn (2000a) found male and female radio-tagged ABM had a mean home range of 1.68 ± 0.27 acres and 1.73 ± 0.40 acres, respectively. Swilling et al. (1998) observed one radio-collared ABM to travel over 328 feet during nightly forays after hurricane Opal to obtain acorns from the scrub dunes. Using radio telemetry, Lynn (2000a) documented an ABM that traveled one mile within a 30-minute period. Moyers and Shea (2002) trapped a male and female CBM that moved about 637 feet and 2,720 feet in one night, respectively. Gore and Schaefer (1993) documented a marked Santa Rosa beach mouse crossing SR 399, a two-lane highway. Lynn and Kovatch (2004) through mark and recapture trapping documented PKBM that crossed SR 292, a two-lane highway and right-of-way (100-foot wide).

Sneckenberger (2001) found significant seasonal differences in the movement of ABM, and suggested that this was a result of seasonal fluctuations in food availability, food quality, and nutritional needs. Smith (2003) found that Santa Rosa beach mice demonstrated an increase in movement as habitat isolation increased suggesting that longer travel distances were needed to obtain necessary resources. Smith also found that Santa Rosa beach mice had a preference for vegetation cover and connectivity, which is likely a behavioral response to increased predation risk in open areas. Thus, while beach mice are able and do travel great distances the travel pathways should have vegetated cover and no large gaps or open areas. Previous connectivity research suggests critical thresholds exist for species persistence in fragmented landscapes (With and Crist 1995). As fragmentation increases and connectivity is lost, species' ability to move through and between habitats is reduced in a nonlinear fashion.

Foraging

Beach mice are nocturnal and forage for food throughout the dune system. Beach mice feed primarily upon seeds and fruits, and appear to forage based on availability and have shown no preferences for particular seeds or fruits (Moyers 1996). Beach mice also eat small invertebrates, especially during late spring and early summer when seeds are scarce (Ehrhart 1978; Moyers 1996). Research suggests that the availability of food resources fluctuates seasonally in Gulf Coast coastal dune habitat, specifically that the frontal dunes appear to have more species of high quality foods, but these sources are primarily grasses and annuals that produce large quantities of

small seeds in a short period of time. Foods available in the scrub consist of larger seeds and fruits that are produced throughout a greater length of time and linger in the landscape (Sneckenberger 2001). Nutritional analysis of foods available in each habitat revealed that seeds of plant species in both habitats provide a similar range of nutritional quality.

Population dynamics

Population size

Estimating animal abundance or population size is an important and challenging scientific issue in wildlife biology (Otis et al. 1978; Pollock et al. 1990). A number of different census methods are available to estimate wildlife populations, each with particular benefits and biases. Beach mouse surveys involve live trapping mark-recapture studies, which is a common method with small mammals. A five-night minimum trapping period has been standard practice since 1987 for Gulf Coast beach mice. Data from such surveys have been analyzed using various methods with differing degrees of accuracy and bias, as number of individuals captured, minimum number known alive, number captured per 100 trap nights (**Table 11**), or a mathematically modeled statistical population estimate (program CAPTURE, Otis et al. 1978). As the referenced trapping events were not designed similarly or using a standardized sampling techniques, data should not be compared between subspecies or trapping events, nor should densities (mice per 100 trap nights) be inferred beyond the trapping area during that trapping session.

Table 11. Beach mouse trapping sessions and population density estimates.

Subspecies	Location	Reference	Dates of trapping	Number of mice per 100 trap nights	Range (mice per 100 trap nights)
PKBM	Florida Point, Gulf State Park	Moyers et al. (1999)	1995 – 1999	2.37	0.00 – 8.33
PKBM	GINS- Perdido Key Area	Moyers et al. (1999)	1995 – 1999	1.12	0.00 – 3.50
PKBM	Perdido Key State Park	Lynn and Kovatch (2004)	2002	3.0	0.9 – 4.0
PKBM	Perdido Key State Park	Lynn and Kovatch (2004)	2003	4.5	3.19 – 6.25
PKBM	GINS - Perdido Key Area	Lynn and Kovatch (2004)	2002	10.5	5.5 – 19.2
PKBM	GINS - Perdido Key Area	Lynn and Kovatch (2004)	2003	4.38	3.93 – 4.75
PKBM	Perdido Key State Park	FWC/Loggins (2006)	2005	0.3	0.3
PKBM	GINS - Perdido Key Area	FWC/Loggins (2006)	2005	5.5	5.5
PKBM	Perdido Key State Park	FWC/Loggins (2006)	2006	0.6	0.6

Subspecies	Location	Reference	Dates of trapping	Number of mice per 100 trap nights	Range (mice per 100 trap nights)
CBM	Shell Island	Humphrey and Barbour (1981)	1979	8.60	NA
CBM	Shell Island	Meyers (1983)	1982	3.20	NA
CBM	Shell Island	Moyers et al. (1999)	1996	9.11	5.33 - 15.33
CBM	Topsail Hill Preserve State Park	Moyers et al. (1999)	1995 - 1998	0.68	0.23 - 2.21
CBM	Grayton Beach State Park - central unit	Moyers et al. (1999)	1995 - 1998	1.87	0.67 - 2.13
CBM	Shell Island		2002	1.06	NA
CBM	West Crooked Island Tyndall AFB	Lynn (2002a)	2002	0.72	0.13 - 1.86
CBM	Topsail Hill Preserve	Lynn (2002b, c)	2002	0.89	0.7 - 1.08
CBM	WaterSound	St. Joe Company (2004)	2003	1.66	1.66
CBM	WaterColor	St. Joe Company (2004)	2003	0	NA
CBM	WaterColor	St. Joe Company (2005)	2004	0	NA
CBM	WaterSound	St. Joe Company (2005)	2004	0	NA
CBM	Topsail Hill Preserve	US FWS (2005a, b, c)	2005	2.35	0.9 - 4.5
CBM	WaterColor	St. Joe Company (2006)	2005	0	NA
CBM	WaterSound	St. Joe Company (2006)	2005	0	NA
CBM	Topsail Hill Preserve	US FWS (2006a)	2006	1.75	1.75
CBM	Topsail Hill Preserve	US FWS (2006a)	2006	0	NA
CBM	WaterSound	St. Joe Company (2006)	2006	4.7	4.5 - 4.8
SABM	St. Joe Peninsula State Park	Moyers et al. (1999)	1997 - 1998	3.56	3.36 - 3.69
SABM	East Crooked Island, Tyndall AFB	Moyers et al. (1999)	1998	3.44	2.13 - 4.75
SABM	East Crooked Island, Tyndall AFB	Lynn (2000b)	2000	6.55	
SABM	East Crooked Island, Tyndall AFB	Lynn (2002e)	2002	6.83	
SABM	St. Michael's Landing	Moyers and Shea (2002)	2001	5.02	0.30 - 9.73
SABM	St. Michael's Landing	St. Joe Company (2005)	2001	3.7	0.26 - 7.1
SABM	St. Michael's Landing	St. Joe Company (2005)	2002	5.9	5.9
SABM	Bonfire Beach	St. Joe Company (2005)	2005	6.13	4.3 - 8.0

Population densities of beach mice typically reach peak numbers in the late autumn into spring (Rave and Holler 1992; Holler et al. 1997). Peak breeding period occurs in fall and winter, apparently coinciding with the increased availability of seeds and fruits from the previous growing season. Seasonal and annual variation in size of individual populations may be great (Rave and Holler 1992; Holler et al. 1997). Food supplementation studies showed that old field mouse populations increased when foods were abundant; thus, populations of old field mice appear to be food-limited (Smith 1971; Galindo-Leal and Krebs 1998). Similar studies have not been conducted with beach mouse populations.

Gulf Coast Beach Mice

In 1979, Humphrey and Barbour (1981) estimated about 515 CBM existed on Topsail Hill and Shell Island. That estimate was used during the Federal listing of the CBM in 1985. Population estimates using CAPTURE on Shell Island from February 1993 to March 1994, ranged from 105 to 338 CBM on a 23-acre study area (Novak 1997). Just prior to Hurricane Opal in 1995, it was estimated that Shell Island supported 800 to 1,200 CBM (Gore, FWC 1999 pers. communication). Three years following Hurricane Opal in June 1998, one trapping effort at six different sites on Shell Island resulted in a cumulative population estimate of 195 CBM (164 CBM captured) (Moyers et al. 1999). The east portion of the island was trapped from 2000 to 2003. Population estimates ranged between 24 and 67 CBM (Lynn 2004a). At Topsail Hill Preserve State Park, trapping conducted in March 2003 and March 2005 yielded a population estimate of 190 to 250 CBM (Service 2003a, 2003d; Sneckenberger 2005), during which a total of 26 mice were translocated to the WaterSound development adjacent to Deer Lake State Park. Trapping in 2006 has yielded too few captures to calculate a population estimate. Population estimates from trapping at Grayton Beach State Park (main unit) from 1995 to 2000, ranged from 25 to 116 CBM (Moyers et al. 1999; Van Zant 2000). The central unit was trapped for 3 nights in August 2002; however, no mice were captured (Lynn 2002d). Limited tracking surveys were accomplished in 2003 and 2004 and beach mouse tracks were observed (Kovatch 2003; Toothacker 2004). The western area, although it provides CBM habitat, has not been documented as occupied by CBM (Moyers et al. 1999; Van Zant 2000). The population estimates for the WaterColor development for the two years prior to and one year following development ranged from 3 to 7 CBM (The St. Joe Company 1999). CBM were last captured in February of 2001 at WaterColor; quarterly trapping has continued on the site in 2003 (St. Joe/Arvida 2003). Auburn University trapped West Crooked Island in October 2000, and the Service trapped the area in 2001 to 2003. The population estimate ranged from a low of 174 to a high of 244 CBM (Lynn 2000b, 2002a, 2003b, 2003c, 2003d). The Service estimated the total population of CBM in 2003, to be about 600 to 1,000 beach mice.

Since its listing in 1985, PKBM population estimates never reached more than 400 to 500 individuals until 2003. Before Hurricane Ivan (2004) a population estimate of 500 to 800 was divided between two populations - the Johnson Beach Unit of Gulf Islands National Seashore (GINS) and Perdido Key State Park (PKSP) (Service 2004). The status of PKBM at Gulf State Park - Florida Point (GSP) is uncertain, possibly extirpated in 1999. In October 2005, following the active hurricane seasons of 2004 and 2005, a trapping effort of less than one-third of the habitat available on public lands yielded captures of less than 30 individuals. Tracking data from

June 2006 indicated that about 25 and 32 percent of the available habitat was occupied at PKSP and GINS, respectively (Loggins 2007). Trapping at PKSP and GINS in March 2007, was cancelled after one night after the capture of only one mouse (a fatality) and very limited sightings of beach mouse sign (tracks, burrows) (Loggins 2007).

The SABM even at its lowest population probably numbered several hundred individuals (Gore as cited in 63 FR 70055). James estimated (1992) that the East Crooked Island subpopulation to be about 150. However, by 1996, SABM were no longer found on East Crooked Island. Following Hurricane Opal in 1995, Mitchell et al. (1997) estimated the St. Joe Peninsula State Park population to be between 300 and 500 mice. In November 1997 and January 1998, 19 pairs of SABM were relocated from St. Joseph Peninsula State Park to East Crooked Island, Tyndall Air Force Base (Moyers et al. 1999). Trapping surveys conducted on East Crooked Island in 2000 and 2002 indicated that beach mice occupied the entire island. Population estimates ranged from 71 to 133 mice (Lynn 2002e). A current overall population estimate for SABM post hurricane seasons of 2004 and 2005 is between 500 to 700 mice.

Atlantic Coast Beach Mice

Populations of the SEBM have been estimated to be around 5000 to 6000 mice. Recent surveys have confirmed that SEBM are found on the beaches of Canaveral National Seashore, Merritt Island NWR, and CCAFS in Brevard County, all on federally protected lands. In April 2002, a population of SEBM was documented at the Smyrna Dunes Park, at the north end of New Smyrna Beach (Sauzo 2004). Prior to 2006, populations of the SEBM were thought extirpated from both sides of the Sebastian Inlet (Bard, FDEP 2004 pers. communication). However, during surveys in June 2006, a single mouse was located at the very southern end of the Sebastian Inlet State Park. Mice were also found at Jungle Trail on the Pelican Island National Wildlife Refuge, another area where they were thought extirpated. Additional surveys of other areas south of Brevard County have not located any mice and indicate the distribution of this subspecies in the counties south of Brevard, severely fragmented. SEBM are no longer believed to occur at Jupiter Island, Palm Beach, Lake Worth, Hillsboro Inlet or Hollywood Beach (Service 1999).

Although the distribution of the AIBM has declined significantly, particularly in the northern part of its range, the populations at Anastasia State Park and Fort Matanzas National Monument have continued to fluctuate seasonally between two and 90 mice per acre. It is thought that populations should be characterized by a range rather than a static value (Humphrey and Frank 1992b). Quarterly surveys of these two sites have shown that the populations have remained stable. Due to the limited dune habitat at the Park, this population has not been able to maintain a stable population and it is unknown how many mice remain.

Population variability

Beach mouse populations fluctuate on a seasonal and annual basis. Attempts to explain population dynamics have revealed an incomplete understanding of the species and its population cycles. It is clear that beach mice, like all rodents, are known for high reproductive rates and experience extreme highs and lows in population numbers. Depressed beach mouse

populations may be associated with tropical storms and drought, perhaps resulting from reduced habitat and food resources. These fluctuations can be a result of reproduction rates, food availability, habitat quality and quantity, catastrophic events, disease, and predation (Blair 1951; Bowen 1968; Smith 1971; Hill 1989; Rave and Holler 1992; Swilling et al. 1998; Swilling 2000).

Population stability

Population viability analysis (PVA) is essentially a demographic modeling exercise to predict the likelihood a population will continue to exist over time (Groom and Pascual 1997). The true value in using this analytical approach is not to determine the probability of a species' extinction, but to clarify factors that have the most influence on a species' persistence. From 1996 to 1999, the Service funded Auburn University to develop a PVA for beach mice (Holler et al. 1999; Oli et al. 2001). Four subpopulations of Gulf Coast beach mice subspecies were modeled. They consisted of two subpopulations of PKBM, one at GINS-Perdido Key Area and one at Florida Point, and two subpopulations of ABM, one at Bon Secour NWR and one at Ft. Morgan State Park. They used a stochastic (random) differential equation (Wiener-drift) model, applied to long term demographic data. The model is "stochastic" because it incorporates the variable effects of the environment upon population change. However, it did not model the effects of hurricanes on the habitat or population of beach mice.

The Oli et al. (2001) analyses indicated that all four subpopulations were at risk of extinction, with habitat fragmentation as the most influential factor. The GINS-Perdido Key Area had the highest risk for extinction; the PKBM had a 100 percent chance of reaching one individual (becoming functionally extinct) within 21 (mode) or 45 (median) years. At Florida Point, the PKBM had a low risk of becoming functionally extinct (1.3 percent) within 13 to 20 years. However, following Hurricane Opal in 1995, and subsequent predation pressure, the PKBM population at Florida Point was believed extirpated in 1999. This localized extirpation clearly demonstrates that while PVA's are useful in determining significant factors in species survival, they have limited use in predicting the time to extinction for a given species.

More recently, the Conservation Breeding Specialist Group (Traylor-Holzer 2004, 2005, 2006) was contracted by the Service to conduct a population and habitat viability analysis (PHVA) on ABM using the Vortex population simulation model (Lacy and Kreeger 1992). The goal was to develop an ABM population model and use the model to assess the status of the ABM habitat and populations and projections for continued existence. The PHVA results project the ABM to have a $26.8\% \pm 1.0\%$ likelihood of extinction over the next 100 years. Much of this risk is due to hurricane impacts on ABM populations and habitat which can result in population declines. The model suggests that hurricanes are a driving force for ABM populations, both directly and indirectly as their impacts interact with other factors, including development of higher elevation (scrub) habitat and predation by cats. Due to the similarities in the subspecies and proximal location, it can be inferred that these factors also have a strong influence on the persistence of PKBM populations. (Again, when reviewing PHVA results, it is crucial that the actual values for the risk of extinction are not the focus of the interpretation. The true value of a PHVA is the ability to compare management strategies and development scenarios, run sensitivity analyses, and determine the main influence(s) on population persistence.)

Similar to the land use arrangement on Perdido Key, the Fort Morgan Peninsula (occupied by ABM) consists of three areas of public lands separated by two areas of private lands, which allow for limited (varied) dispersal between the public lands. The current level of dispersal between public lands through private lands is unknown, but is affected by development and habitat degradation. Without dispersal between public lands through private lands, the PHVA results project the ABM to have a 41.2 percent $\pm$ 1.1 percent likelihood of extinction. If all privately-owned habitat between the public lands is lost, the likelihood of extinction increases to 46.8 percent $\pm$ 1.1 percent. Again, it can be inferred that a similar increase in risk of extinction would occur with the PKBM if dispersal could not occur through private lands.

Despite the similarities in the subspecies, it is important to note that carrying capacity (K), which was found to be a strong influence on the model, would be different in PKBM. For ABM, K was estimated using maximum ABM density estimates (4.5 to 11.6 ABM per acre) and acres of habitat (2,989 acres). As density estimates for PKBM would likely be lower, and remaining PKBM habitat is less than 1,300 acres, the Vortex model for PKBM would likely project a greater likelihood of extinction.

The Service contracted with The Georgia Cooperative Fish and Wildlife Research Unit to critique the PVAs for the ABM accomplished by Oli et al. (2001) and Conservation Breeding Specialist Group (Traylor-Holzer 2005). Conroy and Runge (2006) indicated that neither PVA provided reliable estimates of extinction probability for ABM. They recommended that future PVA work should incorporate sampling, temporal, and possibly spatial variance for input variables and should clearly and explicitly express uncertainty in extinction output. Until this can be done, reliable estimates of extinction probability for the ABM (and other beach mouse subspecies) cannot be estimated.

Species that are protected across their ranges have lower probabilities of extinction (Soulé and Wilcox 1980). Beach mouse populations naturally persist through local extirpations due to storm events or the harsh, stochastic nature of coastal ecosystems. Historically, these areas would be recolonized as population densities increase and dispersal occurs from adjacent populated areas. In addition, from a genetic perspective, beach mice recover well from population size reductions (Wooten 1994), given sufficient habitat is available for population expansion after the bottleneck occurs. As human development has fragmented the coastal dune landscape, beach mice can no longer recolonize along these areas as they did in the past (Holliman 1983). As a continuous presence of beach mice or suitable habitat along the coastline is no longer possible and any hurricane can impact the entire range of each subspecies, the probability of beach mice persisting would be enhanced by the presence of contiguous tracts of suitable habitat occupied by multiple independent populations (Shaffer and Stein 2000). The history of the PKBM alone illustrates the need for multiple populations (a now potentially extirpated population was the source of the two remaining populations of the subspecies) (Holler et al. 1989, 71 FR 60238). While maintaining multiple populations of beach mouse subspecies provides protection from total loss (extinction), especially when migration and relocations are possible (Oli et al. 2001), conservation of each subspecies necessitates protection of genetic variability throughout their ranges (Ehrlich 1988). Preservation of natural populations is therefore crucial, as the loss of a population of beach mice can result in a permanent loss of alleles (Wooten 1999 et al.). This loss of genetic variability cannot be regained through translocations or other efforts.

Status and Distribution

The distribution of all the beach mouse subspecies is significantly reduced from their historic ranges due to modification and destruction of the coastal dune ecosystem they inhabit. Habitat loss and alteration was likely a primary cause of the extinction of one subspecies, the Pallid beach mouse, which was endemic to barrier beach between Matanzas and Ponce de Leon inlets in Volusia and Flagler counties (Humphrey 1992a).

Atlantic Coast Beach Mice

The distribution of the SEBM has declined significantly, particularly in the southern part of its range. Historically, it was reported to occur along about 174 miles of Florida's central and southeast Atlantic coast from Ponce (Mosquito) Inlet, Volusia County, to Hollywood Beach, Broward County (Hall 1981). Bangs (1898) reported it as extremely abundant on all the beaches of the east peninsula from Palm Beach at least to Mosquito (Ponce) Inlet. During the 1990s, the SEBM was reported only from Volusia County (Canaveral National Seashore); in Brevard County (Canaveral National Seashore, Kennedy Space Center/Merritt Island NWR, and CCAFS); a few localities in Indian River County (Sebastian Inlet SRA, Treasure Shores Park, and several private properties), and St. Lucie County (Pepper Beach County Park and Fort Pierce Inlet SRA) (Humphrey et al. 1987; Robson 1989; Land Planning Group, Inc. 1991; Humphrey and Frank 1992b; Service 1993). The SEBM is geographically isolated from all other subspecies of *P. polionotus*.

Populations of the SEBM are still found on the beaches of Canaveral National Seashore, Merritt Island NWR, and CCAFS in Brevard County, all on federally protected lands. In April 2002, a population of SEBM was documented at the Smyrna Dunes Park, at the north end of New Smyrna Beach (A. Sauzo, University of Central Florida 2004 pers. communication). Populations from both sides of Sebastian Inlet appear to be extirpated (A. Bard, FDEP 2004 pers. communication).

The status of the species south of Brevard County is currently unknown. The surveys done during the mid-1990s indicate the distribution of this subspecies in the counties south of Brevard was severely limited and fragmented. There are not enough data available to determine population trends for these populations. These surveys revealed that it occurred only in very small numbers where it was found. In Indian River County, the Treasure Shores Park population experienced a significant decline in the 1990s, and it is uncertain whether populations still exist at Turtle Trail or adjacent to the various private properties (D. Jennings, Service 2004 pers. communication). Trapping efforts documented a decline from an estimated 300 individuals down to numbers in the single digits. In 2006, a population off Jungle Trail at Pelican Island National Wildlife Refuge was discovered (Van Zant, University of Central Florida 2006 pers. communication). No beach mice were found during surveys in St. Lucie County and it is possible that this species is extirpated there. The SEBM no longer occurs at Jupiter Island, Palm Beach, Lake Worth, Hillsboro Inlet or Hollywood Beach (Service 1999).

The primary reason for the significant reduction in the range of the SEBM is the loss and alteration of coastal dunes. Large-scale commercial and residential development on the coast of

Florida has eliminated SEBM habitat in the southern part of its range. This increased urbanization has also increased the recreational use of dunes, and harmed the vegetation essential for dune maintenance. Loss of dune vegetation results in widespread wind and water erosion and reduces the effectiveness of the dune to protect other beach mouse habitat. In addition to this increased urbanization, coastal erosion is responsible for the loss of the dune environment along the Atlantic coast, particularly during tropical storms and hurricanes. The extremely active 2004 hurricane season had a pronounced affect on Florida's Atlantic coast beaches and beach mouse habitat.

The encroachment of residential housing onto the Atlantic coast also increases the likelihood of predation and harassment by feral or uncontrolled cats and dogs. A healthy population of SEBM on the north side of Sebastian Inlet SRA in Brevard County was completely extirpated by 1972, presumably by feral cats (A. Bard, FDEP 2004 pers. communication). Urbanization of coastal habitat could also lead to potential competition of beach mice with house mice and introduced rats.

The distribution of the beach mouse is limited due to modification and destruction of its coastal habitats. On the Atlantic coast of Florida, the AIBM and the SEBM were federally listed as endangered and threatened, respectively, in 1989 (54 FR 20602). One additional Atlantic coast subspecies, the pallid beach mouse (*P. p. decoloratus*), was formerly reported from two sites in Volusia County, but extensive surveys provide substantial evidence that this subspecies is extinct (Humphrey and Barbour 1981).

The distribution of the AIBM has declined significantly, particularly in the northern part of its range. Historically, it was reported to occur from the vicinity of the Duval-St. Johns County line southward to Matanzas Inlet, St. Johns County, Florida (Humphrey and Frank 1992a). It currently occurs only on Anastasia Island, primarily at the north (Anastasia State Park) and south (Fort Matanzas National Monument) ends of the island, although beach mice still occur at low densities in remnant dunes along the entire length of the island (Service 1993). The original distribution consisted of about 50 linear miles of beach; current populations occupy about 14 linear miles of beach with possibly only 3 miles supporting viable populations (Service 1993).

In 1992 to 1993, 55 AIBM (27 females and 28 males) were reintroduced to GMTNERR-Guana River in St. Johns County. In 1993, the population was estimated at 220 mice. The reintroduction has been successful this far, despite several hurricanes and northeasterly storms that have caused erosion.

The primary reason for the significant reduction in the range of the AIBM is the loss and alteration of coastal dunes. Large-scale commercial and residential development on the coast of Florida has eliminated AIBM habitat in the northern two-thirds of its range. This increased urbanization has also increased the recreational use of dunes, and harmed the vegetation essential for dune maintenance. Loss of dune vegetation results in widespread wind and water erosion and reduces the effectiveness of the dune to protect other beach mouse habitat. In addition to this increased urbanization, coastal erosion is responsible for the loss of the dune environment along the Atlantic coast, particularly during tropical storms and hurricanes. The extremely active 2004

hurricane season had a severe affect on Florida's Atlantic Coast beaches and beach mouse habitat.

The encroachment of residential housing onto the Atlantic Coast also increases the likelihood of predation by domestic cats and dogs. Anastasia State Park has successfully reduced feral cat populations at the recreation area and has seen a benefit to the beach mice. Urbanization of coastal habitat could also lead to potential competition of beach mice with house mice and introduced rats.

Gulf Coast Beach Mice

PKBM populations have existed since the late 1970s as isolated populations along its historic range (16.9 miles). The effects of hurricane Frederic (1979) coupled with increased habitat fragmentation due to human development led to the extirpation of all but one population of PKBM. The less than 30 individuals at Gulf State Park (at the westernmost end of Perdido Key) were once the only known existing population of PKBM (Holler et al. 1989). Beach mice from this site were used to reestablish PKBM at Gulf Islands National Seashore (GINS) between 1986 and 1988 (Holler et al. 1989). Then in 1999 the population at Gulf State Park was considered extirpated (Moyers et al. 1999). In 2000, 10 PKBM (5 pairs) was relocated from GINS to Perdido Key State Park. In February of 2001, this relocation was supplemented with an additional 32 PKBM (16 pairs). The PKBM were released on both north and south sides of SR 292 in suitable habitat. Two years of quarterly survey trapping indicated that the relocations of PKBM to PKSP were successful and this was considered an established population (Lynn and Kovatch 2004). PKBM were also trapped on private land between GINS and PKSP in 2004, increasing documentation of current occurrences of the mouse (Lynn 2004b). Based on the similarity of habitat between these areas and the rest of Perdido Key, as well as the continuity of the habitat, the mouse is believed to inhabit other private properties where suitable habitat exists north and south of SR 292. The PKBM is considered to occur on 42 percent of Perdido Key (1,227 acres of 2,949 acres) (**Table 12**).

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Table 12. Perdido Key beach mouse habitat on Perdido Key in Florida and Alabama – 2007 estimate¹.

Area	Total in AL & FL		Total in Florida		Total in Alabama	
	Acres	Percent	Acres	Percent	Acres	Percent
Perdido Key	2,949	100	2,615	89	334	11
PKBM habitat	1,293	100	1,146	88	148	12
Private lands	1,440	49	1,278	43	162	5
PKBM habitat	303	23	270	24	33	3
Public lands	1,509	51	1,337	45	172	6
			GINS		GSP	
			1,052		172	
			PKSP			
			285			
PKBM habitat	990	76	876	67	114	9
			GINS		GSP	
			638		114	
			PKSP			
			238			

¹Data calculated by U.S. Fish and Wildlife Service Panama City, Florida using 2004 State of DOQQ aerial photography, 2005 parcel data from Baldwin County, AL and 2005 parcel data from Escambia County, Florida and revised June 2006.

The listing of PKBM was based on data collected in 1983-84, and at that time the mouse was recovering from the effects of Hurricane Frederick in 1979. Following Hurricane Frederick estimated population numbers based on trapping were 13 PKBM found at one location (Gulf State Park). Just prior to listing, only one PKBM was captured in trapping surveys, this again being at Gulf State Park. Since that time, numbers have fluctuated dramatically based on hurricanes and/or translocation efforts, but were at their highest estimate ever documented just prior to Hurricane Ivan in 2004 at between 500-800 individuals. This was a result of significant partnership efforts and included translocation and habitat restoration on public lands. Even with the destructive hurricanes of the last two years, current numbers of PKBM, while low (no population estimates are available), are greater than one mouse and mice have been confirmed from two areas (PKSP and GINS). Survey efforts (tracking and trapping) have also been sporadic and inconsistent; therefore, it is difficult to establish long term trend information at this time.

CBM sub-populations currently persist along approximately 15 miles of Gulf of Mexico shoreline consisting of four isolated areas along 11 miles of beachfront within its former range. Another five miles outside of the CBM's known historic range has been recently colonized (Lynn, 2000a, 2003a). In the 1950s, the CBM was widespread and abundant at that time according to Bowen (1968). By 1979, Humphrey and Barbour (1981) reported only 40 percent of the original habitat remained undeveloped in non-contiguous areas. They also documented that the CBM had been extirpated from seven of its nine historical localities being restricted to the Topsail Hill area in Walton County and Shell Island in Bay County. In 1985 when the CBM became federally protected, CBM were still only known from the Topsail Hill area and Shell Island, an area consisting of about ten miles of coastline (50 FR 23872). In 1989, a cooperative

interagency effort reintroduced CBM onto the central and west units of Grayton Beach State Park increasing the occupied coastline by another mile (Holler and Mason 1989). In 1999, with the closing of East Pass and Shell Island connecting to West Crooked Island, CBM increased their range by approximately four miles (Lynn 2000b). CBM are now known to occupy approximately 15 miles of Gulf of Mexico beachfront; 12 of the 15 miles are publicly owned lands.

There are four sub-populations of CBM that currently exist: 1) Topsail Hill Preserve State Park (and adjacent eastern and western private lands), 2) Shell Island (includes St. Andrew State Park mainland and Shell Island with private inholdings and Tyndall Air Force Base), 3) Grayton Beach (and adjacent eastern private lands), and 4) West Crooked Island. Approximately 96 percent of the lands known to be occupied by CBM are public lands. Translocations to establish a fifth sub-population of CBM occurred in March of 2003 and 2005. CBM from Topsail Hill Preserve State Park were moved to private lands at Camp Creek/WaterSound in Walton County, Florida (Lynn 2003a; Service 2005b, 2005c, 2005d, and 2005e).

Topsail Hill Preserve State Park consists of 1,637 acres of which 262 acres provide CBM habitat; the majority being occupied by CBM (**Table 3**). The Florida Park Service prepared a Unit Management Plan for the Preserve that explicitly plans for conservation and protection of CBM habitats (FDEP 2000). Private lands on the east side consist of approximately 9.63 acres. Of that, 7 acres consist of the development known as the Stallworth Preserve. The Service issued an ITP for CBM to the Stallworth Preserve development in 1995; an amendment to the permit was issued in 1999. The remaining 2.63 acres has been purchased by Walton County with a grant from the Service. Private lands on the west side of the Preserve consist of 24 acres and include Four-Mile Village, a low density single family development, and the Coffeen Nature Preserve managed by the Sierra Club.

Shell Island consists of lands within the St. Andrew State Park, Tyndall Air Force Base, and private lands. The Unit Management Plan for the State Park was completed in 1999. The plan identifies the need for protection and management of the CBM. Tyndall Air Force Base manages their portion of Shell Island under the installation's Integrated Natural Resources Management Plan. The Service has joined with the State Park and Tyndall AFB since 1995 by providing funding to protect and restore CBM habitats on Shell Island.

The St. Andrew State Park mainland consists of 1,260 acres of which 123 acres are beach mouse habitat. Several tracking efforts looking for signs of CBM on the mainland were made between 1995 and 1998; no evidence was found that indicated the presence of the beach mouse (Moyers et al. 1999). However, live-trapping to document the absence of the mouse has not been conducted. Reintroduction of this area is considered an action to support recovery of CBM.

The Grayton Beach subpopulation consists of two units in Grayton Beach State Park. The Park is divided into a central and western unit and is currently connected by a narrow band of primary dunes. Total acreage of the Park is 2,236 acres with 153 acres providing suitable CBM habitat. The Unit Management Plan for the Park identified the protection of the CBM as an important component. The Park has requested and received funds from the Service to implement CBM habitat restoration and protection. Portions of private lands (WaterColor and Seaside

developments) on the east side of the central unit are occupied by CBM or provide suitable habitat.

West Crooked Island consists of 1,558 acres of which 730 acres provide CBM habitat and remains occupied by CBM (Lynn 2004a). The West Crooked Island subpopulation resulted from its connection to Shell Island in 1998 -1999. The construction of the St. Andrew Pass navigation inlet in the early 1930s severed Shell Island from the mainland on its western end. Since then, the original pass, East Pass (or Old Pass) began to close. After passage of Hurricane Opal in 1995, East Pass temporarily closed and reopened; however, after passage of hurricanes Earl and Georges in 1998, the pass closed (Coastal Tech 1999; Middlemas 1999). CBM dispersed onto West Crooked Island from Shell Island colonizing most of the island within two years (Lynn 2004a). East Pass was reopened as a joint venture between Tyndall Air Force Base and Bay County in December of 2001 but has since closed again.

The passage of the Hurricane Ivan resulted in CBM sub-populations being affected by impacts resulting from a category 1 hurricane. Erosion of the beach and dunes occurred with the primary dunes being eroded with blow outs occurring in areas usually noted as weak points along the dune systems including areas such as coastal dune lake outlets. In the blow out areas overwash of vegetation was evident. Trapping conducted on private lands indicate CBM survived on the WaterSound property in Walton County, Florida and reproduction was ongoing (Moyers 2005 pers. communication). Preliminary and subsequent tracking and trapping on State Parks indicate that CBM survived the hurricane with tracks being observed in the secondary and scrub dune habitat at Topsail Hill Preserve State Park (Service 2005e; Suydan 2005 pers. communication).

SABM is now known to consist of two sub-populations, East Crooked Island and St. Joseph Peninsula State Park. The majority of the East Crooked Island sub-population is located on Tyndall AFB and the other on the St. Joseph Peninsula State Park. Other important public lands for the conservation of the mouse would include Eglin Air Force Base lands at Cape San Blas and Billy Joe Rish Park (Table 3). Private lands adjacent to Tyndall AFB and the State Park are either known to be occupied by SABM or contain habitat. Trapping by St Joe/Arvida on about 111 acres of SABM habitat at East Crooked Island was conducted in 2000, 2001, and 2003. The trapping confirmed existence of SABM on the property (Moyers and Shea 2002). However, trapping their property in St. Joe Beach did not result in capture of any beach mice (Moyers and Shea 2002). Although SABM is thought to continue to occupy habitat south of St. Joseph Peninsula State Park, only tracking has been conducted to confirm its presence on private lands since the late 1990s. Private lands adjacent to public lands are available for population dispersal and food source during periods of high population and after severe weather events. However, subpopulations on large tracts of private land within the historic range of the subspecies are needed for conservation of the SABM.

Land development has been primarily responsible for the permanent loss of SABM habitat along its approximate 40-mile historic range. In addition, construction of U.S. highway 98 accelerated the habitat loss from associated development. By the mid 1990's only about 12 linear miles were known to be occupied (Gore 1994; Gore 1995), indicating a 68 percent reduction in its historic distribution (63 FR70053). An effort to re-establish the SABM back into its historic range was initiated around the time of listing (Moyers et al. 1999); however, the range reduction

described above did not take this into account since the success of the re-introduction was not known at the time (63FR70053). Similar analyses have not been conducted since.

Our best documentation of the species' decline can be seen from trapping and/or tracking surveys conducted at various times throughout its range. By the mid to late 1980s, concerns were raised when trapping efforts failed to result in captures at West Crooked Island (Gore 1987). By 1990 the SABM appeared to only inhabit a small portion (approximately 11 linear miles) of its original range: west end of East Crooked Island and within St. Joseph Peninsula State Park (Gore 1990). SABM's apparent decline continued into the mid-1990s when in 1994, the population on East Crooked Island was "presumed to be extinct" (Wooten and Holler 1999), leaving only one known population on St. Joseph Peninsula (Moyers et al. 1999). Subsequent reintroduction efforts in 1997-1998 appeared to have re-established the population on East Crooked Island (Moyers et al. 1999).

The passage of hurricane Ivan resulted in SABM subpopulations being affected by impacts resulting from a category 1 hurricane. Erosion of the beach and dunes occurred with the primary dunes being eroded with blow outs occurring in areas usually noted as weak points along the dune systems including areas such as coastal dune lake outlets. In the blow out areas, overwash of vegetation was evident. Tracking conducted by State Park personnel since the hurricane indicate that SABM survived the hurricane with tracks being observed in the secondary and scrub dune habitat, however, no trapping has occurred since the hurricane.

Recovery criteria

The Recovery Plan (Service 1993) for the SEBM identifies the primary recovery objectives for the subspecies. For the SEBM to be considered for delisting, it is required that there be viable populations on the five public land areas where the subspecies occur. Each population should not fluctuate below an effective breeding size of 500 individuals. Five additional viable populations shall be established throughout the historic range of the subspecies. These populations should be monitored for at least 5 years before considering delisting.

The Recovery Plan (Service 1993) for the AIBM identifies the primary recovery objectives for the subspecies. For the AIBM to be considered for downlisting to threatened, it is required that those populations at the northern and southern end of Anastasia Island continue to be viable. Each population should support a breeding population of 500 individuals. Two additional viable populations shall be established within the mainland portion of the historic range. All of these populations should be monitored for 5 years.

The Recovery Plan for the PKBM, CBM, and ABM (Service 1987) identifies the primary recovery objectives to be the stabilization of present populations by preventing further habitat deterioration, and the re-establishment of populations in areas where they were extirpated. For each of the subspecies to be considered for downlisting to threatened, it is required that there be a minimum of at least three distinct self-sustaining populations in designated critical habitat with at least 50 percent of the critical habitat being protected and occupied by beach mice (Service 1987).

While this is the currently approved Recovery Plan for the three beach mouse subspecies, studies and research since the Recovery Plan publication has provided additional information concerning recovery needs for the subspecies. Protection and enhancement of existing populations and their habitat, plus reestablishment of populations in suitable areas within their historic ranges, are necessary for the subspecies survival and recovery. Core beach mouse populations remain isolated and are vulnerable to natural and anthropogenic factors that may further reduce or degrade habitat and/or directly reduce beach mouse population sizes. Maximizing the number of independent populations is critical to species survival. Protection of a single, isolated, minimally viable population risks the extirpation or extinction of a species as a result of harsh environmental conditions, catastrophic events, or genetic deterioration over several generations (Kautz and Cox 2001). To reduce the risk of extinction through these processes, it is important to establish multiple protected populations across the landscape (Soule and Simberloff 1986; Wiens 1996). Through the critical habitat designation process we are addressing this by designating five independent units for the subspecies spaced throughout its historic range, depending on the relative fragmentation, size, and health of habitat, as well as availability of areas with beach mouse primary constituent elements.

A draft Recovery Plan for the SABM is currently being prepared.

In accordance with the Act, the Service completes consultations with federal agencies (including ourselves) for actions that may adversely affect beach mice and their designated habitat. In Florida consultations have included military missions and operations, beach nourishment and other shoreline protection, and actions related to protection of coastal development (Table 13).

Table 13. Previous biological opinions within Florida that have been issued for projects that had adverse impact to the nesting beach mice.

PROJECT	YEAR	IMPACT (Habitat/critical habitat/individuals)
PKBM GINS Dune Protection	2000	0.01 acre
PKBM translocation to PKSP	2000	≤ 3 beach mice
PKBM supplemental translocation to PKSP	2003	≤ 3 beach mice
PKBM FEMA Berm Orange Beach, AL	2003	0.14 acre
PKBM FWS scientific collecting permit program	2004- 2005	1 beach mouse per 400 trap-nights per area
PKBM Florencia Development (within Action Area)	2005	3.5 acres
PKBM PKSP Re-build	2005	1.99 acres

PROJECT	YEAR	IMPACT (Habitat/critical habitat/individuals)
PKBM FEMA Berm Emergency consultation (within Action Area)	2005	Consultation not complete
PKBM GINS road rebuild	2005	1.7 acres
PKBM Magnolia West Development (within Action Area)	2006	5.2 acres
PKBM Palazzo Development	2006	0.58 acre
PKBM Searinity Development	2006	0.32 acre
PKBM Retreat Development	2006	0.21 acre
PKBM Bond Residence	2006	0.17 acre
CBM Stallworth Preserve Development	1995	7 acres
CBM Navy Panama City Beach site 4 construction	2000	0.01 acre
CBM East Pass Re-opening	2001	Temporary, indirect take
CBM WaterColor and WaterSound Developments	2000	7.6 acres
CBM FWS scientific collecting permit	2004-2005	1 beach mouse per 400 trap-nights per area
CBM FEMA beach berms post hurricane Ivan emergency consultation	2005	Consultation not complete
CBM Western Lake Reopening consultation	2006	2.7 acres annually for five years
AIBM Sea Colony Development	1998	0.7 acres
Anastasia State Park beach nourishment (AIBM)	2004	50 linear feet
Cape Canaveral Air Force borrow source (SEBM)	2007	Project pending
SEBM FWS scientific collecting permit program	2004-2005	1 beach mouse per 400 trap-nights per area
AIBM FWS scientific collecting permit program	2004-2005	1 beach mouse per 400 trap-nights per area
Kennedy Space Center Dune Restoration	2008	710 linear feet

Threats

Habitat Loss or Degradation

Coastal dune ecosystems are continually responding to inlets, tides, waves, erosion and deposition, longshore sediment transport, and depletion, and fluctuations in sea level. The location and shape of barrier island beaches perpetually adjusts to these physical forces. Winds move sediment across the dry beach forming dunes and the island interior landscape. The natural communities contain plants and animals that are subject to shoreline erosion and deposition, salt spray, wind, drought conditions, and sandy soils. Vegetative communities include foredunes, primary and secondary dunes, interdunal swales, sand pine scrub, and maritime forests. During storm events, overwash is common and may breach the island at dune gaps or other weak spots, depositing sediments on the interior and backsides of islands, increasing island elevation and accreting the sound shoreline. Breaches may result in new inlets through the island.

The quality of the dune habitat (primary, secondary, and scrub) is an important factor in maintaining and facilitating beach mouse recovery. Habitat manipulation is an old and widely used tool in wildlife management. It is especially useful in improving habitat suitability to increase local populations of a species. For beach mice, improving habitat can enhance the abundance and diversity of food resources, increase the chances of meeting a mate, and reduce competition for food and burrow sites.

Long-term trapping data has shown that beach mouse densities are cyclic and fluctuate by magnitudes on a seasonal and annual basis. These fluctuations can be a result of reproduction rates, food availability, habitat quality and quantity, catastrophic events, disease, and predation (Blair 1951; Bowen 1968; Smith 1971; Hill 1989; Rave and Holler 1992; Swilling et al. 1998; Swilling 2000; Sneckenberger 2001). Without suitable habitat sufficient in size to support the natural cyclic nature of beach mouse populations, subspecies are at risk from local extirpation and extinction, and may not attain the densities necessary to persist through storm events and seasonal fluctuations of resources.

Habitat loss and fragmentation associated with residential and commercial real estate development is the primary threat contributing to the endangered status of beach mice (Holler 1992a, 1992b; Humphrey 1992). Coastal development has fragmented all the subspecies into disjunct populations. Isolation of habitats by imposing barriers to species movement is an effect of fragmentation that equates to reduction in total habitat (Noss and Csuti 1997). Furthermore, isolation of small populations of beach mice reduces or precludes gene flow between populations and can result in the loss of genetic diversity. Demographic factors such as predation (especially by domestic cats), diseases, and competition with house mice, are intensified in small, isolated populations, which may be rapidly extirpated by these pressures. Especially when coupled with events such as storms, reduced food availability, and/or reduced reproductive success, isolated populations may experience severe declines or extirpation (Caughley and Gunn 1996). The influence these factors have on populations or individuals is largely dependent on the degree of isolation.

The conservation of multiple large, contiguous tracts of habitat is essential to the persistence of beach mice. At present, large parcels exist mainly on public lands. Protection, management, and recovery of beach mice on public areas have been complicated by increased recreational use as public lands are rapidly becoming the only natural areas left on the coast. Public lands and their staff are now under pressure to manage for both the recovery of endangered species and recreational use. Where protection of large contiguous tracts of beach mouse habitat along the coast is not possible, establishing multiple independent populations is the best defense against local and complete extinctions due to storms and other stochastic events (Danielson 2005). Protecting multiple populations increases the chance that at least one population within the range of a subspecies will survive episodic storm events and persist while vegetation and dune structure recover.

Habitat connectivity also becomes essential where mice occupy fragmented areas lacking one or more habitat types. If scrub habitat is lacking from a particular tract, adjacent or connected tracts with scrub habitat are necessary for food and burrow sites when resources are scarce in the frontal dunes, and are essential to beach mouse populations during and immediately after hurricanes. Trapping data suggests that beach mice occupying the scrub following hurricanes recolonize the frontal dunes once vegetation and some dune structure have recovered (Swilling et al. 1998; Sneckenberger 2001). Similarly, when frontal dune habitat is lacking from a tract and a functional pathway to frontal dune habitat does not exist, beach mice may not be able to attain the resources necessary to expand the population and reach the densities necessary to persist through the harsh summer season or the next storm. Functional pathways may allow for natural behavior such as dispersal and exploratory movements, as well as gene flow to maintain genetic variability of the population within fragmented or isolated areas. To that end, contiguous tracts or functionally connected patches of suitable habitat are essential to the long-term conservation of beach mice.

A lack of suitable burrow sites may be a consequence of habitat degradation. Beach mice use burrows to avoid predators, protect young, store food, and serve as refugia between foraging bouts and during periods of rest. Beach mice have been shown to select burrow sites based on a suite of abiotic and biotic factors. A limitation in one or more factors may result in a shortage of suitable sites and the availability of potential burrow sites in each habitat may vary seasonally. Beach mice tend to construct burrows in areas with greater plant cover, less soil compaction, steep slopes, and higher elevations above sea level (Lynn 2000a; Sneckenberger 2001). These factors are likely important in minimizing energy costs of burrow construction and maintenance while maximizing the benefits of burrow use by making a safe and physiologically efficient refuge. Similar to food resources, this fluctuation in availability of burrow sites suggests that a combination of primary, secondary and scrub dune habitat is essential to beach mice at the individual level.

Predation

Beach mice have a number of natural predators including coachwhip (*Masticophis flagellum*) and corn snakes (*Elaphe guttata guttata*), pygmy rattlesnake (*Sistrurus miliarius*), and Eastern diamondback rattlesnake (*Crotalus adamanteus*), short-eared (*Asio flammeus*) and great-horned

owls (*Bubo virginianus*), great blue heron (*Ardea herodias*), northern harrier (*Circus cyaneus*), red fox (*Vulpes vulpes*), gray fox (*Urocyon cinereoargenteus*) skunk (*Mephitis mephitis*), weasel (*Shallela frenata*), and raccoon (*Procyon lotor*) (Blair 1951; Bowen 1968; Holler 1992a; Novak 1997; Moyers et al. 1999; Van Zant and Wooten 2003). Predation in beach mouse populations that have sufficient recruitment and habitat availability is natural and not a concern. However, predation pressure from natural and non-native predators may result in the extirpation of small, local populations of beach mice.

Free-roaming and feral pets are believed to have a devastating effect on beach mouse persistence (Bowen 1968; Linzey 1978) and are considered to be the main cause of the loss of at least one population of beach mice (Holliman 1983). Cat tracks have been observed in areas of low trapping success for beach mice (Moyers et al. 1999). The PHVA for the ABM indicated that if each population had as few as one cat which ate one mouse a day, rapid extinction occurred in over 99 percent of all iterations (Traylor-Holzer 2005).

In response to increasing depredation of sea turtle nests and shorebird nests/young by coyote, fox, hogs, and raccoon, multi-agency cooperative efforts to control predator populations on important coastal wildlife habitats have been initiated and are ongoing throughout Florida, in particular on public lands. These programs also benefit beach mice.

Hurricanes

Hurricanes can severely affect beach mice and their habitat, as tidal surge and wave action overwash habitat, leaving a flat sand surface denuded of vegetation; sand is deposited inland, completely or partially covering vegetation; blowouts between the ocean and bays and lagoons leave patchy landscapes of bare sand; primary dunes are sheared or eroded; and habitat is completely breached, creating channels from the ocean to bays and lagoons. Other effects include direct mortality of individuals, relocation/dispersal, and subsequent effects of habitat alterations (that impact such factors as forage abundance/production and substrate elevation). Habitat impacts can be widespread, encompassing the range of the subspecies.

Until frontal dune topography and vegetation redevelop, scrub habitat maintains beach mice populations and provides the majority of food resources and potential burrow sites (Lynn 2000a; Sneckenberger 2001). While storms temporarily reduce population densities (often severely), this disturbance regime maintains open habitat and retards plant succession, yielding a habitat more suitable for beach mice than one lacking disturbance. The low-nutrient soil of the coastal dune ecosystem often receives a pulse of nutrients from the deposition of vegetative debris along the coastline (Lomascolo and Aide 2001). Therefore, as the primary and secondary dunes recover, beach mice recolonize this habitat readily as food plants develop to take advantage of the newly available nutrients. Recovery times vary depending upon factors such as hurricane characteristics (*i.e.*, severity, amount of associated rain, directional movement of the storm eye, storm speed), successional stage of habitat prior to hurricane, elevation, and restorative actions post hurricane. Depending on these factors, recovery of habitat may take from one year to over 40 years.

The impact of hurricanes on plant communities temporarily affects food availability, and hence can limit population densities in impacted habitats soon after storms. Observations indicate that Hurricane Opal (a Category 3 storm in November 1995) caused a decrease in one population of ABM by 30 percent (Swilling 2000). However, population densities in scrub habitat typically increased following hurricanes (Swilling 2000). Sneckenberger (2001) also found atypical numbers of ABM in scrub following a hurricane. Five months post-storm, “densities (individuals/km) were up to 7.5 times greater in scrub areas than in frontal dune grids.” Impacts of the storm may have been apparent as long as 17 months after the storm when scrub densities remained triple those of frontal dunes (Sneckenberger 2001). Moyers et al. (1999) found similar results for CBM at Grayton Beach State Park. When frontal and primary dunes sustained extensive damage during Hurricane Opal in 1995, beach mice were captured behind what remained of primary dune habitat. By 1998, however, primary dunes and the immediate habitat inland appeared to support higher numbers of beach mice.

In addition to the overall change in post Hurricane Opal distribution of ABM, Swilling et al. (1998) found the mean percent of newly marked individuals increased from 14 percent for the three trapping periods before the storm to an average of 26.7 percent for the same interval post hurricane. The average for the three trapping periods immediately following was even higher, at 42.7 percent of the individuals captured. Swilling et al. (1998) concluded that this increased presence of new individuals reflected increased reproduction. A statistical analysis of the data indicated that the number of females exhibiting signs of reproduction was significantly higher than normal (18.9 percent higher). Moyers et al. (1999) also found similar results at Topsail Hill Preserve State Park. Four to five months following Hurricane Opal, all female CBM captured were pregnant or lactating. Trapping six months after the hurricane, Moyers et al. (1999) noted that 51.5 percent of captured CBM were new unmarked beach mice.

Although hurricanes can significantly alter beach mouse habitat and population densities in certain habitats, some physical effects may benefit the subspecies. Hurricanes are probably responsible for maintaining coastal dune habitat upon which beach mice depend through repeated cycles of destruction, alteration, and recovery of dune habitat. Holler et al. (1999) suggested that hurricanes could function to break up population subgroups and force population mixing. The resultant breeding between members of formerly isolated subgroups increases genetic heterogeneity and could decrease the probability of genetic drift and bottlenecks.

Beachfront Lighting

Artificial lighting increases the risk of predation and influences beach mouse foraging patterns and natural movements as it increases their perceived risk of predation. Foraging activities and other natural behaviors are influenced by many factors. Artificial lighting alters behavior patterns causing beach mice to avoid otherwise suitable habitat and decreases the amount of time they are active (Bird et al. 2004). The presence of vegetative cover reduces predation risk and perceived predation risk of foraging beach mice, and allows for normal movements, activity, and foraging patterns. Foraging in sites with vegetative cover is greater and more efficient than in sites without cover (Bird 2002). Beach mice have also been found to select habitat for increased percent cover of vegetation, and decreased distance between vegetated patches (Smith 2003).

Genetic variability

Selander et al. (1971) conducted an electrophoretic study on 30 populations of *P. polionotus*, including populations of beach mouse subspecies. Based on 30 allozyme loci, they estimated that the level of allozyme variation found in beach mouse populations was at least 40 percent lower than the level of variation in nearby inland populations. This work indicates that beach mouse populations already have lower genetic variability before inbreeding, bottleneck events, or founder effects that may occur in a reintroduced population. Lower levels of heterozygosity has been linked to less efficient feeding, fewer demonstrations of social dominance and exploratory behavior, and smaller body size (Smith et al. 1975; Garten 1976; Teska et al. 1990). Research focused on inbreeding depression in old-field mice (including one beach mouse subspecies), determined that the effects of inbreeding negatively influenced factors such as litter size, number of litters, and juvenile survivorship (Lacy et al. 1995).

In 1995, the Service contracted with Auburn to conduct genetic analysis of: 1) post-re-establishment gene structure in PKBM and CBM; 2) microgeographic patterning and its relevance to alternate management approaches for ABM on the Bon Secour NWR; and 3) if feasible, the historical relationship of SABM from Crooked Island relative to CBM from Shell Island and SABM from St. Joseph Peninsula.

Results of the work for CBM found: 1) founder effects were observed in the Grayton Beach State Park population (fixation of alleles common to the donor population and allele frequency shifts); 2) incongruity in number and size of several alleles was observed between Grayton Beach State Park and Shell Island; 3) overall genetic divergence between the donor and re-established population was moderate; 4) genetic differences between Topsail Hill Preserve State Park and other CBM sites were higher than expected given the spatial proximity; 5) Topsail Hill Preserve State Park appears to be a reservoir for unique variation within the remaining populations of CBM; and 6) the overall relatedness estimated for Grayton Beach State Park suggested that any mating would involve close relatives (Wooten and Holler 1999).

Wooten and Holler (1999) recommended strategies for management of CBM based on genetics. Management of the Grayton Beach State Park population for genetic characteristics appears to be needed; however, additional genetic analyses will be needed. Relocation of CBM to Grayton Beach State Park from Shell Island should be continued.

Results of the work for PKBM found that: 1) founder effect (from Florida Point to GINS) did impact the GINS-Perdido Key Area subpopulation. Loss of rare alleles and allele frequency shifts were noted; 2) a low to moderate level of overall genetic divergence was observed; 3) data suggests that some effects of genetic drift were mediated by continued transfer of individuals; 4) levels of heterozygosity were unexpected given recent history; 5) average levels of relatedness among individuals is high which may portend future inbreeding related problems (however, no evidence of existing inbreeding was observed in the data); and 6) the overall level of microsatellite variation retained in the GINS-Perdido Key Area subpopulation was higher than anticipated. Wooten and Holler (1999) recommended management of PKBM based on genetics by: 1) preserving the natural population to the maximum extent possible since the loss of the Florida Point subpopulation resulted in the permanent loss of alleles; 2) using the GINS-Perdido

Key Area subpopulation as a donor for re-establishment of other populations because of the retention of a substantial amount of genetic variation; and 3) reestablishment plans should include transfers between donor and reestablished subpopulations. In addition, translocations should be accomplished in pairs.

Analysis of genetic work focused on SABM indicated that there are two genetic histories for Crooked Island beach mice: 1) The last known beach mice from Crooked Island were derived from CBM or 2) the last known beach mouse from Crooked Island were unique from both CBM found on Shell Island or SABM found on St. Joseph peninsula possibly being some type of hybrid where the gene flow events did not occur at the same time (Van Zant 2003).

Analysis of the species/critical habitat likely to be affected

Beach mice are currently federally protected because of their low numbers caused by habitat loss with continuing threats to their habitat (including critical habitat for CBM, PKBM, and SABM) and resulting affects from storm events. The primary reason for the significant reduction in their range is the loss and alteration of coastal dunes. Large-scale commercial and residential development on the coast of Florida has eliminated beach mouse habitat. Coastal urbanization has also increased the recreational use of beachfront areas. Dune habitat maintenance is an important component of beach mouse conservation. Providing a healthy and continuous dune system assures mouse population stability. Integral to this is keeping beachgoers off the dunes and replanting as necessary when impacts occur or are observed. The extremely active 2004 and 2005 hurricane seasons also had a severe affect on Florida's beaches and beach mouse habitat.

Critical habitat for three (PKBM, CBM, and SABM) of the five subspecies of beach mice has been designated in the continental United States and will be discussed. No critical habitat has been designated in the continental United States for the other two subspecies (SEBM and AIBM). Therefore, the proposed action would have no effect on designated critical habitat for these two subspecies because none is designated.

Generally, emergency berm repair and construction is not placed on existing beach mouse habitat consisting of vegetated dunes. Typical effects from these activities to beach mice and their habitats consist of the staging and storage of equipment, work vehicles, or materials and beach access for emergency berm repair and construction. These effects may result in the permanent and temporary loss, degradation, or fragmentation of beach mouse habitat and changes in essential life history behaviors (dispersal and movement, foraging, seeking mates, breeding, and care of young). Other activities that have affected the conservation of beach mice and required consultation with the Service are included in the Service's overall evaluation of the current status of each subspecies and listed in **Table 13**.

ENVIRONMENTAL BASELINE

Status of the species/critical habitat within the Action Area (all subspecies of beach mice)

The Action Area encompasses the entire ranges and designated critical habitats of the five beach mouse subspecies. Therefore, the previous discussion in "Status of the Species" applies here.

Factors affecting the species environment within the action area (all subspecies of beach mice)

Coastal development

Beach mice were listed as an endangered and threatened species primarily because of the fragmentation, adverse alteration and loss of habitat due to coastal development. The threat of development-related habitat loss continues to increase. Other contributing factors include low population numbers, habitat loss from a variety of reasons (including hurricanes), predation or competition by animals related to human development (cats and house mice), and the existing strength or lack of regulations regarding coastal development.

Hurricanes

Hurricanes were probably responsible for maintaining coastal beach habitat upon which beach mice depend through repeated cycles of destruction, alteration, and recovery of dune habitat. Hurricanes generally produce damaging winds, storm tides and surges, and rain and can result in severe erosion of the beach and dune systems. Overwash and blowouts are common on barrier islands. Hurricanes can impact beach mice either directly (*e.g.*, drowning) or indirectly (*e.g.*, loss of habitat). Depending on their frequency, storms can affect beach mice on either a short-term basis (*e.g.*, temporary loss of habitat) or long term (*e.g.*, loss of food, which in turn may lead to increased juvenile mortality, resulting in a depressed breeding season). How hurricanes affect beach mice also depends on the characteristics (winds, storm surge, rainfall), the time of year (within or outside of the nesting season), and where the northeast edge of the hurricane crosses land.

Because of the limited remaining habitat, frequent or successive severe weather events could compromise the ability of certain populations of beach mice to survive and recover. Beach mice evolved under natural coastal environmental events such as hurricanes. The extensive amount of pre-development coastal beach and dune habitat allowed beach mice to survive even the most severe hurricane events. It is only within the last 20 to 30 years that the combination, of habitat loss to beachfront development and destruction of remaining habitat by hurricanes, has increased the threat to beach mice survival and recovery. On developed beaches, typically little space remains for sandy beaches to become re-established after periodic storms. While the beach itself moves landward during such storms, reconstruction or persistence of structures at their pre-storm locations can result in a major loss of habitat for beach mice.

The 2004 hurricane season was the most active storm season in Florida since weather records began in 1851. Hurricanes Charley, Frances, Ivan, and Jeanne, along with Tropical Storm Bonnie, damaged the beach and dune system, upland structures and properties, and infrastructure in the majority of Florida's coastal counties. The cumulative impact of these storms exacerbated erosion conditions throughout the state.

Beachfront Lighting

Artificial lighting along developed areas of the both coastlines continues to cause concern for beach mouse recovery. While a majority of coastal local governments and Counties have adopted beachfront lighting ordinances compliance and enforcement is lacking in some areas. Further, the lighting in areas outside the beachfront ordinance coverage areas continues to have unregulated lighting resulting in urban glow. Even the darker areas of conservation managed lands are subject to being surrounded by the sky glow.

Predation

A major continuing threat to beach mice is predation by cats and other non-native species. The domestic cat *Felis catus* is not native to North America and is considered a separate species from its wild ancestral species, *Felis silvestris*. Cats are hunters, retaining this behavior from their ancestors. However, wildlife in the western Hemisphere did not evolve in the presence of a small, abundant predator like the domestic cat, and thus did not develop defenses against them. Cats were introduced to North America a few hundred years ago.

Free-ranging pet and feral cats prey on small mammals, birds, and other native wildlife. In the U.S., on a nationwide basis, cats kill over a billion small mammals and hundreds of millions of birds each year. Worldwide, cats are second only to habitat destruction in contributing to the extinction of birds. Cats have been documented to take beach mice, sea turtle hatchlings, shorebirds, and migratory birds. A significant issue in the recovery of beach mice is predation by free-ranging pet and feral cats. Beach mice have a number of natural predators including snakes, owls, herons, and raccoons. Predation is part of the natural world. However, predation pressure from both natural and non-native predators in combination with other threats may result in the extirpation of small, local populations of beach mice in a very short time.

EFFECTS OF THE ACTION

Factors to be considered

Emergency berm construction and repair will occur within habitat that is used by beach mice year round. The activities include the storage of equipment, work vehicles, or materials and creation, expansion, or use of beach access points for emergency berm construction and repair. The work, depending on the location may be conducted any time of the year. While most effects would be expected to be temporary, long-term and permanent impacts from the activities could include the loss of beach mice from excavation of dune habitat and degradation and fragmentation of beach mice habitat including critical habitat for the PKBM, CBM, and SABM. Short-term and temporary impacts could include loss of foraging habitat and altering beach mouse movement and dispersal activities.

There are typically different "levels" of access sites needed for a project. The primary access is a "lay-down" yard, where storage trailers, and other equipment and materials are stored. These are typically big paved parking lots, so that the contractor's trucks can access the area to drop off and pick up equipment. If the berm material source will be from an offshore or navigation channel

source, the use of pipes may be needed to transport the material to the beach. There's typically a beach access at that point to get the pipe and equipment onto the beach and that access is usually at least 50-ft wide (the pipes are frequently 40- to 50-ft sections). In NW Florida and Alabama these yards have been approximately 8 miles apart.

"Intermediate areas" are used at about the quarter points of the project length. These are used for the fuel tank, welding equipment, and other items or systems that get used a couple of times a day. These locations can vary from two to three miles apart.

Then there are access points to allow project vehicles and trucks on and off the beach. Based on previous projects it would be expected to have single-vehicle entry points at one-half to one-mile mile intervals.

Protective, avoidance, and minimization measures have been incorporated into the project plan to avoid or minimize the potential impacts from the emergency berm repair and construction activities. However, even with these measures, impacts to beach mice are expected to occur from some aspects of the project activities. The activities are expected to directly or indirectly adversely affect beach mice and/or their habitat including designated critical habitat for the PKBM, CBM, and SABM. The work may occur on public and/or private lands.

Proximity of action: Some aspects of the emergency berm construction and repair activities would occur directly in beach mouse habitat. The storage or staging of equipment, and vehicles, use or creation of beach access points, and placement of sand could occur in habitat occupied or used by SEBM, AIBM, PKBM, CBM, and SABM. Beach mice spend their entire life cycle within the coastal dune system.

Distribution: The storage of equipment and vehicles and use of beach access points that could occur in habitat occupied or used by SEBM, AIBM, PKBM, CBM, and SABM may vary depending on the individual project length and existing beach accesses and non-beach mouse habitat that can be used for storage and staging.

Timing: The timing of the activities would directly and indirectly impact beach mice and their habitat during all seasons as beach mice are permanent residents of coastal dune habitats. Beach mice reproduce year round with more mice being produced in the late winter and early spring. Impacts could include but would not be limited to disrupting mice seeking mates, constructing nest burrows, foraging for food, caring for their young and young mice leaving the nest burrow dispersing into new habitat.

Nature of the effect: The effects of the activities may include the loss of a few beach mice from excavation of habitat for beach access and reduction of beach mouse activity including feeding, reproduction, and movement from loss or alteration of habitat. Activities that decrease the amount or quality of dune habitat or movement could affect beach mice by reducing the amount of available habitat and fragmenting the habitat.

Duration: The emergency berm construction and repair will be done only in emergency situations. The berms are constructed to withstand 5-year storms. Thus, they are not expected to

remain on the beach for very long. Time to complete the project construction may vary depending on the project length, weather, and other factors (contractor and equipment availability, regulatory permitting). However, it is anticipated for most projects work could take from a week to 30 days to complete. Beach mouse habitats could remain disturbed until the project is completed and the habitats are restored.

Disturbance frequency: Depending on the emergency berm construction and repair, this could result in impacts to beach mice and their habitats at any time during the year. Following initial emergency berm repair and construction, activities could occur every year depending on the project location and emergency event (weather). The programmatic consultation will be reviewed every 5 years or sooner if new information concerning the projects or protected species occurs. The actual number of times the emergency berm repair and construction would occur is unknown and dependent on weather events.

Disturbance intensity and severity: Depending on the frequency needed to conduct the emergency berm construction and repair and the existence of staging areas and beach access points, effects to the recovery of beach mice may vary. However, the Action Area encompasses the entire of the range of each species and the overall intensity and depending on the number and size of the emergency events the berm projects could encompass each subspecies entire range. The length of time the project would occur would minimize disturbance of beach mice.

The staging and storage of equipment and materials and beach access points could occur within habitat occupied or used by SEBM, AIBM, PKBM, CBM, and SABM and could be adjacent to designated critical habitat for the PKBM, CBM, and SABM. Beach mice are permanent inhabitants of the coastal ecosystem conducting all their life cycles in this environment. While the current status of individual beach mouse subspecies is not specifically known, their general distribution is known.

Analyses for effects of the action

The Action Area consists of the Atlantic or Gulf beachfront including the dry unvegetated beach, developing foredunes, and areas that were formerly primary or secondary dunes. Beach mice would generally be found inhabiting stable primary, secondary, and scrub dunes on a permanent basis with other habitats being used periodically on a daily or seasonal basis for feeding and movement. Some of these areas also include designated critical habitat. The primary constituent elements for PKBM, CBM, and SABM critical habitat include the following.

1. A contiguous mosaic of primary, secondary and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites.
2. Primary and secondary dunes, generally dominated by sea oats, that, despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators.

3. Scrub dunes, generally dominated by scrub oaks, that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane induced storm surge.
4. Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and recolonization of locally extirpated areas.
5. A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth and viability of all life stages.

Direct and Indirect Impacts

Direct impacts are effects of the action on the species occurring as the project is implemented during the construction phase of the project. Direct loss of individual beach mice may temporarily occur during the creation or expansion of beach access points when heavy equipment clears the habitat and packs the sand. In general the length of time between disasters (berm reconstruction work) is expected to be sufficient for beach mouse habitat to be restored. Thus, it is not anticipated that the emergency berm construction and repair activity would result in permanent beach mouse habitat destruction (including critical habitat). However, habitat for all the beach mouse subspecies and designated critical habitat for the PKBM, CBM, and SABM that provides food or cover may be temporarily destroyed or altered from the activities.

Indirect effects are caused by or a result from the proposed action, are later in time and are reasonably certain to occur. The indirect effect of emergency berm construction and repair activities would include newly created or expanded existing beach access points that act as barriers to beach mouse movement for foraging, population expansion or dispersal. Maintaining the connectivity among habitats is vital to persistence of beach mice recovery. Recovery actions needed to assure the connectivity include restoration and maintenance of the dune system following project completion.

For the Service to determine if the project impacts on critical habitat would be an adverse modification, we shall determine if the impact on the habitat appreciably diminishes the capability of the critical habitat to satisfy essential requirements of beach mice with designated critical habitat. The long-term maintenance of the beach mouse populations in the project areas could be compromised if the emergency berm construction and repair activities occur too frequently resulting in a long-term barrier to mice movement. However, our evaluation indicates the impacts to critical habitat should be temporary in nature based on past history of emergency berm repair and construction projects. In addition, the area to be directly affected within the individual subspecies ranges would be a small percentage of the overall critical habitat and would not be expected to reduce the carrying capacity of the recovery unit or appreciably diminish the ability of the PCE's to provide for the essential functions of the critical habitat units.

Species' response to a proposed action

This BO is based on effects that are anticipated to beach mice (all life stages) as a result of the temporary physical disturbance of beach mouse habitat from the emergency berm repair and construction activities. Some beach mice (all life stages) may be lost during the initial construction or expansion of beach accesses where heavy equipment destroys dune habitat and compacts the sand within the access corridor. Any mice that survive the initial construction may move outside of the disturbed area and construct burrows elsewhere in the vicinity. Following access construction, a bare gap of sand could form a barrier to limit beach mouse movement within the area altering regular movement patterns. These impacts are expected to be limited to the construction phase of the project (a week to 30 days). Thus, effects would be short term in nature with the potential for one generation of mice to be lost (female mice can reproduce approximately every 26 days).

Beach mice have evolved to adapt to catastrophic weather events, while additional factors such as surrounding development pressure and non-native predators may affect the species' ability to recover from the loss of individuals and temporary habitat impacts. However, the temporary loss of the habitat itself is not expected to permanently impact the populations as no beach mouse habitat within the project areas would be permanently destroyed. Additionally, all temporary habitat loss would be restored and/or maintained as part of the conservation measures committed to by the local sponsors or the Applicants. The temporary nature of the impacts to dune habitats are not expected to alter the function and conservation role of the remaining beach mouse habitat, including designated critical habitat.

PIPING PLOVER

STATUS OF THE SPECIES/CRITICAL HABITAT

Species/critical habitat description

The piping plover is a small, pale sand-colored shorebird, about seven inches long with a wingspan of about 15 inches (Palmer 1967). On January 10, 1986, the piping plover was listed as endangered in the Great Lakes watershed and threatened elsewhere within its range, including migratory routes outside of the Great Lakes watershed and wintering grounds (Service 1985). Piping plovers were listed principally because of habitat destruction and degradation, predation, and human disturbance. Protection of the species under the Act reflects the species' precarious status range-wide. Three separate breeding populations have been identified, each with its own recovery criteria: the northern Great Plains (threatened), the Great Lakes (endangered), and the Atlantic Coast (threatened) (**Figure 17**). The piping plover winters in coastal areas of the U.S. from North Carolina to Texas, and along the coast of eastern Mexico and on Caribbean islands from Barbados to Cuba and the Bahamas (Haig and Elliott-Smith 2004). Information from observation of color-banded piping plovers indicates that the winter ranges of the breeding populations overlap to a degree.

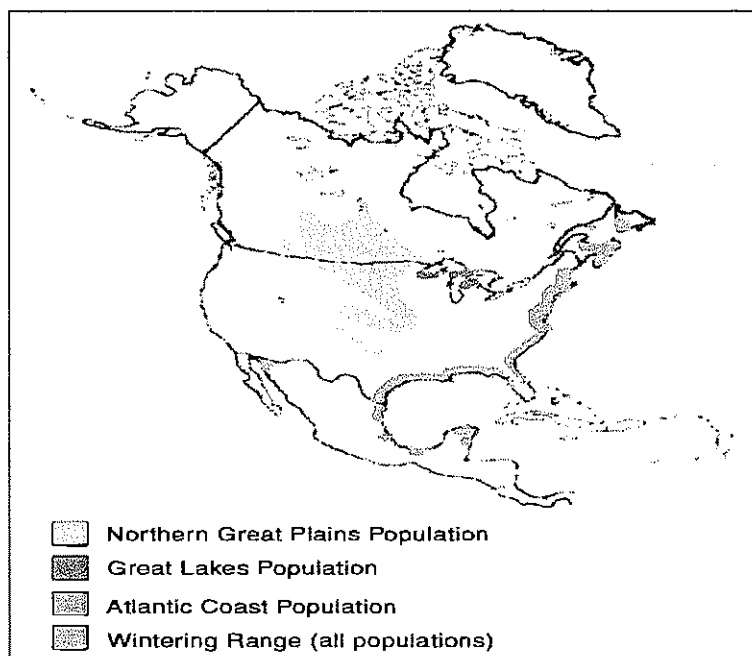


Figure 17. Range of piping plovers.

Natural protection: Cryptic coloration is a primary defense mechanism for this species; nests, adults, and chicks all blend in with their typical beach surroundings. Piping plovers on wintering and migration grounds respond to intruders (pedestrian, avian and mammalian) usually by squatting, running, and flushing (flying).

Foraging/food: Behavioral observation of piping plovers on the wintering grounds suggests that they spend the majority of their time foraging (Nicholls and Baldassarre 1990a; Drake 1999a, 1999b). Feeding activities may occur during all hours of the day and night (Staine and Burger 1994; Zonick 1997), and at all stages in the tidal cycle (Goldin 1993; Hoopes 1993). Wintering plovers primarily feed on invertebrates such as polychaete marine worms, various crustaceans, fly larvae, beetles, and occasionally bivalve mollusks (Bent 1929; Cairns 1977; Nicholls 1989; Zonick and Ryan 1996). They peck these invertebrates on top or just beneath the surface.

Feeding areas: Plovers forage on moist substrate features such as intertidal portions of ocean beaches, washover areas, mudflats, sand flats, algal flats, wrack lines, sparse vegetation, and shorelines of coastal ponds, lagoons, ephemeral pools and adjacent to salt marshes (Gibbs 1986; Zivojnovich 1987; Nichols 1989; Nicholls and Baldassarre 1990a; Nicholls and Baldassarre 1990b; Coutu et al. 1990; Hoopes et al. 1992; Loegering 1992; Goldin 1993; Elias-Gerken 1994; Wilkinson and Spinks 1994; Zonick 1997; Service 2001a). Studies have shown that the relative importance of various feeding habitat types may vary by site (Gibbs 1986, Coutu et al. 1990; McConnaughey et al. 1990; Loegering 1992; Goldin 1993; Hoopes 1993). Cohen et al. (2006) documented more abundant prey items and biomass in sound island and sound beaches than the ocean beach.

Habitat: Wintering piping plovers appear to prefer coastal habitat that include sand flats adjacent to inlets or passes, sandy mud flats along prograding spits (areas where the land rises with respect to the water level), ephemeral pools, and overwash areas as foraging habitats. These substrate types have a richer infauna than the foreshore of high energy beaches and often attract large numbers of shorebirds (Cohen et al. 2006). Wintering plovers are dependent on a mosaic of habitat patches and move among these patches depending on local weather and tidal conditions (Nicholls and Baldassarre 1990a). Drake (1999b) monitored the movement of 48 piping plovers in south Texas for one season. She found, using 95 percent of the documented locations, that these birds had a mean home range of 3,117 acres. Drake (1999b) also noted that the mean linear distance moved per individual bird was 2 miles for the fall through the spring of 1997-1998. Observations suggest that this species exhibits a high degree of wintering site fidelity (Drake et al. 2001; Stucker and Cuthbert 2006).

Migration: Plovers depart their breeding grounds for their wintering grounds from July through late August, but southward migration extends through November. Piping plovers use habitats in the Florida from July 15 through May 15. Both spring and fall migration routes of Atlantic Coast breeders are believed to occur primarily within a narrow zone along the Atlantic Coast (Service 1996). Some mid-continent breeders travel up or down the Atlantic Coast before or after their overland movements (Stucker and Cuthbert 2006). Use of inland stopovers during migration is also documented (Pompei and Cuthbert 2004). Information from observation of color-banded piping plovers indicates that the winter ranges of the breeding populations overlap to a significant degree. Therefore, the source breeding population of a given wintering individual cannot be determined in the field unless it has been banded or otherwise marked. Confirmed sightings from all three breeding populations have been documented in the Florida.

While piping plover migration patterns and needs remain poorly understood and occupancy of a particular habitat may involve shorter periods relative to wintering, information about the energetics of avian migration indicates that this might be a particularly critical time in the species' life cycle. The possibility of lower survival rates for Atlantic Coast piping plovers breeding at higher latitudes (based on relationships between population trends and productivity) suggest that migration stress may substantially affect survival rates of this species (Hecht 2006). The pattern of both fall and spring counts at many Atlantic Coast sites demonstrates that many piping plovers make intermediate stopovers lasting from a few days up to one month during their migrations (Noel et al. 2005; Stucker and Cuthbert 2006). In addition, this species exhibits a high degree of both intra- and inter-annual wintering site fidelity (Nicholls and Baldassarre 1990; Drake et. al. 2001; Noel et al. 2005; Stucker and Cuthbert 2006).

The Service has designated critical habitat for the piping plover on three occasions. Two of these designations protected different breeding populations of the piping plover. Critical habitat for the Great Lakes breeding population was designated May 7, 2001 (66 FR 22938, Service 2001a), and critical habitat for the northern Great Plains breeding population was designated September 11, 2002 (67 FR 57637, Service 2002). The Service designated critical habitat for wintering piping plovers on July 10, 2001 (66 FR 36038, Service 2001b). Wintering piping plovers may include individuals from the Great Lakes and northern Great Plains breeding populations as well as birds that nest along the Atlantic coast. The three separate designations of

pipin plover critical habitat demonstrate diversity of constituent elements between the two breeding populations as well as diversity of constituent elements between breeding and wintering populations.

Designated wintering pipin plover critical habitat originally included 142 areas [the rule states 137 units; this is in error] encompassing about 1,793 miles of mapped shoreline and 165,211 acres of mapped areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

Since the designation of wintering critical habitat, 19 units (TX- 3,4,7-10, 14-19, 22, 23, 27,28, and 31-33) in Texas have been vacated and remanded back to the Service for reconsideration by Court order (Texas General Land Office v. U.S. Department of Interior (Case No. V-06-CV-00032)). Four units in North Carolina have been vacated and remanded back to the Service for reconsideration by Court order (Cape Hatteras Access Preservation Alliance v. U.S. Department of Interior (344 F. Supp. 2d 108 (D.D.C. 2004))). The four critical habitat units vacated were NC-1, 2, 4, and 5, and all occurred within Cape Hatteras National Seashore (CAHA). On June 12, 2006, the Service proposed to amend and re-designate these four units as critical habitat for wintering pipin plover (71 FR 33703, Service 2006b), leaving a total of 119 designated critical habitat units and 110,461 acres. The primary constituent elements for pipin plover wintering habitat are those biological and physical features that are essential to the conservation of the species. The primary constituent elements are those habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. These areas typically include those coastal areas that support intertidal beaches and flats and associated dune systems and flats above annual high tide (Service 2001a). PCEs of wintering pipin plover critical habitat include sand or mud flats or both with no or sparse emergent vegetation. Adjacent unvegetated or sparsely vegetated sand, mud, or algal flats above high tide are also important, especially for roosting pipin plovers (Service 2001a). Important components of the beach/dune ecosystem include surf-cast algae, sparsely vegetated back beach and salterns, spits, and washover areas. Washover areas are broad, unvegetated zones, with little or no topographic relief, that are formed and maintained by the action of hurricanes, storm surge, or other extreme wave action. The units designated as critical habitat are those areas that have consistent use by pipin plovers and that best meet the biological needs of the species. The amount of wintering habitat included in the designation appears sufficient to support future recovered populations, and the existence of this habitat is essential to the conservation of the species. Additional information on each specific unit included in the designation can be found at 66 FR 36038 (Service 2001a).

Life history

Pipin plover breeding activity begins in mid-March when birds begin returning to their nesting areas (Coutu et al. 1990; Cross 1990; Goldin 1990; MacIvor 1990; Hake 1993). Plovers are known to begin breeding as early as one year of age (MacIvor 1990; Haig 1992); however, the percentage of birds that breed in their first adult year is unknown. Pipin plovers generally fledge only a single brood per season, but may reneat several times if previous nests are lost.

Demographic models for pipin plovers indicate that even small declines in adult and juvenile survival rates will cause very substantial increases in extinction risk (Melvin and Gibbs 1994;

Amirault et al. 2005). Furthermore, insufficient protection of non-breeding piping plovers and their habitat has the potential to quickly undermine the progress toward recovery achieved at other sites. For example, a banding study conducted between 1998 and 2004 in Atlantic Canada found lower return rates of juvenile (first year) birds to the breeding grounds than was documented for Massachusetts (Melvin and Gibbs 1996, cited in Appendix E, Service 1996), Maryland (Loefering 1992), and Virginia (Cross 1996) breeding populations in the mid-1980s and very early 1990s. This is consistent with failure of the Atlantic Canada population to increase in abundance despite very high productivity (relative to other breeding populations) and extremely low rates of dispersal to the U.S. over the last 15 plus years (Amirault et al. 2005). Simply stated, this suggests that maximizing productivity does not ensure population increases. Management must focus simultaneously on all sources of stress on the population within management control (predators, ORVs, etc.). Drake et al. (2001) evaluated winter piping plover habitat use in Texas and determined they have relatively small home-ranges and high survivorship from arrival in fall through spring departure. Cohen et al. (2006) experienced 100 percent winter survival of radio-tagged birds in a study conducted in North Carolina from December 2005 to March 2006. They speculate their high survival rate was attributed to plovers food availability much of the day as well as the low occurrence of days below freezing and infrequent wet weather.

Piping plovers live an average of five years, although studies have documented birds as old as 11 (Wilcox 1959) and 15 years.

Population dynamics

Northern Great Plains Population

The northern Great Plains plover breeds from Alberta to Manitoba, Canada and south to Nebraska; although some nesting has recently occurred in Oklahoma. Currently the most westerly breeding piping plovers in the United States occur in Montana and Colorado. The northern Great Plains is the largest of the three breeding populations (2006 data report 4,698 birds including the 2,962 in the U.S. (Ryba 2007)). The 2006 International Census reported a substantial increase since 2001 in both the U.S. and Canadian portion of the northern Great Plains breeding population.

Great Lakes Population

The Great Lakes plovers once nested on Great Lakes beaches in Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario, Canada. Russell (1983) reviewed historical records to estimate the pre-settlement populations of the plover throughout this range. Total population estimates ranged from 492 to 682 breeding pairs in the Great Lakes region. Michigan alone may have had the most plovers with as many as 215 pairs.

The endangered Great Lakes population is at a perilously low level. From an all-time low of 12 nesting pairs in 1990, the population increased to 32 nesting pairs in 1999, 58 nesting pairs in 2005, and 53 pairs in 2006 (Roche 2006). Although the increase from 32 pairs to 58 pairs is very important, this population remains extremely vulnerable due to the low numbers.

Sightings of banded birds in the Great Lakes during the 2005 breeding season indicate that adult mortality during winter 2004-2005 and spring migration 2005 was higher than normal, and this data is supported by a smaller population increase than was expected based on productivity in 2003 and 2004 (Stucker and Cuthbert 2006). Future-year detection of individuals presumed lost may determine that this survival estimate is low, but the apparent increase in mortality has potentially grave implications for survival and recovery of this imperiled population.

Atlantic Coast Population

The Atlantic Coast piping plover breeds on coastal beaches from Newfoundland and southeastern Quebec, Canada to North Carolina. The Atlantic Coast population has increased from 790 pairs since listing to a preliminary estimation of 1,632 pairs in 2005 (Service 2006b). Between 2004 and 2005, Atlantic Coast breeding population abundance estimates declined in the northern and central parts of the range and increased in the south, with an overall decline of approximately 2 percent. The 2005 productivity in the U.S. portion of the Atlantic range was below the long-term average. Atlantic Coast data for 2006 or 2007 are not yet available.

Status and distribution

Non-breeding (migrating and wintering)

Piping plovers winter in coastal areas of the U.S. from North Carolina to Texas and in portions of Mexico and the Caribbean. Birds from the three breeding populations overlap in their use of migration and winter habitat. In Florida, the majority of wintering birds on the Gulf Coast are likely to be from the northern Great Plains population, although individuals from the Great Lakes and Atlantic populations have been documented. The majority of the birds using the Atlantic Coast are believed to be from the Atlantic breeding population. Repeated sightings for >8 years of banded Great Lakes birds have documented their use of the coast of the Carolinas, Georgia (Noel et al. 2005), Alabama (Stucker and Cuthbert 2006) and Florida's Atlantic Coast (Leary 2007).

In 2001, 2,389 piping plovers were located during a winter census, accounting for only 40 percent of the known breeding birds recorded during a breeding census (Ferland and Haig 2002). About 89 percent of birds that are known to winter in the U.S. do so along the Gulf Coast (Texas to Florida), while eight percent winter along the Atlantic coast (North Carolina to Florida). Four range-wide population surveys have been conducted for the piping plover; the 1991 (Haig and Plissner 1992), the 1996 (Plissner and Haig 1997), the 2001 (Ferland and Haig 2002) and the 2006. The 2006 International Census results have not yet been published. These four surveys were completed to help determine the species distribution and to monitor progress towards recovery. Table 14 summarizes the results of the wintering census. Total numbers have fluctuated over time with some areas experiencing increases and others decreases. Fluctuations are predominately due to the location, quality, and extent of suitable non-breeding habitat that may vary over time due to regional rainfall and anthropogenic hydrologic manipulation and disturbance. Fluctuations could also represent unequal survey efforts or localized conditions during surveys. The increased numbers of birds counted in Texas in 2006 may reflect a shift of birds away from areas such as the Chandeleur Islands in Louisiana that were negatively impacted

by Hurricane Katrina in 2005 (Cobbs 2006). The increase in the 2006 numbers from the Caribbean is due to increased survey efforts (Maddock 2006).

Table 14. Results of the 1991, 1996, 2001, and unofficial 2006 International Piping Plover Wintering Census.

Location	1991	1996	2001	2006
North Carolina	20	50	87	84
South Carolina	51	78	78	82
Georgia	37	124	111	212
Florida	551	375	416	414
-Atlantic	70	31	111	unk
-Gulf	481	344	305	unk
Alabama	12	31	30	29
Mississippi	59	27	18	78
Louisiana	750	398	511	224
Location	1991	1996	2001	2006
Texas	1,904	1,333	1,042	2,158
Puerto Rico	0	0	6	?
U.S. Total	3,935	2,416	2,299	~3,281
Mexico	27	16	Not surveyed	76
Caribbean	40	83	90	378
GRAND TOTAL	3,451	2,515	2,389	3,735
% of Breeding Census	62.9%	42.4%	40.2%	unknown

The status of piping plovers on winter and migration grounds is difficult to assess, but threats to piping plover habitat used during winter and migration identified by the Service during its designation of critical habitat continue to affect the species. Unregulated motorized and pedestrian recreational use, inlet and shoreline stabilization projects, beach maintenance and nourishment, and pollution affect most winter and migration areas. Conservation efforts at some locations have likely resulted in the enhancement of wintering habitat.

The 2004 and 2005 hurricane seasons affected a substantial amount of habitat along the Gulf Coast. Habitats such as those along Gulf Islands National Seashore have benefited from increased washover events which created optimal habitat conditions for piping plovers. On the flip side, hard shoreline structures are put into place throughout the species range to prevent such shoreline migration (see *Factors Affecting Species Environment within the Action Area*). The Chandeleur Islands, a north-south oriented chain of low-lying islands, located approximately 62 miles east of the city of New Orleans, Louisiana, were impacted by hurricanes Lili (2002), Ivan (2004), Dennis (2005) and Katrina (2005), the strongest and closest in proximity to the Chandeleurs) (USGS 2005). Early estimates are that Hurricane Katrina removed about 85 percent of the sand from the beach and dunes of the Chandeleur Islands. It is unknown how much sand is likely to return under natural conditions to rebuild these barrier islands (Williams 2006). The Chandeleur Island Chain was used consistently by piping plovers and was designated critical habitat in 2001.

The Service is aware of the following site-specific conditions that affect the status of several habitats piping plover use while wintering and migrating, including critical habitat units. In Texas, one critical habitat unit was afforded greater protection due to the acquisition of adjacent upland properties by the local Audubon chapter. In another unit in Texas, vehicles were removed from a portion of the beach decreasing the likelihood of automobile disturbance to plovers. In Florida, land acquisition has been initiated within portions of one critical habitat unit in the panhandle. Exotic plant removal is occurring in another Florida critical habitat unit in South Florida that threatens to invade suitable piping plover habitat. The Service remains in a contractual agreement with the USDA for predator control within limited coastal areas in the panhandle, including portions of some critical habitat units. Continued removal of potential terrestrial predators is likely to enhance survivorship of wintering and migrating piping plovers. In North Carolina, one critical habitat unit was afforded greater protection when the local Audubon chapter agreed to manage the area specifically for piping plovers and other shorebirds following the relocation of the nearby inlet channel.

Several projects have resulted in formal consultation for piping plovers or their designated critical habitat in the Florida Panhandle (**Table 15**). Emergency consultation for beach nourishment at Navarre Beach resulted in supplying the permittee with avoidance and minimization measures to lessen the impacts to optimal piping plover habitat that may have been created by the hurricane. Emergency consultations with FEMA for berm placement post Hurricane Ivan, resulted in similar guidance. These projects are complete; however, final consultation is not yet complete. No formal consultations have taken place in South Florida Vero Beach jurisdiction. A few consultations have resulted in formal consultation for piping plovers or their designated critical habitat in Northeast Florida.

Table 15. Biological opinions issued for all projects that had adverse impact to the piping plovers on non-breeding grounds in Florida.

SPECIES Piping plover	YEAR	PROJECT ACTIVE YES/NO
East Pass re-opening	2001	Completed
Amend BO for south jetty extension in Ponce De Leon Navigation Inlet	2003	Completed
Terminal groin and nearshore breakwater on south end of Amelia Island, Nassau, FL	2004	Completed
Eglin AFB INRMP	2002-2007	Consultation ongoing
Pensacola Beach beach nourishment original Amd. 1	2002-2005	Initial completed & hurricane recovery completed
Navarre beach nourishment emergency consultation and Amd. 1-6	2005	Project completed, consultation not completed
Renewal and Amend Volusia County, FL ITP	2005	Consultation complete, actions ongoing
Eglin Santa Rosa Island Programmatic	2005-2007	Consultation ongoing
Tyndall AFB INRMP	2006-2007	Consultation ongoing

SPECIES Piping plover	YEAR	PROJECT ACTIVE YES/NO
St. Joseph Peninsula beach restoration	2007	Consultation complete, project not started
Alligator Point beach nourishment	2007	Consultation complete, project not started
NAS pass dredging and spoil placement	2007	Consultation ongoing

Recovery criteria

Northern Great Plains Population (Service 1994)

1. Increase the number of birds in the U.S. northern Great Plains states to 2,300 pairs.
2. Attain recovery objective of 813 pairs amongst 4 Provinces for Prairie Canada (Goossen et al. 2002).
3. Secure long term protection of essential breeding and wintering habitat.

Great Lakes Population (Service 2003d)

1. At least 150 pairs (300 individuals), for at least 5 consecutive years, with at least 100 breeding pairs (200 individuals) in Michigan and 50 breeding pairs (100 individuals) distributed among sites in other Great Lakes states.
2. Five-year average fecundity within the range of 1.5-2.0 fledglings per pair, per year, across the breeding distribution, and ten-year population projections indicate the population is stable or continuing to grow above the recovery goal.
3. Protection and long-term maintenance of essential breeding and wintering habitat is ensured, sufficient in quantity, quality, and distribution to support the recovery goal of 150 pairs (300 individuals).
4. Genetic diversity within the population is deemed adequate for population persistence and can be maintained over the long-term.
5. Agreements and funding mechanisms are in place for long-term protection and management activities in essential breeding and wintering habitat.

Atlantic Coast Population (Service 1996)

1. Increase and maintain for 5 years a total of 2,000 breeding pairs, distributed among 4 recovery units.
2. Verify the adequacy of a 2,000 pair population of piping plovers to maintain heterozygosity and allelic diversity over the long term.
3. Achieve a 5-year average productivity of 1.5 fledged chicks per pair in each of the 4 recovery units described in criterion 1, based on data from sites that collectively support at least 90 percent of the recover unit's population.
4. Institute long-term agreements to assure protection and management sufficient to maintain the population targets and average productivity in each recovery unit.
5. Ensure long-term maintenance of wintering habitat, sufficient in quantity, quality, and distribution to maintain survival rates for a 2,000-pair population.

Threats to Piping Plovers

Predation: Predation has been identified as a major factor limiting piping plover reproductive success but the impact predation has on piping plovers while on migration or wintering grounds is unknown. Substantial evidence exists that human activities are affecting types, numbers, and activity patterns of predators, thereby exacerbating natural predation. Non-native species such as feral cats are considered significant predators on some sites (Goldin et al. 1990; Post 1991). Humans have also indirectly influenced predator populations; for instance, human activities abetted the expansions in the populations and/or range of other species such as gulls (Drury 1973; Erwin 1979). Strauss (1990) found that the density of fox tracks on a beach area was higher during periods of more intensive human use. Predatory birds also are relatively common during their fall and spring migration along the Atlantic Ocean coastline, and there is a possibility they may occasionally take piping plovers.

Weather: Piping plover habitats (breeding and non-breeding) are dependent on natural forces although storms and severe cold weather are believed to take their toll on piping plovers. After an intense snowstorm swept the entire North Carolina coast in late December 1989, high mortality of many coastal bird species was noted (Fussell 1990). Piping plover numbers decreased significantly from about 30 to 40 birds down to 15 birds. While no dead piping plovers were found, circumstantial evidence suggests that much of the decrease was mortality (Fussell 1990). Hurricanes may also result in direct mortality or habitat loss, and if piping plover numbers are low enough or if total remaining habitat is very sparse relative to historical levels, population responses may be impaired even through short-term habitat losses. Wilkinson and Spinks (1994) suggest that, in addition to the unusually harsh December 1989 weather, low plover numbers seen in South Carolina in January 1990 (11 birds, compared with more than 50 during the same time period in 1991 to 1993) may have been influenced by effects on habitat and food availability caused by Hurricane Hugo which came ashore there in September 1989. Hurricane Elena struck the Alabama Coast in September 1985 and subsequent surveys noted a reduction of foraging intertidal habitat on Dauphin and Little Dauphin Islands (Johnson and Baldassarre 1988). Birds were observed foraging at Sand Island, a site that was used little prior to the hurricane.

Vehicles: Vehicles significantly degrade piping plover habitat or disrupt normal behavior patterns. Vehicular and/or pedestrian disturbance that reduces plover use and/or impairs their foraging efficiency on soundside tidal flats is particularly injurious. Multiple studies have shown that bay tidal flats have relatively high indices of arthropod abundance compared with other microhabitats, and that piping plovers select these habitats in greater proportion than their availability (Loefering and Fraser 1995; Cross and Terwilliger 2000; Elias et al. 2000; Houghton et al. 2005). Zonick (2000) found that off road vehicle (ORV) density negatively correlated with abundance of roosting plovers on the ocean beach. Studies elsewhere (Wheeler 1979) demonstrate adverse effects of ORV driving on soundside beaches on the abundance of infauna essential to piping plover foraging requirements.

Recreational Activities: Pedestrian and non-motorized recreational activities can be a source of both direct mortality and harassment of piping plovers. There are a number of potential sources for pedestrians on the beach, including those individuals driving and subsequently parking on the

beach, those originating from off-beach parking areas (hotels, motels, commercial facilities, beachside parks, etc.), and those from beachfront and nearby residences. Essentially, the magnitude of threats to coastal species is particularly significant because vehicles extend impacts to remote stretches of beach where human disturbance would be very slight if access were limited to pedestrians only. Human recreation on coastal habitats can cause adverse impacts on dune formation, vegetation, and the invertebrate and vertebrate fauna.

Elliott and Teas (1996) found a significant difference in actions between piping plovers encountering pedestrians and those not encountering pedestrians. Piping plover not encountering pedestrians spend proportionately less time in active non-foraging behavior. This study suggests that interactions with pedestrians on beaches cause birds to shift their activities from calorie acquisition to calorie expenditure. In winter and migration sites, human disturbance continues to decrease the amount of undisturbed habitat and appears to limit local piping plover abundance (Zonick and Ryan 1996). The disturbance distance for wintering and migrating western snowy plovers in a California study was 98.4 feet for pedestrians and pets, but a higher proportion of pets than pedestrians disturbed plovers (Lafferty 2001).

During spring, summer, and fall months in Florida, recreational boaters find barrier island washover areas and peninsular tips attractive landing spots to spend the day, which may prove an increasing issue for piping plovers especially during migration months. This is particularly true on weekends and holidays.

Dogs: The presence of pets increases disturbance to wintering and migrating piping plovers. Pedestrians have been observed walking their dogs through congregations of feeding shorebirds and encouraging their dogs to chase the birds. Noncompliant pet owners who allow their dogs off leash have the potential to flush piping plovers and these flushing events may be more prolonged than those associated with pedestrians or pedestrians with dogs on leash. A study conducted on Cape Cod, Massachusetts found that the average distance at which piping plovers were disturbed by pets was 150 feet, compared with 75 feet for pedestrians. Furthermore, the birds reacted to the pets by moving an average of 187 feet, compared with 82 feet when the birds were reacting to a pedestrian, and the duration of the disturbance behavior stimulated by pets was significantly greater than that caused by pedestrians (Hoopes 1993). Disturbance also reduces the time migrating shorebirds spend foraging (Burger 1991) and has been implicated as a factor in the long-term decline of migrating shorebirds at staging areas (Pfister et al. 1992).

Viruses: Preliminary reports suggested West Nile virus was a potential threat on the northern Great Plains population in 2003 or 2004, but a case has yet to be confirmed (Dingledine 2006). Shorebird testing throughout the U.S. for Avian Flu is ongoing. One piping plover was captured and swabbed in Florida in December 2006. Results are undetermined with ongoing research.

Oil Spills: Oil spills pose a threat to piping plovers throughout their life cycle. Oiled plovers have been reported from Matagorda Island National Wildlife Refuge, Texas (Service 1996). Four piping plovers have been reported in the Jacksonville, Florida area with greased undersides (Leary 2007). No known oil spill was reported in the area. It is possible they became greased while roosting in wrack that accumulated remnant oil from some offshore activity. Impacts are undetermined.

Exotic vegetation: In Florida, 39-64% of the non-indigenous plant species considered to be most invasive by the Florida Exotic Pest Plant Council may actually alter the ecosystems that they invade through changes in such properties as geomorphology, hydrology, biogeochemistry, and disturbance (Gordon 1998). Like many invasive species, coastal exotic plants reproduce and spread quickly and exhibit dense growth habits, often outcompeting native plant species. Crowfootgrass (*Dactyloctenium aegyptium*) grows invasively along portions of the Florida coastline and forms thick bunches or mats that may change the vegetative structure of coastal plant communities and alter shorebird habitat. The exotic Australian pine (*Casuarina equisetifolia*) also changes the vegetative structure of the community. Because shorebirds prefer foraging in open areas where they are able to see potential predators and because tall trees provide good perch sites for avian predators, Australian pines may impact shorebirds by limiting the availability of optimal foraging habitat.

Habitat Loss/Degradation: Important components of ecologically sound barrier beach management include perpetuation of natural dynamic coastal formation processes. Man-made structures along the shoreline or manipulation of natural inlets upset the dynamic processes and result in habitat loss or degradation (Melvin et al. 1991). Throughout the range of migrating and wintering piping plovers, inlet and shoreline stabilization, inlet dredging, and beach maintenance and renourishment activities continue to constrict natural coastal processes. Dredging of inlets can affect spit formation adjacent to inlets, while jetties can cause widening of islands and subsequent growth of vegetation on inlet shores. Over time, both result in loss of plover habitat. Additional investigation is warranted to determine the extent to which these disturbance factors affect wintering plovers on a cumulative nature.

Analysis of the species/critical habitat likely to be affected

The proposed action has the potential to adversely affect wintering and migrating piping plovers and their habitat from all three populations within the proposed project area and Action Area. The Atlantic Coast nesting population of piping plover is a component of the entity listed as threatened which encompasses all breeding piping plovers (Great Plains and Atlantic) except the Great Lakes breeding population. As reported by Haig et al. (2005), results of the 2001 Plover Breeding Census indicate an 8.4 percent increase from 1991 census, but only a 0.2 percent increase since 1996. Regional trends suggest that since 1991, numbers of breeding birds increased on the Atlantic Coast by 78 percent and by 80 percent in the Great Lakes. The 2006 International Census reported a substantial increase since 2001 in both the U.S. and Canadian portion of the northern Great Plains breeding population.

Florida has 34 piping plover designated critical habitat units, comprising approximately 26 percent of its coastline. The 34 units include approximately 68 miles of federal shoreline, 120 miles of State shoreline and 24 miles of shoreline in private ownership (including non-profit organizations). This equates to approximately 212 miles of shoreline in Florida designated as critical habitat for the piping plover. As noted previously any FEMA berm or berm repair proposed within designated critical habitat for piping plover will require separate consultation.

We will consider the effects of the proposed action of berm placement on piping plovers and their habitat in the following sections. The effects of the proposed berm placement are expected to fill newly created habitat and to impede natural coastal processes, which will continue to diminish quantity and quality of bayside intertidal foraging habitats used by piping plovers within the Action Area, resulting in possible decreased survivorship of migrating and wintering piping plovers. Other projects, which include beach nourishment, jetty extensions, and inlet dredging activities that have affected the conservation of piping plovers wintering or migrating in northwest Florida are included in the Service's evaluation of the species current status (Table 15).

ENVIRONMENTAL BASELINE

Status of the species within the action area

The coastline of Florida is composed of barrier and peninsular islands that are part of a complex and dynamic coastal system that continually responds to inlets, tides, waves, erosion and deposition, longshore sediment transport, and depletion, fluctuations in sea level, and weather events. The location and shape of barrier islands beaches perpetually adjusts to these physical forces. Winds move sediment across the dry beach forming dunes and the island interior landscape. The natural communities contain plants and animals that are subject to shoreline erosion and deposition, salt spray, wind, drought conditions, and sandy soils. Vegetative communities include foredunes, primary and secondary dunes, interdunal swales, sand pine scrub, and maritime forests. During storm events, overwash is common and may breach the island at dune gaps or other weak spots, depositing sediments on the interior and backsides of islands, increasing island elevation and accreting the sound shoreline. Breaches may result in new inlets through these islands.

The interaction between the biology and geomorphology of barrier islands is complex. Just as the barrier island undergoes a process of continual change, so do the ecological communities present. Vegetation zones gradually re-establish following storms, and in turn affect physical processes such as sand accretion, erosion, and overwash. The beach front, dunes, and overwash areas all provide important habitat components. Many barrier island species are adapted to respond positively to periodic disturbance. As the island widens, new feeding habitat (sand and mud flats) is created for shorebirds such as the piping plover. Low wide beaches provide roosting and feeding habitat for shorebirds. These barrier island habitats are becoming increasingly rare as our Nation's coastlines rapidly develop.

The known distribution of the piping plover in Florida is a result of occasional statewide cursory surveys combined with sporadic localized surveys that provide better estimates on abundance and seasonal use in those specific areas depending on the strength of the surveys. Currently the International Plover Winter Census as summarized in Table 14 remains the only consistent winter survey effort for piping plovers on a statewide basis (Ferland and Haig 2002). Relative to abundance and relying on the results of the International Plover Winter Census, Florida ranks in the top third of eight southeastern states on which wintering piping plovers depend. The section above "*Status and Distribution: non-breeding (migrating and wintering)*" explains the limitations in the data collected during the International Census survey window with regard to

locating all sites and exact numbers of plovers in specific locations. By their nature, the habitat features that piping plovers depend on are in a constant state of change thereby making it difficult to document the exact status of piping plovers in the Action Area on any given year at any given site.

We use the results of the following survey effort to demonstrate the limitations of relying on just the results of the International Plover Winter Census or any short term, one day or season survey effort for a species dependent on dynamic habitats. In 2006, the Service and the American Bird Conservancy funded the Apalachicola Riverkeeper to collect shorebird abundance and distribution data throughout Franklin County, Florida. Survey data was collected from August 2006, through May 2007. Attempts were made to visit each primary site at least twice monthly. One area known for its historic plover use, Phipps Preserve, was visited twenty-four times with surveys between August 15, 2006 through May 1, 2007. Numbers of piping plover recorded ranged from zero to a high of 47 piping plovers on two different days (**Figure 18**). The 2005 International Plover Winter Census reported 17 piping plovers on Phipps Preserve. Given that piping plovers evolved in a dynamic system, and that they are dependent upon these ever-changing features for their survival and conservation it is important that sites that experience these natural processes where plover habitat may come and go, are protected.

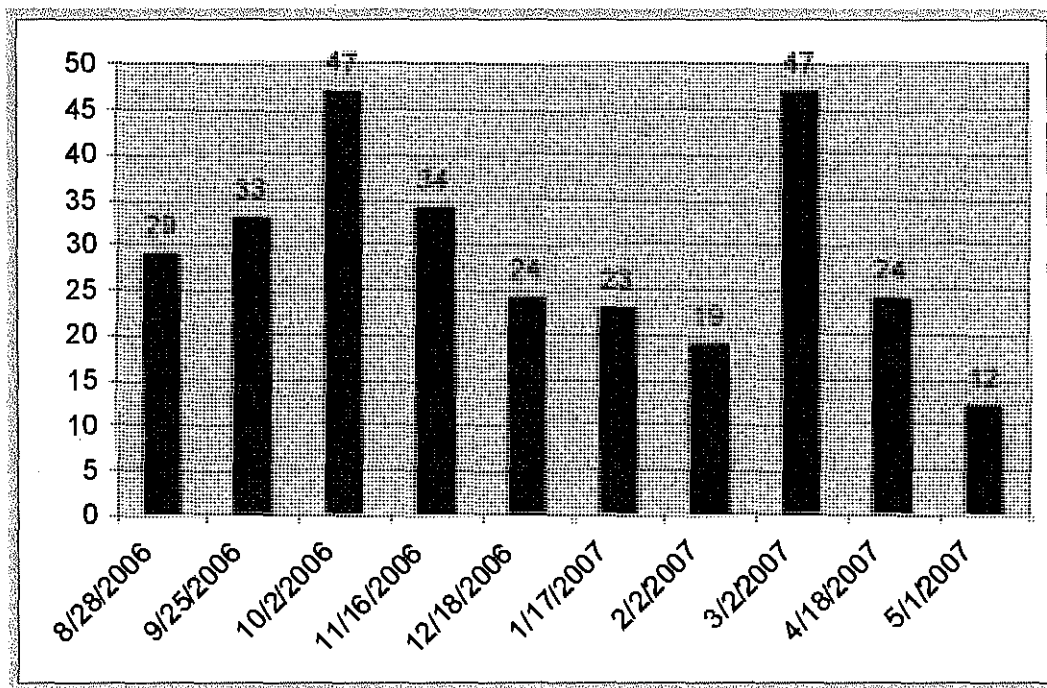


Figure 18. Apalachicola Riverkeeper and American Bird Conservancy piping plover sightings from August 2006 through May 1, 2007.

Factors affecting species environment within the action area

A number of ongoing anthropogenic and natural factors may affect the piping plover in the Action Area. Many of these effects have not been evaluated with respect to biological impacts on the species. In addition, some are interrelated and the effects of one cannot be separated from others. Known or suspected factors affecting the species in the Action Area are discussed below.

All threats discussed above (*see threats: Status and Distribution section*) are threats seen throughout piping plover habitat in the entire Action Area. Depending on the local land codes, land ownership and enforcement capabilities, some threats are more pronounced in some areas than others.

Increasing Trend of Berm Placement and Nourishment Projects in Response to Storm Events

In the wake of an apparent increasing trend in episodic storm events, managers of lands under public, private and county ownership chose to protect coastal structures using emergency storm berms usually followed by nourishment activities. Berm placement and beach nourishment place substantial amounts of sand along the Gulf beaches in hopes of preventing what otherwise would be considered “natural processes” of overwash and island migration.

Past and ongoing stabilization projects along the NW Florida coastline and all of the Action Area have fundamentally altered the naturally dynamic coastal processes that create and maintain beach strand habitats (**Figure 18**). Hard shoreline stabilization structures such as jetties and groins interrupt littoral drift, while artificially created berms and nourishment prevent overwash. These structures prevent natural shoreline migration. Such stabilization has encouraged residential and commercial development and associated infrastructure along otherwise ephemeral and/or flood prone habitats. The subsequent development has forestalled formation of highly productive piping plover overwash habitats and eliminated connectivity of piping plover oceanfront and bayside roosting and foraging habitats. The results of these projects have essentially forced public lands and some undeveloped private lands into becoming an oasis for endangered species such as the piping plover as well as other non-listed species. Of concern is the increasing trend of public lands applying these same actions. Figure 19 shows the designated critical habitat units for piping plovers in the NW Florida panhandle and the results of the 2006 International Plover Winter Census. It does not seem a coincidence that the areas populated with piping plovers in this snapshot survey are the areas that are not artificially stabilized and developed and preclude natural successional stages and processes from occurring. While berms are installed to protect existing structures they further prevent natural shoreline processes. A similar pattern is seen throughout Florida (ABC and FWS unpublished data 2007). Recreational pressures are heavy on both the natural and unnatural lands, so it appears to be more a habitat component that makes the difference in areas selected for use by piping plovers.

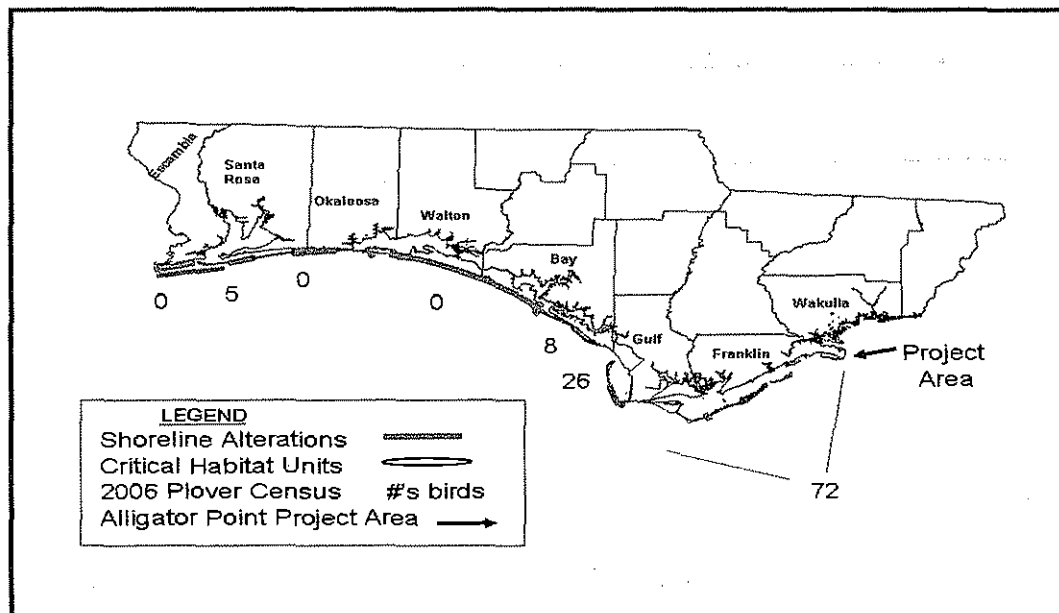


Figure 19. Comparison of shoreline stabilization projects (beach nourishment, hardening) and piping plover census data.

Intraspecific and Interspecific Shorebird Competition

Historically, prior to high human densities and beach hardening projects, approximately 825 miles of coastline and parallel bayside flats (unspecified amount) of habitat occurred in Florida. This provided an unspecified amount of optimal foraging habitat for many shorebird species depending on the cumulative successional stages of the coastline. To date, approximately thirty-five percent of the coastline remains where coastal dynamics are allowed to function in Florida. As coastal functions are prohibited, formations of habitat appealing to different bird species dependent on these processes become more and more concentrated into the remaining optimal areas for foraging and roosting. It is likely they are, or will be, forced to forage and roost in less optimal areas.

Up to 24 shorebird species migrate or winter along the Atlantic Coast and almost 40 species of shorebirds occur during migrational and wintering periods in the Gulf of Mexico region (Helmert 1992). Continual degradation and loss of habitat needed by migrating and wintering shorebirds elevates the risk of increased pressure on remaining food supplies. Food limitations potentially increase intraspecific and interspecific competition and could result in eventual mortality. Shorebirds require maximum fat reserves to complete migrations. Birds with less than maximum fat reserves could be expected to show reduced survivorship. Piping plovers are part of this overall shorebird niche that may be forced to compete with the other 24 to 40 species of shorebirds dependent on Florida coastline habitats for some part of their life cycle. Shorebird species numbers are universally declining. The complexities of a shorebird life cycle make it difficult to determine what role the loss of 65 percent of habitat has played in this overall decline but it is likely significant.

EFFECTS OF THE ACTION

Factors to be considered

Unknown lengths of emergency berm repairs are proposed under this consultation. FEMA requires that emergency berms be confined to locations and dimensions needed to protect improved property from no more than a five (5) year storm event. We consider the effects of the proposed action on piping plovers and their habitat in the following sections. The effects of the proposed berm constructions are expected to impact portions of the Action Area for the life of the project.

The geomorphic characteristics of barrier islands, peninsulas, beaches, dunes, overwash fans, and inlets are critical to a variety of natural resources and influence a barrier beach's ability to respond to wave action, including storm overwash and sediment transport. However, the protection or persistence of these important natural land forms, processes, and wildlife resources is often in conflict with long-term, large-scale beach stabilization and property protection projects and their indirect effects, i.e., increases in residential development, infrastructure, and public recreational uses, and preclusion of overwash and creation of inlet formations on which plovers thrive.

Protective, avoidance, and minimization measures have been incorporated into the project plan to avoid or minimize the potential impacts from the emergency berm repair and construction activities. However, even with these measures, impacts to piping plovers are expected to occur from some aspects of the project activities. The work may occur on public and private lands. The manufactured berms will fill in any newly created washover or low lying areas and impede future overwash to bayside flats when placed along barrier islands or peninsulas as is their intention, thereby causing successional advances in the habitat that will preclude its use by piping plovers.

Proximity of action: The emergency beach berm and associated activities may occur within newly created piping plover habitat. Indirect effects of the action – alterations and restrictions in the natural processes of the barrier island, are expected to occur throughout barrier and peninsular islands of Florida, (i.e. the Project and Action Area).

Distribution: Project construction activities and berm placement that may impact piping plovers will occur on the Gulf of Mexico and Atlantic Ocean coastlines throughout the Action Area. Direct and indirect impacts to migrating and wintering piping plover are expected along approximately an equal amount of bayside habitat and washover areas that but for the project would exist in the future.

Timing: The timing of the emergency berm construction and repair activities may occur during the migration and wintering period for piping plovers (July 15-May 15). Indirect effects will occur later in time.

Nature of the effect: The immediate effects are loss of foraging and roosting habitats of migrating and wintering piping plovers. Changes to plover habitat are expected in island morphology due to the elimination or reduction of potential for washover due to the presence of

the constructed berms. Any decrease in survival of birds on migrating or wintering grounds due to lack of optimal habitat could contribute to decreased survival rates, decreased productivity on the breeding grounds, and therefore increased vulnerability to any of the three piping plover populations.

Duration: The emergency berm construction and repair will be done only in emergency situations. The berms are constructed to withstand 5-year storms. The direct effects will be sporadic depending on the amount of suitable piping plover habitat created by the storm event that created the need for an emergency berm. Alteration of the natural barrier island processes are expected for the life of the berm (5 years).

Disturbance frequency: Construction will be a short term disturbance. The frequency will be dependent on the frequency of storm events.

Disturbance intensity and severity: The construction activities are expected to have short-term and temporary effects on the piping plover populations. Piping plovers located within construction areas would be expected to move outside of the construction zone due to disturbance. Berm construction is expected to indirectly effect island morphology and bayside shoreline dynamics, temporarily eliminating the creation of piping plover habitat.

Analysis for Effects of the Action

Berm placement to protect improved property generally occurs within 1-2 years of erosional weather events that may have facilitated the need for the berms. Optimal piping plover habitat is not usually in the immediate vicinity of highly developed properties due to disturbance factors as well as unsuitable habitat. Following storm events, piping plover habitat may have been created within the vicinity of these developed properties but more likely, piping plovers will be more attracted to habitats that may have formed on the adjacent baysides if development does not completely hinder the dynamics of a washover event. Expected indirect effects are loss of habitat and increased intraspecies and interspecies competition.

Direct effects

Direct effects are those direct or immediate effects of a project on the species or its habitat. The construction window (*i.e.*, disposal of sand for berm placement) for each berm placement project will extend through approximately one piping plover migration and winter season. In low-lying areas, burial and suffocation of invertebrate species will occur during berm placement. Benthic recruitment will not occur in the areas of sand fill.

Heavy machinery and equipment (*e.g.*, trucks and bulldozers operating on project area beaches, the placement of the dredge pipeline along the beach, and sand disposal) may adversely affect migrating and wintering piping plovers in the project area through disturbance and disruption of normal activities such as roosting and feeding, and possibly forcing birds to expend valuable energy reserves to seek available habitat elsewhere.

Indirect effects

The constructed berms will be placed as a protective element against shoreline erosion to protect man-made infrastructure. Indirect effects of temporarily reducing the potential for the formation of optimal habitats, especially along barrier peninsulas that are susceptible to overwash, pose a concern for piping plovers with respect to survival and recovery. The proposed project will perpetuate and contribute to the widespread activities that prevent the formation of these preferred early successional overwash habitats. Additional investigation is warranted to determine the extent to which these disturbance factors cumulatively affect wintering plovers.

The proposed project will limit the creation of optimal foraging and roosting habitat and will increase the attractiveness of these beaches to recreation. The increased recreational use of artificially elevated beaches is often cited by the Corps and others as a benefit of these projects. Recreational activities that may potentially adversely affect plovers include unleashed pets, increased pedestrian use and reduction of foraging habitat from deliberate removal of wrack.

Berms increase the likelihood that landowners or local governments will initiate construction of new infrastructure or upgrade existing facilities, such as roads, buildings, or parking areas adjacent to the project area. Short-term adverse effects may include disturbance to nearby plovers due to construction activities. Longer-term impacts could include a decrease in use of nearby habitat due to increased disturbance levels from recreational activities, increased levels of intraspecies and interspecies competition by concentrating piping plovers and other shorebirds into smaller or less optimal foraging and roosting areas, and the temporary preclusion of the creation of additional recovery habitat.

Species response to the proposed action

This BO is based on direct and indirect effects that are anticipated to piping plovers (wintering and migrating) as a result of constructed berms. In the context of migrating and wintering piping plovers, it is anticipated that highly eroded areas along the Florida coastline and an unspecified number of piping plovers could be impacted by habitat loss due to direct fill, construction disturbance, increased recreational disturbance and increased competition in the remaining habitats by intraspecific and interspecific shorebirds, and temporarily preclude the creation of habitat.

Disturbance reduces the time migrating shorebirds spend foraging (Burger 1991) and has been implicated as a factor in the long-term decline of migrating shorebirds at staging areas (Pfister et al. 1992). While piping plover migration patterns and needs remain poorly understood and occupancy of a particular habitat may involve shorter periods relative to wintering, information about the energetics of avian migration indicates that this might be a particularly critical time in the species' life cycle. Foraging and roosting on suboptimal habitat or in higher shorebird concentrations on the non-breeding grounds by migrating and wintering piping plovers may reduce the fitness of individuals.

Demographic models for piping plovers indicate that even small declines in adult and juvenile survival rates will cause very substantial increases in extinction risk (Melvin and Gibbs 1994; Amirault et al. 2005). Furthermore, insufficient protection of non-breeding piping plovers and their habitat has the potential to quickly undermine the progress toward recovery achieved on the breeding grounds.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local, or private actions that are reasonably certain to occur in the Action Area considered in this BO. Future Federal actions that are unrelated to the proposed project are not considered in this opinion because they require separate consultation pursuant to section 7 of the Act.

It is reasonably certain to expect that coastal development, human occupancy and recreational use along the Atlantic and Gulf coasts of Florida will increase in the future. Redevelopment along with new developments following the hurricane seasons of 2004 and 2005 are occurring as allowed by local zoning standards. It is unknown how much influence a beach berm would contribute to the development and recreational use of the shoreline. Any projects that are within endangered or threatened species habitat will require section 7 or 10 permitting from the Service.

In recognizing the importance of coastal barrier islands along the Atlantic and Gulf coasts, Congress passed the Coastal Barrier Resources Act (CBRA) of 1982 and Coastal Barrier Improvement Act (CBIA) in 1991. The purpose of CBRA is "...to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts by restricting future Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers." Congress established the Coastal Barrier Resources System (CBRS) units for which this Act applies. FEMA individually consults with the Service on berm projects that occur in the CBRS.

Following the hurricane seasons of 2004 and 2005, FEMA funded local municipalities and counties to construct emergency berms to provide storm protection along the Gulf of Mexico and Atlantic beachfronts.

CONCLUSION

Sea Turtles

After reviewing the current status of the loggerhead, green, leatherback, hawksbill, and Kemp's ridley sea turtles, the environmental baseline for the Action Area, the effects of the proposed emergency berm construction and repair, and the cumulative effects, it is the Service's biological opinion that the project, as proposed, is not likely to jeopardize the continued existence of the loggerhead, green, leatherback, hawksbill or Kemp's ridley sea turtles. No critical habitat has been designated for any of the sea turtle species in the continental United States; therefore, none will be affected.

The conservation of the five loggerhead nesting subpopulations is essential to the recovery of the loggerhead sea turtle. Each individual subpopulation is necessary to conserve genetic and demographic robustness, or other features necessary for long-term sustainability of the entire population. Thus, maintenance of viable nesting in each subpopulation contributes to the overall population. Three of the five loggerhead subpopulations occur within the Action Area.

There is approximately 1,400 miles of available sea turtle nesting habitat in the southeastern U.S. Of this available nesting habitat, impacts will only occur after an emergency event in critically eroded areas of the shoreline estimated to be 75 miles of shoreline. From the overall sea turtle recovery, this equates to 5.4 percent of the estimated 1,400 miles of available sea turtle nesting habitat in the southeastern U.S. FEMA berms are only funded based on the previous existence of a berm. This could include existing beach nourishment projects and previous FEMA funded berms. It is not possible to determine the exact extent of the shoreline to be impacted every two years since this would be based on an emergency situation. However, impacts will be reduced through habitat restoration and project design.

Beach Mice

All known populations of SEBM and the AIBM are located completely on county, state, or federally protected lands, except for a small area in St. Johns County, Florida, in which the AIBM are found on private lands along the Florida coast. After reviewing the current status of the SEBM, AIBM, PKBM, CBM, and SABM, the environmental baseline for the Action Area, the effects of emergency berm construction and repair, and the cumulative effects, it is the Service's biological opinion that the Programmatic action for these projects, as proposed, is not likely to jeopardize the continued existence of any of the above subspecies of beach mice and is not likely to destroy or adversely modify designated critical habitat for the PKBM, CBM, or SABM. For the Service to determine if the impacts of the proposed action on designated critical habitat would be an adverse modification, we must determine if the impact would appreciably diminish the capability (or ecological function) of the critical habitat to satisfy essential requirements of the PKBM, CBM, and SABM in the Action Area.

Temporary impacts are expected to be limited to the construction/maintenance phase of the project and habitat restoration period following the project, which could be completed between a week and 30 days. Thus, effects would be short term in nature with the potential for one generation of mice to be lost (female mice can reproduce approximately every 26 days) during each project. Beach mice can reproduce rapidly so colonization or recolonization of the restored habitat would be expected within several months, if sufficient habitat and resources are available.

While a few beach mice may be lost, beach mice recover well from population size reductions (Wooten 1994) given sufficient habitat is available for population expansion after the bottleneck occurs. Therefore, we do not consider the potential loss of individuals to be significant.

Also, we would not anticipate that the temporary loss of the critical habitat would alter or affect the remaining critical habitat in the Action Area for each subspecies (PKBM, CBM, and SABM) to the extent that it would appreciably diminish the habitat's capability to provide the intended conservation role for the subspecies in the wild. This BO does not rely on the regulatory

definition of destruction or adverse modification of critical habitat at 50 Code of Federal Regulations [C.F.R.] 402.02. Instead, we have relied upon the statutory provisions of the Act to complete our analysis with respect to critical habitat.

Piping Plover

After reviewing the current status of the wintering population of the northern Great Plains, the Great Lakes and the Atlantic Coast piping plover, the environmental baseline for the berm placement and associated activities, proposed protective avoidance and minimization measures, and the cumulative effects, it is the Service's BO that implementation of the project, as proposed, is not likely to jeopardize the continued existence of non-breeding piping plover. Specific rationale for the non-jeopardy determination for each population is provided below. As noted previously, the overall status of the listed entity is stable, if not increasing.

Of greatest concern is the reliance that piping plovers have on the remaining 35 percent of Florida's coastal shoreline where the natural coastal processes are allowed to function. In these natural areas, piping plover habitat conceivably comes and goes as a function of storm events and associated tides, winds, elevation, and vegetational succession. The best we can hope for is a balance between suitable and unsuitable piping plover habitat remaining in Florida as there is little opportunity to expand the amount of habitat available for future conservation of the species. The amount available today appears sufficient to sustain the species but it is unknown if it is sufficient to conserve the species into perpetuity. The remaining habitat in Florida available today for piping plover use where coastal processes are allowed to function are still subjected to threats, especially human disturbance, coastal highways, military missions, and dredge disposal projects. Increased management to minimize such impacts to piping plover in these areas is the best defense we may have to conserve the species.

The proposed project would directly and indirectly affect an unspecified amount of newly created habitat as well as impact subsequent mud and sand flats by precluding natural development of additional habitat within the Action Area. FEMA berms are set in place usually immediately following highly erosive weather events. Plovers have confirmed site fidelity and are documented consistently using the same wintering and migrating locations year after year which minimizes the number of piping plovers that may be directly impacted if the habitat is altered prior to them becoming dependent on its availability. They have also been reported using newly created habitat within six months after its creation. Newly created piping plover feeding and roosting areas in locations where emergency berms will be placed are in developed areas as the intent is to protect improved property. The human disturbance factor and their associated recreational activities such as kite flying, pet walking, and beach driving reduce the likelihood of piping plovers using these newly created and otherwise suitable areas. Foraging on optimal, but disturbed habitat, on the non-breeding grounds by migrating and wintering piping plovers may reduce the fitness of individuals, which will have an unknown affect on the listed entity.

Due to the unlikelihood of large numbers of piping plover becoming established before newly created habitats are bermed and the inconclusive, but seemingly high winter survivorship (see *Status of the Species, Life History section*), we conclude that implementation of the proposed project would not appreciably affect the survival and recovery of the piping plover from the

Atlantic Coast, Great Plains nor the Great Lakes populations. Proposed FEMA Berm Repair and Construction projects that occur within piping plover critical habitat are not included in this programmatic BO and will be consulted on individually.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered or threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited under the Act provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are non-discretionary, and shall be implemented by FEMA so that they become binding conditions of any grant or permit issued to the Applicant, as appropriate, for the exemption in section 7(o)(2) to apply. FEMA has a continuing duty to regulate the activity covered by this incidental take statement. If FEMA (1) fails to assume and implement the terms and conditions or (2) fails to require the FEMA grant Applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, FEMA shall report the progress of the action and its impacts on the species to the Service as specified in the incidental take statement [50 CFR §402.14(i)(3)].

AMOUNT OF EXTENT OF TAKE

Sea Turtles

It is anticipated that no more than 75 miles of highly eroded shoreline could be affected Statewide as a result of beach berm construction after a federally declared emergency event; incidental take of sea turtles will be difficult to detect for the following reasons:

- (1) turtles nest primarily at night and all nests are not located because
 - [a] natural factors, such as rainfall, wind, and tides may obscure crawls; and
 - [b] human-caused factors, such as pedestrian and vehicular traffic, may obscure crawls, and result in nests being destroyed because they were missed during a nesting survey and egg relocation program;
- (2) the total number of hatchlings per undiscovered nest is unknown;

- (3) the reduction in percent hatching and emerging success per relocated nest over the natural nest site is unknown;
- (4) an unknown number of females may avoid the project beach and be forced to nest in a less than optimal area;
- (5) lights may misdirect an unknown number of hatchlings and cause death; and
- (6) escarpments may form and cause an unknown number of females from accessing a suitable nesting site.

The level of incidental of the sea turtle species can be anticipated by the disturbance and sand placement of suitable turtle nesting beach habitat because: (1) turtles nest within the project site; (2) emergency berm repair and construction will likely occur during a portion of the nesting season; (3) the emergency berm repair and construction project will modify the incubation substrate, beach slope, and sand compaction; and (4) artificial lighting will deter and/or misdirect nesting females and hatchlings.

Incidental take is expected to be in the form of: (1) destruction of all nests that may be constructed and eggs that may be deposited from April 15 through April 30 and from September 1 through September 30 and missed by a nest survey and egg relocation program within the boundaries of the berm project(s); (2) destruction of all nests deposited from October 31 through April 30 when a nest survey and egg relocation program is not required to be in place within the boundaries of the proposed project; (3) reduced hatching success due to egg mortality during relocation and adverse conditions at the relocation site; (4) harassment in the form of disturbing or interfering with female turtles attempting to nest within the construction area or on adjacent beaches as a result of construction activities; (5) misdirection of hatchling turtles on beaches adjacent to the construction area as they emerge from the nest and crawl to the water as a result of project lighting; (6) behavior modification of nesting females due to escarpment formation within the project area during a nesting season, resulting in false crawls or situations where they choose marginal or unsuitable nesting areas to deposit eggs; and (7) destruction of nests from escarpment leveling within a nesting season when such leveling has been approved by the Service.

Table 16 represents the level of take that could occur if the reasonable and prudent measures were not implemented. According to Schroeder (1994), there is an average survey error of seven percent; therefore, there is the possibility that some nests within the action area may be misidentified as false crawls and missed. However, due to implementation of the sea turtle protection measures, we anticipate that the take will not exceed seven percent of the nesting average in the project area. This number is not the level of take exempted because the exact number cannot be predicted nor can the level of incidental take be monitored.

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Table 16. The average annual number of sea turtle nests that will be taken within the Action Area (75 miles Statewide), based on the best available commercial and scientific information.

SPECIES Loggerhead, Green, Leatherback, and Kemp's Ridley sea turtles	INDIVIDUALS (NESTS)	TAKE TYPE	CRITICAL HABITAT DESTROYED
Gulf of Mexico and Atlantic Coast of Florida	All nests within the 75 miles of beachfront where berm construction will occur after a federally declared emergency event	harm/harassment	None

Table 17. How the incidental take will be monitored if the specific number of individuals cannot be determined. This will be based on the best available commercial and scientific information.

SPECIES Loggerhead, Green, Leatherback, and Kemp's Ridley sea turtles	CRITICAL HABITAT	HABITAT	OTHER
Gulf of Mexico and Atlantic Coast of Florida	None	Statewide Nesting Beach Survey protocol	NA
Gulf of Mexico and Atlantic Coast of Florida	None	Index Nesting Beach Survey protocol	NA

Beach Mouse

It is anticipated that no more than 75 miles of highly eroded shoreline could be affected Statewide as a result of beach berm construction after a federally declared emergency event; incidental take of beach mice will be difficult to detect for the following reasons:

- (1) an unknown number of beach mice may be injured, crushed or buried during beach access construction work and remain entombed in the sand;
- (2) beach mice are nocturnal, are small and finding a dead or injured body is unlikely because of predation, and
- (3) changes in beach mouse essential life behaviors may not be detectable in standardized monitoring surveys.

The incidental take is expected to be in the form of: (1) harm or harassment to all beach mice occupying the created or expanded beach access points; (2) harassment of beach mice from disturbance of foraging opportunities within the access areas during the construction period; (3) harassment of beach mice from temporary loss of foraging and burrow habitat; and (4) harassment of beach mice from temporary restriction of movement across access areas.

The level of incidental take of beach mice can be expected by the loss of habitat that is fragmented temporarily. To assess the effects of the impacts to beach mice the following will be monitored: 1) beach mouse distribution and abundance, and 2) success of habitat restoration.

Table 18. The average annual number of beach mice and designated critical habitat that will be affected within the Action Area (75 miles Statewide), based on the best available commercial and scientific information.

SPECIES	INDIVIDUALS	TAKE TYPE	CRITICAL HABITAT DESTROYED
Southeastern and Anastasia beach mice	All mice within beach access corridors used for berm construction after a federally declared emergency even	harm/harassment	None
St. Andrew, Choctawhatchee, and Perdido Key beach mice	All mice within beach access corridors used for berm construction after a federally declared emergency even	harm/harassment	All designated CH that is within beach access corridors used for berm construction

Table 19. How the incidental take will be monitored if the specific number of individuals cannot be determined. This will be based on the best available commercial and scientific information.

SPECIES	CRITICAL HABITAT	HABITAT	OTHER
Southeastern and Anastasia beach mice	None	Species abundance and distribution and habitat restoration success	NA
St. Andrew, Choctawhatchee, and Perdido Key beach mice	Species abundance and distribution and habitat restoration success	Species abundance and distribution and habitat restoration success	NA

Piping Plovers

It is anticipated that no more than 75 miles of highly beachfront eroded shoreline as well as the equivalent bayside habitats could be affected Statewide as a result of beach berm construction after a federally declared emergency event; incidental take of piping plover, incidental take of piping plovers will be difficult to detect for the following reasons:

- (1) harassment to the level of harm from loss or disturbance of habitat may only be apparent on the breeding grounds the following year; and

- (2) dead plovers may be carried away by waves or predators.

Incidental take (**Table 18**) of this species can be anticipated by the proposed project activities because:

- (1) piping plovers migrate and winter in the Action and Project Area;
- (2) equipment may disturb plovers attempting to forage and roost within the Project Area;
- (3) the effects of sediment disposal in low lying coastal areas will reduce prey sources;
- (4) the berm placement is expected to temporarily (up to 5 years) affect the island morphology and prevent early successional stages, thereby precluding the maintenance and creation of additional recovery habitat; and
- (5) increased levels of pedestrian and dog disturbance is expected.

The Service has reviewed the biological information and other information relevant to this action. The take is expected in the form of harm and harassment because of: (1) decreased fitness and survivorship of wintering plovers due to loss and degradation of foraging and roosting habitat resulting in more energy expenditure seeking foraging and roosting habitat and (2) decreased fitness and survivorship of plovers attempting to migrate to breeding grounds due to loss and degradation of foraging and roosting habitat.

Table 20. The average annual number of piping plover and designated critical habitat that will be affected within the Action Area (75 miles Statewide), based on the best available commercial and scientific information.

SPECIES	INDIVIDUALS	TAKE TYPE	CRITICAL HABITAT DESTROYED
Piping plover	All birds using beachfront or bay shoreline feeding and roosting habitat (may be newly created) within a berm construction project area after a federally declared emergency event beach	harm/harassment	All designated CH that is within beach access corridors used for berm construction

Table 21. How the incidental take will be monitored if the specific number of individuals cannot be determined. This will be based on the best available commercial and scientific information.

SPECIES	CRITICAL HABITAT	HABITAT	OTHER
Piping plover	Monitoring of bird presence; project and or human disturbance	Monitoring of bird presence; project and or human disturbance	NA

EFFECT OF THE TAKE

Sea Turtles

In the accompanying BO, the Service determined that this level of anticipated take is not likely to result in jeopardy to the loggerhead, green, leatherback, hawksbill or Kemp's ridley sea turtle species. Critical habitat has not been designated in the project area; therefore, the project will not result in destruction or adverse modification of critical habitat for any of the sea turtle species.

Incidental take of nesting and hatchling sea turtles is anticipated to occur during project construction and during the life of the project. Take will occur on nesting habitat consisting of the length of the beach where the restoration material will be placed.

Beach Mouse

In the accompanying BO, the Service determined that this level of anticipated take is not likely to result in jeopardy to AIBM, SEBM, PKBM, CBM, and SABM or in adverse modification or destruction of designated critical habitat. Critical habitat for the SEBM and AIBM has not been designated; therefore, the project will not result in destruction or adverse modification of critical habitat for either subspecies.

Incidental take of SEBM, AIBM, PKBM, CBM, and SABM is anticipated to occur during the construction of the emergency berm repair and construction activities. The take will occur during project construction where beach access points are expanded or created and where equipment is staged or stored within beach mouse habitat.

Piping Plover

In the accompanying BO, the Service determined that this level of anticipated take is not likely to result in jeopardy to the piping plover species. Projects occurring in critical habitat units designated for piping plovers require a separate consultation and therefore the project will not result in destruction or adverse modification of critical habitat for any of the piping plover breeding populations.

Incidental take of piping plovers is anticipated to occur during project construction and during the life of the project. Take will occur along the GOM and Atlantic Ocean shoreline as well as associated bayside habitats both during and after berm placement.

REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize take of the loggerhead, green, leatherback, hawksbill, and Kemp's ridley sea turtles, SEBM, AIBM, CBM, PKBM, and SABM, and non-breeding piping plover in the proposed emergency berm construction and repair Action Area.

1. Conservation Measures included in FEMA's BA that address protection of nesting sea turtles, beach mice, and non-breeding piping plover must be implemented (unless revised below) in the berm project.
2. Beach quality sand suitable for sea turtle nesting, successful incubation, and hatchling emergence, beach mouse burrow construction and piping plover food prey species substrate shall be used for the emergency berm construction and repair projects.
3. **For emergency berm construction and repair projects in Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward counties, Florida,** work activities shall not occur from May 1 through October 31, the period of the main sea turtle egg laying and egg hatching season, to reduce the possibility of sea turtle nest burial, crushing of eggs, or nest excavation. An exemption to this may occur if it is determined through coordination or emergency consultation with the Service.
4. **For emergency berm construction and repair projects in Nassau, Duval, St. Johns, Flagler, Volusia, Miami-Dade, Monroe, Collier, Lee, Sarasota, Hillsborough, Pinellas, Pasco, Franklin, Gulf, Bay, Walton, Okaloosa, Santa Rosa, and Escambia counties, Florida,** work activities may occur during the nesting season. For higher density nesting beaches in Gulf, and Franklin counties, and on Manasota Key located in Sarasota County, emergency berm construction shall not occur during the main part of the nesting season (June 1 through October 31). An exemption to this may occur if it is determined through coordination or emergency consultation with the Service.
5. All disaster related debris including derelict coastal armoring shall be removed from the beach prior to any emergency berm construction.
6. The placement and design of the emergency berm shall emulate the natural dune system to the maximum extent practicable, including the emergency berm configuration and shape.
7. The FEMA grant applicant shall install and maintain predator proof trash receptacles at all public beach access points to minimize the potential for attracting predators of sea turtles, beach mice, and piping plover.
8. Educational signs shall be placed where appropriate at beach access points with information on sea turtles, beach mice and non-breeding piping plover conservation.
9. The FEMA grant applicant shall ensure that contractors performing the emergency berm construction and repair work fully understand and correctly implement the sea turtle, beach mice, and non-breeding piping plover protection measures detailed in this incidental take statement.
10. Surveys for early and late nesting sea turtles shall be conducted if the FEMA berm construction will be conducted during the sea turtle nesting season, but outside the peak nesting and hatching periods, the eggs shall be relocated if nests are constructed in the area of berm construction to minimize sea turtle nest burial, crushing of eggs, or nest excavation.

11. No nighttime activities shall occur if FEMA berm construction will be conducted during the sea turtle nesting season to reduce the likelihood of impacting sea turtle nesting and hatching activities.
12. Beach compaction shall be monitored and tilling shall be conducted as required to reduce the likelihood of impacting sea turtle nesting and hatching activities.
13. Monitoring shall be conducted to determine if escarpments are present and if present shall be leveled as required to reduce the likelihood of impacting sea turtle nesting and hatching activities.
14. Construction equipment and materials shall be stored in a manner that will minimize impacts to nesting and hatching sea turtles (during the sea turtle nesting season and including the early and late portions of the sea turtle nesting season), beach mice and piping plovers to the maximum extent practicable.
15. Existing vegetated habitat at each of the beach access points shall be protected to the maximum extent practicable and shall be delineated by fence or other suitable material to ensure vehicles and equipment transport stay within the beach access corridor. New beach access locations created for the project work shall be approved by the Service.
16. Expanded or newly created beach accesses shall be restored to dune habitat within 3 months following project completion. The habitat restoration shall consist of restoring the beach and dune topography and planting with appropriate native dune vegetation (*i.e.*, native to coastal dunes in the respective county and grown from plant stock from that region of Florida). All dune restoration and planting shall be designed and conducted to minimize impacts to sea turtles, beach mice and piping plover.
17. Protect optimal piping plover feeding and roosting habitat.
18. All vegetation planting on the newly constructed berms shall be designed and conducted to minimize impacts to sea turtles, beach mice and non breeding piping plovers.
19. A report describing the actions taken to implement the terms and conditions of this incidental take statement shall be submitted to the Service within 60 days of completion of the proposed work for each year when the activity has occurred.

TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the Act, FEMA shall comply with the following terms and conditions which (1) implement the reasonable and prudent measures described above and (2) outline required reporting/monitoring. These terms and conditions are non-discretionary. All conservation measures described in FEMA's BA are hereby incorporated by reference as terms and conditions within this document pursuant to 50 CFR § 402.14(I) with the addition of the following terms and conditions.

Proposed work

1. For berm material obtained from an upland source:

Sand Specifications

The fill material shall be beach compatible and meet the specifications required by Florida Administrative Codes 62B-41.007 (j) and 62B-33.002 (8). In addition the fill shall meet the following requirements.

The fill material to be placed at the work area shall be clean sand from a permitted upland source, free of construction debris, asphalt, gravel, rocks, clay balls, branches, leaves and other organics, components prone to cause cementation, oil, pollutants and any other non-beach-compatible materials. The sand shall be similar to the existing beach sediments in color and texture.

The grain size of the fill material shall conform to the following, by weight (all sieve sizes refer to U.S. Std. sieves):

- (a) not more than 2.5% finer than the No. 200 sieve
- (b) not more than 10% finer than the No. 140 sieve
- (c) not more than 50% finer than the No. 80 sieve
- (d) not more than 15% coarser than the No. 10 sieve, and
- (e) not more than 5% coarser than the No. 4 sieve

At minimum, using the Munsell Color Scale, all sand placed shall have a Value of at least 6.0 or higher and a Chroma of between 1.0 and 2.0 (inclusive) when graded on the 7.5YR or 10YR Hues under air dry sample conditions. Material with higher Value grades and higher Chroma grades (within the Chroma range specified), are preferred.

If sand from multiple sources is used, the materials should be mixed at the beach access sites before it is transferred to the beach so that sand will be consistent throughout the placement areas. On site mixing should not be done to achieve beach quality material, rather mixing would be done to make the fill aesthetically consistent due to the fact that the multiple sources are beach quality material.

Sand Inspection

The contents of each sand delivery truck will be inspected upon arrival to the beach access site. Sand quality is to be visually compared to FDEP approve benchmark samples before the sand is dumped. Sand is more closely inspected as the material is dumped. During visual inspection of the material upon arrival at the beach access site, if the quality of the material is uncertain, a physical sample will be taken with the option of quantitative analysis (sieving, color, etc). If in doubt the material will be loaded back into the truck and returned to the borrow source.

Post Placement Sampling

After material is placed on the beach and graded to template, sand sample will be collected along the constructed dune at a rate of one sample per 1,000 cubic yards of placed material. The

location of the sampling sites will be recorded with GPS. These samples will be quantitatively assessed for grain size analysis using the No. 230, 200, 170, 140, 80, 60, 45, 35, 25, 18, 14, 10, 7, 5, 4 and ¾" sieves. Samples will also be assessed for color and carbonate content. The results from the quantitative analysis will be submitted to DEP within 90 days after completing construction.

Compliance and Remediation

Continuous inspection of material upon arrival to the beach access site will minimize the likelihood of non-compliant material being placed. If initial post placement sampling indicates non-compliant material may have been placed, more extensive sampling and quantitative assessment will be conducted for the area in question to determine the extent of non-compliance, if any. In the event it is concluded that material has been placed that does not meet the specifications required by Florida Administrative Codes 62B-41.007 (j) and 62B-33.002 (8) the applicant will consult with the Service and FDEP to determine the most appropriate solution, including removal and/or replacement of the material if necessary; subject to constraints imposed by marine turtle nesting activity.

2. For berm material obtained from an offshore source:

Beach compatible fill shall be used for the berm construction. Beach compatible fill is material that maintains the general character and functionality of the material occurring on the beach and in the adjacent dune and coastal system. Such material shall be predominately of carbonate, quartz or similar material with a particle size distribution ranging between 0.062mm (4.0Φ) and 4.76mm (-2.25Φ) (classified as sand by either the Unified Soils or the Wentworth classification), shall be similar in color and grain size distribution (sand grain frequency, mean and median grain size and sorting coefficient) to the material in the historic beach sediment at the disposal site and shall not contain:

- (a) Greater than 5 percent, by weight, silt, clay or colloids passing the #230 sieve (4.0φ);
- (b) Greater than 5 percent, by weight, fine gravel retained on the #4 sieve (- 2.25φ);
- (c) Coarse gravel, cobbles or material retained on the ¾ inch sieve in a percentage or size greater than found on the native beach;
- (d) Construction debris, toxic material or other foreign matter; and
- (e) Material that will result in cementation of the beach.

If rocks or other non-specified materials appear on the surface of the filled beach in excess of 50 percent of background in any 10,000 square foot area, then surface rock should be removed from those areas. These areas shall also be tested for subsurface rock percentage and remediated as required. If the natural beach exceeds any of the limiting parameters listed above, then the fill material shall not exceed the naturally occurring level for that parameter.

3. For berm material obtained from a navigation channel:

Pursuant to subsection 62B-41.005(15), Florida Administrative Code (F.A.C.), sandy sediment derived from the maintenance of coastal navigation channels shall be deemed

suitable for beach placement with up to 10 percent fine material passing the #230 sieve, provided that it meets the criteria contained in 1a to 1e above and water quality standards. If this material contains between 10 percent and 20 percent fine material passing the #230 sieve by weight, and it meets all other sediment and water quality standards, it shall be considered suitable for placement in the nearshore portion of the beach.

These standards shall not be exceeded in any 10,000 square foot section extending through the depth of the beach berm. If the native beach exceeds any of the limiting parameters listed above, then the fill material shall not exceed the naturally occurring level for that parameter.

4. **For emergency berm construction and repair projects in Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward counties, Florida,** emergency berm construction and repair activities shall be started after October 31 and be completed before May 1. During the May 1 through October 31 period, no construction equipment or work materials shall be placed and/or stored on the beach.

The Service shall be contacted for coordination, on a project by project basis, if berm work is needed in these counties during the above exclusionary period. The Service will determine whether work (a) may proceed in accordance with the Terms and Conditions; (b) proceed in accordance with the Terms and Conditions and other requirements as developed by the Service; or (c) require that an individual emergency consultation be performed.

5. **For emergency berm construction and repair projects in Nassau, Duval, St. Johns, Flagler, Volusia, Miami-Dade, Monroe, Collier, Lee, Charlotte, Sarasota, Manatee, Hillsborough, Pinellas, Pasco, Franklin, Gulf, Bay, Walton, Okaloosa, Santa Rosa, and Escambia counties, Florida,** emergency berm construction and repair activities may occur during the nesting season except on publicly owned conservation lands such as state parks and areas where such work is prohibited under local land use codes.

The Service shall be contacted for coordination, on a project by project basis, if berm work is needed in higher density nesting beaches in Gulf and Franklin counties, and on Manasota Key located in Sarasota County during the above exclusionary period. The Service will determine whether work (a) may proceed in accordance with the Terms and Conditions; (b) proceed in accordance with the Terms and Conditions and other requirements as developed by the Service; or (c) require that an individual emergency consultation be performed.

- a. Prior to any sand placement, all disaster related debris including derelict coastal armoring shall be removed from the beach to the maximum extent practicable. Debris removal activities shall be conducted during daylight hours and during the dates listed on Table 20 and shall not commence until completion of the sea turtle survey each day.

Table 22. Time periods for debris removal work during the sea turtle nesting season.

COUNTY PROJECT OCCURS	DATE
Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward	March 1 through November 30
Dade, Monroe	April 1 to November 30
Volusia, Flagler, St. John, Duval, Nassau	April 15 to November 30
Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, Pasco, Pinellas, Manatee, Sarasota, Charlotte, Lee, Collier	May 1 to October 31

- b. The emergency berm shall have a slope of 1.5:1 followed by a gradual slope of 4:1 for approximately 20 feet seaward.
6. The FEMA grant applicant shall ensure that the contractors conducting the work provide predator proof trash receptacles for the construction workers. All contractors and their employees shall be briefed on the importance of not littering and keeping the project area trash and debris free. Predator proof trash receptacles shall be installed and maintained at all access points, eating areas, and rest-room areas.
7. Educational signs shall be placed where appropriate at beach access points explaining the importance of species such as sea turtles, beach mice, and piping plovers that are dependent on coastal habitats and ways to minimize human impacts. The Service can provide design ideas (Share the Shore Signs). These signs shall also include existing ordinances such as Animal Control Ordinances, informing beach users about the County/Municipality's ordinance that will minimize the harassment of sea turtles, beach mice and piping plovers. These signs shall be maintained for the life of the project, or five (5) years, whichever is lesser.
8. The FEMA grant applicant shall arrange a meeting between representatives of the contractor, the Service, the FWC, and the permitted sea turtle surveyor at least 10 days prior to the commencement of work on this project. At least 5 days advance notice shall be provided prior to conducting this meeting. This will provide an opportunity for explanation and/or clarification of the species protection measures as well as additional guidelines when construction occurs such as storing equipment, minimizing driving, and follow up meetings during construction.

Protection of Sea Turtles

For emergency berm construction and repair projects in Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward counties, Florida:

1. If the emergency berm construction and repair project will be conducted during the period from March 1 through April 30, early morning surveys for sea turtle nests shall be conducted daily from March 1 through April 30 or until completion of the project (whichever is earliest). If the berm will be conducted during the period from November 1 through November 30, daily early morning sea turtle nesting surveys shall be conducted 65 days prior to project initiation and continue through September 30. From March 1 through April 30 and

November 1 through November 30 and eggs shall be relocated per the following requirements.

- 1a. Nesting surveys and egg relocations shall only be conducted by personnel with prior experience and training in nesting survey and egg relocation procedures. All nesting surveys, nest relocations screening or caging activities etc. shall be conducted only by persons with prior experience and training in these activities and who is duly authorized to conduct such activities through a valid permit issued by FWC, pursuant to F.A.C 68E-1. Nesting surveys shall be conducted daily between sunrise and 9 a.m. (this is for all time zones). The contractor shall not initiate work until daily notice has been received from the sea turtle permit holder that the morning survey has been completed. Surveys shall be performed in such a manner so as to ensure that construction activity does not occur in any location prior to completion of the necessary sea turtle protection measures.
- 1b. Only those nests that may be affected by berm construction activities shall be relocated. Nests requiring relocation shall be moved no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation. Relocated nests shall not be placed in organized groupings; relocated nests shall be randomly staggered along the length and width of the beach in settings that are not expected to experience daily inundation by high tides or known to routinely experience severe erosion and egg loss, or subject to artificial lighting. Nest relocations in association with construction activities shall cease when construction activities no longer threaten nests.
- 1c. Nests deposited within areas where construction activities have ceased or will not occur for 65 days shall be marked and left *in situ* unless other factors threaten the success of the nest. The turtle permit holder shall install an on-beach marker at the nest site and/or a secondary marker at a point landward as possible to assure that future location of the nest will be possible should the on-beach marker be lost. A series of stakes and highly visible survey ribbon or string shall be installed to establish a 10-foot radius around the nest. No activity shall occur within this area nor will any activities occur which could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the restoration activity.
2. If the emergency berm construction and repair projects will be conducted in Indian River, St. Lucie, St. Martin, and/or Palm Beach counties during the period from March 1 through April 30, daytime surveys for leatherback sea turtle nests shall be conducted beginning March 1. Nighttime surveys for leatherback sea turtles shall begin when the first leatherback nest is recorded within the project area and through April 30 or until completion of the project (whichever is earliest). Nesting surveys shall be conducted nightly from 9 p.m. until 6 a.m. The project area shall be surveyed at 1-hour intervals (since leatherbacks require at least 1.5 hours to complete nesting, this will ensure all nesting leatherbacks are encountered) and eggs shall be relocated per the preceding requirements.
3. From March 1 through April 30 and November 1 through November 30, staging areas for construction equipment shall be located off the beach to the maximum extent practicable.

Nighttime storage of construction equipment not in use shall be off the beach to minimize disturbance to sea turtle nesting and hatching activities. In addition, all construction work materials or equipment that are placed on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Temporary storage of work materials or equipment shall be off the beach to the maximum extent possible. Temporary storage of work materials or equipment on the beach shall be in such a manner to minimize the impact to nesting habitat and shall not compromise the integrity of remaining dune systems. If pipes are needed for the project they shall be placed parallel to the dune and not less than 5 to 10 feet from the dune. Stored pipes shall be placed perpendicular to the shoreline.

4. Immediately after completion of the emergency berm and repair project and prior to March 1 for 3 subsequent years, sand compaction shall be monitored in the berm area in accordance with a protocol agreed to by the Service, FWC and the Applicant or local sponsor. At a minimum, the protocol provided under 4a, 4b, and 4c below shall be followed. If tilling is required, the area shall be tilled to a depth of 36 inches. Each pass of the tilling equipment shall be overlapped to allow more thorough and even tilling. All tilling activity shall be completed prior to March 1. A report on the results of the compaction monitoring shall be submitted to the Service's field office prior to any tilling actions being taken (**Table 21**). (NOTE: The requirement for compaction monitoring can be eliminated if the decision is made to till regardless of post-construction compaction levels. Additionally, out-year compaction monitoring and remediation are not required if placed material no longer remains on the dry beach.)

Table 23. Service's Field Offices and Address.

COUNTY PROJECT OCCURS	SERVICE FIELD OFFICE	ADDRESS
Brevard	North Florida Ecological Service Office	6620 Southpoint Dr. South # 310, Jacksonville, FL 32216
Indian River, St. Lucie, Martin, Palm Beach, Broward	South Florida Ecological Service Office	1339 20 th Street Vero Beach, FL 32960

- 4a. Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the berm and one station shall be midway between the berm and the high water line (normal wrack line). At each station, the cone penetrometer shall be pushed to a depth of 6, 12, and 18 inches three times (three replicates). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lay over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth shall be averaged to produce final values for each depth at each station. Reports shall include all 18 values for each transect line, and the final 6 averaged compaction values.
- 4b. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area shall be tilled prior to March 1. If values exceeding 500 psi are distributed throughout the project area, but in no case do those

values exist at two adjacent stations at the same depth, then consultation with the Service will be required to determine if tilling is required. If a few values exceeding 500 psi are present randomly within the project area, tilling will not be required.

4c. Tilling shall occur landward of the wrack line and avoid all vegetated areas three square feet or greater with a 3 square foot buffer around the vegetated areas.

5. Visual surveys for escarpments along the project area shall be made immediately after completion of the berm project and prior to March 1 for 3 subsequent years. Escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of 100 feet shall be leveled and the beach profile shall be reconfigured to minimize scarp formation by March 1. If the project is completed during the early part of the sea turtle nesting and hatching season (March 1 through April 30), escarpments may be required to be leveled immediately, while protecting nests that have been relocated or left in place. Surveys for escarpments shall be conducted weekly. Results of the surveys shall be submitted within one month to the Service's appropriate Field Office prior to any action being taken during the nesting season. The Service shall be contacted immediately if subsequent reformation of escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of 100 feet occurs during the nesting and hatching season to determine the appropriate action to be taken. If it is determined that escarpment leveling is required during the nesting or hatching season, the Service will provide a brief written authorization that describes methods to be used to reduce the likelihood of impacting existing nests. An annual summary of escarpment surveys and actions taken shall be submitted to the Service's Field Office (**Table 20**). (NOTE: Out-year escarpment monitoring and remediation are not required if placed material no longer remains on the dry beach).

For emergency berm construction and repair projects in Nassau, Duval, St. Johns, Flagler, Volusia, Miami-Dade, Monroe, Collier, Lee, Charlotte, Sarasota, Manatee, Hillsborough, Pinellas, Pasco, Franklin, Gulf, Bay, Walton, Okaloosa, Santa Rosa and Escambia counties, Florida

6. Daily early morning surveys for sea turtle nests will be required if any portion of the berm construction occurs as follows:

For Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin and Pasco counties, nesting surveys shall be initiated 70 days prior to berm construction activities or by May 1 whichever is later. Nesting surveys shall continue through the end of the project or through October 31 whichever is earlier. If nests are constructed in areas where they may be affected by construction activities, eggs shall be relocated per the requirements listed below;

For Dade, Pinellas, Manatee, Sarasota, Charlotte, Lee, Collier, and Monroe, nesting surveys shall be initiated 65 days prior to berm construction activities or by April 1 whichever is later. Nesting surveys shall continue through the end of the project or through November 30 whichever is earlier. If nests are constructed in areas where they may be affected by construction activities, eggs shall be relocated per the requirement listed below;

For Volusia, Flagler, St. John, Duval and Nassau Counties, nesting surveys shall be initiated 65 days prior to berm placement or by April 15 whichever is later. Nesting surveys shall continue through the end of the project or through November 30 whichever is earlier. If nests are constructed in areas where they may be affected by construction activities, eggs shall be relocated per the requirements listed below;

- 6a. Nesting surveys and egg relocations will only be conducted by personnel with prior experience and training in nesting survey and egg relocation procedures. All nesting surveys, nest relocations screening or caging activities etc. shall be conducted only by persons with prior experience and training in these activities and who is duly authorized to conduct such activities through a valid permit issued by FWC, pursuant to FAC 68E-1. Nesting surveys shall be conducted daily between sunrise and 9 a.m. (this is for all time zones). The contractor shall not initiate work until daily notice has been received from the sea turtle permit holder that the morning survey has been completed. Surveys shall be performed in such a manner so as to ensure that construction activity does not occur in any location prior to completion of the necessary sea turtle protection measures.
- 6b. Only those nests that may be affected by construction activities will be relocated. Nests requiring relocation shall be moved no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation. Relocated nests shall not be placed in organized groupings; relocated nests shall be randomly staggered along the length and width of the beach in settings that are not expected to experience daily inundation by high tides or known to routinely experience severe erosion and egg loss, or subject to artificial lighting. Nest relocations in association with construction activities shall cease when construction activities no longer threaten nests.
- 6c. Nests deposited within areas where construction activities have ceased or will not occur for 65 days shall be marked and left *in situ* unless other factors threaten the success of the nest. The turtle permit holder shall install an on-beach marker at the nest site and/or a secondary marker at a point landward as possible to assure that future location of the nest will be possible should the on-beach marker be lost. A series of stakes and highly visible survey ribbon or string shall be installed to establish a 10-foot radius around the nest. No activity will occur within this area nor will any activities occur which could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the restoration activity.
7. Immediately after completion of the project and prior to the following dates in **Table 24** for 3 subsequent years, sand compaction shall be monitored in the area of restoration in accordance with a protocol agreed to by the Service, the FWC, and the Applicant or local sponsor. At a minimum, the protocol provided under 7a, 7b, 7c, 7d, and 7e below shall be followed. If tilling is required, the area shall be tilled to a depth of 36 inches. All tilling activity shall be completed prior to those dates listed above.

Table 24. Dates related to compaction monitoring.

DATE	COUNTY THE PROJECT OCCURS IN
April 15	Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, Pasco, Volusia, Flagler, St. John, Duval, Nassau, Pinellas, Manatee, Sarasota, Charlotte, Lee, Collier
April 1	Dade, Monroe

Each pass of the tilling equipment shall be overlapped to allow more thorough and even tilling. If the project is completed during the nesting season, tilling will not be performed in areas where nests have been left in place or relocated. (NOTE: The requirement for compaction monitoring can be eliminated if the decision is made to till regardless of post-construction compaction levels. Additionally, out-year compaction monitoring and remediation are not required if placed material no longer remains on the dry beach.) A report on the results of the compaction monitoring shall be submitted to the Service's field office prior to any tilling actions being taken (Table 25).

Table 25. Service's Field Offices.

COUNTY THE PROJECT OCCURS IN	SERVICE FIELD OFFICE	ADDRESS
Nassau, Duval, St. Johns, Flagler, Volusia, Manatee, Pinellas and Hillsborough	North Florida Ecological Service Office	6620 Southpoint Dr. South Suite# 310 Jacksonville, FL 32216
Charlotte, Collier, Lee, Martin, Miami-Dade, Monroe and Sarasota	South Florida Ecological Service Office	1339 20 th Street Vero Beach, FL 32960
Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa and Walton	Panama City Ecological Service Office	1601 Balboa Avenue Panama City, FL 32405

- 7a. Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area), and one station shall be midway between the dune line and the high water line (normal wrack line).
- 7b. At each station, the cone penetrometer shall be pushed to a depth of 6, 12, and 18 inches three times (three replicates). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lie over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth shall be averaged to produce final values for each depth at each station. Reports will include all 18 values for each transect line, and the final 6 averaged compaction values.
- 7c. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area shall be tilled immediately prior to the following dates listed above.

- 7d. If values exceeding 500 psi are distributed throughout the project area but in no case do those values exist at two adjacent stations at the same depth, then consultation with the Service will be required to determine if tilling is required. If a few values exceeding 500 psi are present randomly within the project area, tilling will not be required.
- 7e. Tilling shall occur landward of the wrack line and avoid all vegetated areas three square feet or greater with a 3 square foot buffer around the vegetated areas.
8. Visual surveys for escarpments along the project area shall be made immediately after completion of the project and prior to the following dates (**Table 26**) for 3 subsequent years. Escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of 100 feet shall be leveled and the beach profile shall be reconfigured to minimize scarp formation.

Table 26. Dates for escarpment visual surveys.

DATE	COUNTY THE PROJECT OCCURS IN
April 15	Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, Pasco, Volusia, Flagler, St. John, Duval, Nassau, Pinellas, Manatee, Sarasota, Charlotte, Lee, Collier
April 1	Dade, Monroe

If the project is completed during the sea turtle nesting and hatching season, escarpments may be required to be leveled immediately, while protecting nests that have been relocated or left in place. Surveys for escarpments shall be conducted weekly. Results of the surveys shall be submitted within one month to the Service's appropriate Field Office prior to any action being taken during the nesting season. The Service shall be contacted immediately if subsequent reformation of escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of 100 feet occurs during the nesting and hatching season to determine the appropriate action to be taken. If it is determined that escarpment leveling is required during the nesting or hatching season, the Service will provide a brief written authorization that describes methods to be used to reduce the likelihood of impacting existing nests. An annual summary of escarpment surveys and actions taken shall be submitted to the Service (**Table 25**). (NOTE: Out-year escarpment monitoring and remediation are not required if placed material no longer remains on the beach).

9. Staging areas for construction equipment shall be located off the beach to the maximum extent practicable during the following time periods (**Table 27**):

Table 27. Dates when construction equipment shall be located off the beach.

DATE	COUNTY PROJECT OCCURS
April 1 to November 30	Dade, Monroe
April 15 to November 30	Volusia, Flagler, St. John, Duval, Nassau
May 1 to October 31	Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, Pasco, Pinellas, Manatee, Sarasota, Charlotte, Lee, Collier

Nighttime storage of construction equipment not in use shall be off the beach to minimize disturbance to sea turtle nesting and hatching activities. In addition, all construction pipes that are placed on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Temporary storage of pipes shall be off the beach to the maximum extent possible. Temporary storage of pipes on the beach shall be in such a manner so as to impact the least amount of nesting habitat and shall not compromise the integrity of the dune systems. Pipes placed parallel to the dune shall be five to ten feet away from the toe of the dune (placement of pipes perpendicular to the shoreline is recommended as the method of storage).

Protection of Beach Mice

1. Existing beach access points shall be used for vehicle and equipment beach access to the maximum extent practicable. Existing access may be expanded to accommodate project work equipment and vehicles. These accesses shall be delineated by fence or other suitable material to ensure vehicles and equipment transport stay within the access corridor. The accesses shall be fully restored to pre-project work configuration following project completion. Equipment and material staging/storage areas for the project shall be located outside of vegetated dune habitat and public lands. No storage of equipment or materials shall occur on the beach or dunes at any time of year. Parking areas for construction crews shall be located as close as possible to the work sites, but outside of vegetated dunes to minimize impacts to existing habitat and the need to transport workers along the beachfront. The number of beach access sites for vehicles and equipment shall be minimal, clearly marked. All access and staging areas shall be restored upon completion of emergency berm construction and repair.
2. The creation of new or expansion of existing beach accesses within beach mouse habitat for vehicles and equipment is authorized no more than every 4 miles. The accesses shall be delineated by fence or other suitable material to ensure vehicles and equipment transport stay within the access corridor. These accesses shall be fully restored following project completion.

Protection of Piping Plovers

1. The FEMA or their grant applicant shall consult individually for the following emergency berm construction and repair projects located in:
 - 1a. Designated piping plover critical habitat units (**Appendix B**).
 - 1b. Florida State Parks and other non-federal public lands except to protect “existing structures” such as offices or restroom facilities. Berm placement to protect coastal roads, parking lots, boardwalks, picnic tables, gazebos, light poles, and benches require separate consultations and are not covered under “existing structures”. Federal lands are exempt from FEMA berm funds.

2. The FEMA or their grant applicant shall conduct either the following Term and Condition or “Protection of Piping Plovers prior, during, and after the project 3a-i:”

FEMA or their grant applicant shall contribute at least **\$3,100** for each mile or **\$0.60** per linear foot of berm constructed. The Service will take the lead and work with FEMA or the grant applicant to develop a mechanism for receiving and allocating these monies. The funds will be used towards the management and monitoring of piping plovers and their habitat on public or private lands which have a demonstrated use or potential use by piping plovers. Management may include but not be limited to posting and roping important use areas, enforcement of pet ordinances, and protection of closed off areas. Monitoring may assist in summarizing the status of plovers and their habitat. Trends in areas used by piping plovers may also be assessed in portions of Florida depending on data collected as funding allows." An oversight committee will be formed and they will determine funding allocation. Funds (federal, state or private) from outside sources may contribute to this "Shorebird Conservation Funding Program." These funds are to be used to minimize potential impacts to areas that may be used by piping plover that may be displaced permanently or temporarily by the project.

OR

3. Protection of piping plover prior, during, and after the project.

- 3a. Prior to construction, survey and map onto aerial photography, throughout the project area, optimal non-breeding piping plover habitat (low lying areas, washover passes, inlets, ephemeral ponds, lagoons, and mud and sand flats).
- 3b. Avoid berm placement in optimal piping plover habitat whether existing or newly created by storm events. If these areas cannot be avoided, the FEMA grant applicant shall arrange a meeting between representatives of the contractor, the Service, and the FWC, at least 10 days prior to the commencement of work on this project to discuss avoidance and minimization of impacts to the habitat.
- 3c. Avoid berm placement within 300 feet of inlets (dune lakes, bay inlets, island inlets, etc) and any open body of water except GOM or Atlantic Ocean. If this requirement is not feasible, the FEMA grant applicant shall arrange a meeting between representatives of the contractor and the Service at least 10 days prior to the commencement of work on this project to discuss avoidance and minimization of impacts to the habitat.
- 3d. If piping plovers are reported in the project area, poles or pier pilings occurring within 300 feet of optimal piping plover habitat shall be reported to the Service. The FEMA grant applicant shall coordinate a meeting with the Service to discuss retro-fitting these poles to reduce avian predation.
- 3e. Conduct surveys for non-breeding piping plover in the project area daily starting two weeks prior to project initiation for the duration of the berm construction period between July 15 and May 15 (10 months of the year), if optimal non-breeding piping plover

habitat is documented in the project area. Submit daily piping plover survey results to the Service (**Table 20**) with maps documenting the locations of piping plovers (with GPS coordinates or latitude and longitude coordinates) if seen during this survey period.

- 3f. Conduct bi-monthly surveys for piping plovers in the project areas from July 15 through May 15 of each year (10 months of the year) beginning two weeks post construction and continuing for the duration of the berm. Maintain information in a database (e.g. Access or Excel). Report negative and positive survey data and the amount and type of recreational use documented. Record piping plover locations with a Global Positioning System (GPS), habitat type used (intertidal area, mid-beach, etc), and observed behavior (foraging, roosting, etc). Incorporate all information collected into the database. Guidelines for conducting surveys are included in **Appendix C**. Submit yearly piping plover survey results (datasheets and database) to the Service (Table 20) with maps documenting the locations of piping plovers (with GPS coordinates or latitude and longitude coordinates) when seen.

Conduct at least one of the bi-monthly shorebird surveys April through October on a weekend to document the amount of recreational pressure potentially occurring along the shoreline.

- 3g. The FEMA or their grant applicant shall meet with the Service and FWC to discuss areas within the project area where natural organic material (wrack) can remain along the shoreline year-round. Wrack provides important foraging and roosting habitat by piping plovers on winter and migration grounds as well as an abundance of other shorebirds. Protection of wrack will help to offset the impacts of shorebird habitat directly or indirectly impacted by berm placement and ensuing human disturbance.
- 3h. When piping plovers or optimal habitat are documented in the project area, "Disturbance-Free Zones" shall be posted and roped off at least 300 feet away from the berm construction areas where potential bird resting and feeding are occurring. These areas shall remain roped off for the duration of the project.
- 3i. Excluding the Florida Panhandle Counties (Escambia to Jefferson County), surveys for and removal of exotic vegetation shall be conducted annually on the berm and within ten (10) feet on either side of the berm for the duration of the project or five (5) years, whichever is lesser to minimize the chances of an exotic seed source contained in the berm material becomes established on the beach.

Surveys should focus on the removal of all exotics, including the following which are known to impact coastal areas in Florida: Australian pine (*Casuarina equisetifolia*), melaleuca (*Melaleuca quinquenervia*), Brazilian pepper (*Schinus terebinthifolius*), beach naupaka (*Scaevola taccada*), latherleaf (*Colubrina asiatica*), carrotwood (*Cupaniopsis anacardioides*), lantana (*Lantana camara*), sisal (*Agave sisalana*), beach vitex (*Vitex rotundifolia*) and bowstring hemp (*Sansevieria hyacinthoides*).

Stabilization of Berms with Vegetation

1. Berms constructed within Perdido Key beach mouse habitat shall be stabilized by planting of native dune vegetation per the requirements provided below. The need to stabilize berms with vegetation in Choctawhatchee, St. Andrew, Anastasia Island, and Southeastern beach mouse habitat shall be coordinated with the Service Field Office as indicated on Table 28.

Table 28. Beach mouse occurrence relative to Fish and Wildlife Service Field Office.

COUNTY PROJECT OCCURS	SERVICE FIELD OFFICE	ADDRESS
Anastasia Island beach mouse- St. Johns Southeastern beach mouse – Volusia, Brevard,	North Florida Ecological Service Office	6620 Southpoint Dr. South # 310, Jacksonville, FL 32216
Southeastern beach mouse - Indian River	South Florida Ecological Service Office	1339 20 th Street Vero Beach, FL 32960
Perdido Key beach mouse- Escambia Choctawhatchee beach mouse- Okaloosa, Walton, and Bay St. Andrew beach mouse- Gulf	Panama City Ecological Service Office	1601 Balboa Avenue Panama City, FL 32405

2. Planting of vegetation on the berms may occur year round with the following conditions implemented.
 - 2a. Daily early morning sea turtle nesting surveys shall be conducted during the period from May 1 through October 31. If the planting is conducted in Brevard, Indian River, Martin, Palm Beach, St. Lucie and Broward Counties, daily early morning sea turtle nesting surveys are required and shall include March 1 to April 30 and November 1 to November 30. Nest surveys shall only be conducted by personnel with prior experience and training in nest surveys. Surveyors shall have a valid FWC permit. Nest surveys shall be conducted daily between sunrise and 9 a.m. (all times). No dune planting activity shall occur until after the daily turtle survey and nest conservation and protection efforts have been completed.
 - 2b. Nesting surveys shall be initiated 65 days prior to dune planting activities or by May 1, whichever is later and by March 1, if the planting occurs in Brevard, Indian River, Martin, Palm Beach, St. Lucie or Broward counties. Nesting surveys shall continue through the end of the project or through September 1, whichever is earlier. Hatching and emerging success monitoring will involve checking nests beyond the completion date of the daily early morning nesting surveys.
 - 2c. Any nests deposited in the dune planting area not requiring relocation for conservation purposes shall be left *in situ*. The turtle permit holder shall install an on-beach marker at the nest site and a secondary marker at a point as far landward as possible to assure that future location of the nest will be possible should the on-beach marker be lost. A series of stakes and highly visible survey ribbon or string shall be installed to establish an area of 3-foot radius surrounding the nest. No planting or other activity shall occur within this area or will any activities occur which could result in impacts to the nest. Nest sites shall

be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the planting activity.

- 2d. If a nest is disturbed or uncovered during planting activity, the Applicant or their contractors shall cease all work and immediately contact the responsible turtle permit holder. If a nest(s) cannot be safely avoided during planting, all activity within the affected project site shall be delayed until hatching and emerging success monitoring of the nest is completed.
- 2e. All berm planting activities shall be conducted by hand and only during daylight hours.
- 2f. All dune vegetation shall consist of coastal dune species native to the local area; (*i.e.*, native to coastal dunes in the respective county and grown from plant stock from that region of Florida). Seedlings shall be at least 1 inch by 1 inch with a 2.5-inch pot. Planting shall be on 18-inch centers throughout the created dune; however, 24-inch centers may be acceptable depending on the area to be planted. Vegetation shall be planted with an appropriate amount of fertilizer and anti-desiccant material, as appropriate, for the plant size.
- 2g. No use of heavy equipment (trucks) shall occur on the dunes or seaward for planting purposes. A lightweight (ATV type) vehicle, with tire pressures of 10 psi or less may be operated on the beach.
- 2h. All irrigation equipment shall be installed as authorized under a FDEP permit.

Reporting

- 1. A report describing the projects conducted during the year and actions taken to implement the reasonable and prudent measures and terms and conditions of this incidental take statement shall be submitted to the Service (**Table 25**) by March 1 of the following year of completing the proposed work for each year when the activity has occurred. This report will include the project location (include DEP R-Monuments), project description, dates of actual construction activities, sand source and beach compatibility analysis, names and qualifications of personnel involved in sea turtle nest surveys and relocation activities, descriptions and locations of self-release beach sites, sea turtle nest survey and relocation results and the information outlined in **Table 30**, acreage of new or widened access areas affected in beach mouse habitat, vegetation completed for new or widened access areas, success rate of vegetation of vegetation, names and qualifications of personnel involved in piping plover surveys, results of the daily piping plover surveys shall be submitted, with maps documenting the locations of piping plover (with GPS points or latitude and longitude coordinates), if observed during the survey period, post-construction maps.
- 2. In the event a sea turtle nest is excavated during construction activities, the permitted person responsible for egg relocation for the project shall be notified so the eggs can be moved to a suitable relocation site.

3. Upon locating a sea turtle adult, hatchling, or egg, beach mouse, or piping plover, that may have been harmed, destroyed, killed or injured as a direct or indirect result of the project, notification shall be immediately made to the FWC at 1-888-404-3922 and the Service (Table 29).

Care shall be taken in handling injured turtles or eggs, beach mice or piping plovers to ensure effective treatment or disposition and in handling dead specimens to preserve biological materials in the best possible state for later analysis.

Table 29. Service Field Offices for contacting concerning injury or death of a species during project construction.

COUNTY PROJECT OCCURS	SERVICE FIELD OFFICE	PHONE NUMBER
Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Manatee, Pinellas and Hillsborough	North Florida Ecological Service Office	(904) 232-2580
Indian River, Broward, Charlotte, Collier, Lee, Martin, Miami-Dade, Monroe, Palm Beach, Sarasota and St. Lucie	South Florida Ecological Service Office	(772) 562-3909
Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa and Walton	Panama City Ecological Service Office	(850) 769-0552

Table 30. Sea Turtle Monitoring for Emergency Berm Construction and Repair Projects.

CHARACTERISTIC	PARAMETER	MEASUREMENT	VARIABLE
Nesting Success	False crawls - number	Visual assessment of all false crawls	Number and location of false crawls in nourished areas and non nourished areas: any interaction of the turtle with obstructions, such as groins, seawalls, or scarps, should be noted.
	False crawl - type	Categorization of the stage at which nesting was abandoned	Number in each of the following categories: emergence-no digging, preliminary body pit, abandoned egg chamber.
	Nests	Number	The number of sea turtle nests in nourished and non nourished areas should be noted. If possible, the location of all sea turtle nests shall be marked on map of project, and approximate distance to sea walls or scarps measured using a meter tape. Any abnormal cavity morphologies should be reported as well as whether turtle touched groins, seawalls, or scarps during nest excavation
		Lost Nests	The number of nests lost to inundation, erosion or the number with lost markers that could not be found.
	Lighting Impacts	Disoriented sea turtles	The number of disoriented hatchlings and adults shall be documented and reported in accordance with existing FWC protocol for disorientation events.

CHARACTERISTIC	PARAMETER	MEASUREMENT	VARIABLE
Reproductive Success	Emergence & hatching success	Standard survey protocol	Numbers of the following: unhatched eggs, depredated nests and eggs, live pipped eggs, dead pipped eggs, live hatchlings in nest, dead hatchlings in nest, hatchlings emerged, disoriented hatchlings, depredated hatchlings

The RPMs, with their implementing T&Cs, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. The Service has determined that no more than 75 miles of shoreline in highly eroded areas of the Florida coastline within a federally declared emergency event area with suitable habitat for nesting loggerhead, green, leatherback, Kemp's ridley, and hawksbill sea turtles, and SEBM, AIBM, CBM, SABM, PKBM, and non-breeding piping plovers will be incidentally taken. If during the course of the action, this level is exceeded; such incidental take represents new information requiring initiation of consultation and review of the RPMs provided. FEMA shall immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the RPMs.

COORDINATION OF INCIDENTAL TAKE STATEMENTS WITH OTHER LAWS, REGULATIONS, AND POLICIES

Migratory birds including bald eagles

Relative to the piping plover, the Service will not refer the incidental take of any migratory bird or bald eagle for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712) or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668-668d), if such take is in compliance with the terms and conditions specified here.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

1. Appropriate native salt-resistant dune vegetation should be established on the berms.
2. Surveys for nesting success of sea turtles should be continued for a minimum of 3 years following berm construction to determine whether sea turtle nesting success has been adversely impacted.

3. The FEMA grant Applicant should implement predator control programs that target free ranging domestic and feral cats;
4. The FEMA grant Applicant should install dune walkovers at public beach access points to protect the constructed berms;
5. The FEMA grant Applicant should work with property owners and managers within the project area to install and maintain predator proof trash receptacles at beach accesses points;
6. FEMA should consider measures to limit coastal development that would exacerbate coastal erosion and then require storm protection in the future;
7. The FEMA grant Applicant should consider purchasing land for shorebird conservation which could include locations where natural shoreline processes can occur unimpeded. These might include not only undeveloped areas, but the potential "buy-out" of developments in areas that are sparsely developed and have high potential habitat value (*e.g.*, proximity to feeding areas, prone to overwash, etc.).
8. In order to comply with the MBTA^b and potential for this project to impact nesting shorebirds, the FEMA grant Applicant should follow FWC's standard guidelines to protect against impacts to nesting shorebirds during implementation of this project during the periods from February 15-August 31.

REINITIATION NOTICE

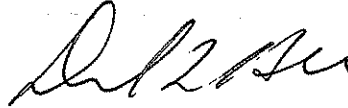
This concludes formal consultation on the action outlined in FEMA's request concerning the construction of 5-year berms on the beach for storm protection following a federally declared emergency event. As written in 50 CFR ' 402.16, reinitiation of formal consultation is required where discretionary FEMA involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the FEMA action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the FEMA action is later modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease until reinitiation.

For this biological opinion, the incidental take would be exceeded when the take as identified in Tables 16, 18, and 20 is exceeded which is what has been exempted from the prohibitions of

^b The Migratory Bird Treat Act (MBTA) implements various treaties and conventions between the U.S., Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory bird. Under the provisions of the MBTA it is unlawful "by any means or manner to pursue, hunt, take, capture or kill any migratory bird except as permitted by regulations issued by the Fish and Wildlife Service. The term "take" is not defined in the MBTA, but the Service has defined it by regulation to mean to pursue, hunt, shoot, wound, kill, trap, capture or collect any migratory bird, or any part, next or egg or any migratory bird covered by the conventions or to attempt those activities.

section 9 by this opinion. The Service appreciates the cooperation of the FEMA during this consultation. We would like to continue working with you and your staff regarding this project. The above findings and recommendations constitute the report of the Service. If you have any questions about this BO, please contact Ann Marie Lauritsen of this office at (904) 525-0661, Lorna Patrick of the Panama City Field Office at (850) 769-0552 or Jeffrey Howe of the South Florida Field Office at (772) 562-3909.

Sincerely,



David L. Hankla
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Appendix A

Previous formal consultations/biological opinions within Florida that have been issued for all projects that had adverse impacts to the nesting sea turtle.

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
JAX FIELD OFFICE					
1991	Brevard	Lighting at Cape Canaveral Air Force and Patrick Air Force Station	Lighting at both installations	Sea turtle lighting	75 disoriented loggerhead nests; 2 green turtles nests at CCAFS and 2 loggerhead nests at PAFB
1993	Brevard	Beach nourishment on Cape Canaveral		Beach nourishment	2 miles
1995	Brevard	Inlet bypass on Brevard County Beach at Cape Canaveral	R-1 to R-14	Inlet bypass	
1996	Brevard	Canaveral Port Authority dredge and beach disposal	R-34 to R-38	Dredge and beach restoration	
1998	Brevard	Inlet bypass on Brevard County Beach at Cape Canaveral	R-1 to R-14		

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2000	Brevard	Amended lighting at Cape Canaveral Air Force and Patrick Air Force Station	Lighting at both installations	Sea turtle lighting	2 percent hatchling and nesting female disorientations at each installation.
2001	Brevard	Brevard County Shore Protection Project (North Reach)	R-5 to R-12 and R-13 to R-54.5	Beach nourishment	9.4 miles
2001	Brevard	Patrick Air Force Base Beach Restoration	R-53 to R-70	Beach nourishment	
2002	Brevard	Brevard County Shore Protection Project (South Reach)	R-123.5 to R-139	Beach nourishment	3.02 miles
2002	Brevard	Brevard County Shore Protection Project (North Reach)	R-4 to R-20	Beach nourishment	
2002	Brevard	Permanent sand tightening of north jetty at Canaveral Harbor	North jetty at Canaveral Inlet	Sand tightening and extension of existing jetty	500 feet
2003	Brevard	Brevard County Shore Protection Project (South Reach)	R-118.3 to R-123.5		0.94 mile
2004	Brevard	Canaveral Harbor Federal Sand Bypass and Beach Placement	R-14 to R-20	Inlet bypass and beach nourishment	18,600 linear feet

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. o eggs, etc.)
2005	Brevard	Brevard County Shore Protection Project (North and South Reach)	R-5 to R-20 and R-21 to R-54.5 and R-118 to R-139	Beach nourishment	13.2 miles
2005	Brevard	Brevard County FEMA Berm and Dune Restoration	R-75 to R-118	Dune repair	12 miles
2005	Brevard	Patrick Air Force Base Beach Restoration	R-54.5 to R-75.3	Beach nourishment	
2005	Brevard	Sloped Geotextile Revetment Armoring Structures	5 tubes along north and south Melbourne beach	Protec tube installation	4,600 linear feet
2006	Brevard	Brevard County FEMA Berm and Dune Restoration	R-75 to R-118	Dune repair	12 miles
2006	Brevard	Amended Lighting at Cape Canaveral Air Force and Patrick Air Force Station		Sea turtle lighting	3 percent hatchling a nesting female disorientations at ea installation
2008	Brevard	Patrick Air Force Base Dune Restoration	R-65 to R-70	Dune Restoration	6,000 linear feet

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2008	Brevard	Brevard County's Dune Restoration	R-75 to R-118 and R-138 to R-202	Dune Restoration	140,000 cy along 3,000 linear feet
1991	Duval	Duval County Beach Erosion Control	R-44 to R-52.5	Beach nourishment	9,000 linear feet
1996	Duval	Duval County Beach Erosion Control	R-47 to R-80	Beach nourishment	5 miles
2003	Duval	Duval County Beach Erosion Control	R-72 to R-80	Beach nourishment	
2005	Duval	Duval County Beach Erosion Control	R-43 to R-53 and R-57 to R-80	Beach nourishment	5.7 miles
2005	Flagler	Road Stabilization from SR A1A		Seawall	140 linear feet
2005	Hillsborough	Egmont Key Nourishment	R-2 to R-10	Beach nourishment	8,000 linear feet
1993	Manatee	Anna Maria Island Beach Restoration	R-2 to R-36	Beach nourishment	4.7 miles
1997	Manatee	Dredge Material Disposal and Longboat Key Beach Restoration	R-48 to R-51	Dredge and beach nourishment	
2002	Manatee	Anna Maria Island Beach Restoration	R-7 to R-10 and R-12 to R-36	Beach nourishment	5.2 miles
2005	Manatee	Anna Maria Island Shore Protection Project	R-7 to R-10	Beach nourishment	3,000 linear feet

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. c eggs, etc.)
2005	Manatee	Anna Maria Island Emergency Beach Restoration	R-2 to R-41	Beach nourishment	4.2 miles
2005	Manatee	Town of Longboat Key Beach Renourishment	R-44.5 to R-46	Beach nourishment	0.34 mile
2007	Manatee	Longboat Key Groin Installation		Groin installation	2,210 linear feet
1994	Nassau	South Amelia Island Beach Restoration	R-60 to R-78	Beach nourishment	
1997	Nassau	Dredging of Sawpit Creek Cut and Beach Disposal	R-73.5 to R-78	Dredge and beach nourishment	2,900 linear feet
2002	Nassau	South Amelia Island Beach Restoration	R-50 to R-80	Beach nourishment	3.4 miles
2002	Nassau	Fernandina Harbor Dredge and Beach Disposal	R-1 to R-9	Dredge and beach nourishment	8,000 linear feet
2004	Nassau	Nassau County Shore Protection Project at Amelia Island	R-9 to R-33	Beach nourishment	3.6 miles
2005	Nassau	Nassau County Shore Protection Project at Amelia Island	R-11 to R-34	Beach nourishment	4.3 miles
2005	Nassau	Dredging of Sawpit Creek Cut and Beach Disposal	R-73.5 to R-78	Dredge and beach nourishment	2,900 linear feet
1988	Pinellas	Sand Key/Redington Beach Restoration	R-99 to R-107	Beach nourishment	
1990	Pinellas	Sand Key/Indian Rocks Beach Restoration	R-72 to R-85	Beach nourishment	

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
1991	Pinellas	Long Key Beach Restoration	R-144 to R-147	Beach nourishment	0.45 mile
1991	Pinellas	Johns Pass Dredge Material Disposal	R-127 to R-130	Dredge disposal and sand placement	
1992	Pinellas	Sand Key/Redington Beach Restoration	R-99 to R-107	Beach nourishment	
1992	Pinellas	Sand Key/Indian Shore Beach Restoration	R-85 to R-99	Beach nourishment	
1996	Pinellas	Treasure Island Beach Restoration	R-138 to R-142	Beach nourishment	2,500 linear feet
1996	Pinellas	Long Key Beach Restoration	R-144 to R-146	Beach nourishment	0.45 mile
1998	Pinellas	Sand Key/Belleair Beach Restoration	R-56 to R-66	Beach nourishment	
1999	Pinellas	Sand Key Beach Restoration	R-71 to R-107	Beach nourishment	
2000	Pinellas	Treasure Island Beach Restoration	R-136 to R-141	Beach nourishment	2.0 miles
2000	Pinellas	Terminal Groin at North End of Treasure Island		Groin construction	
2000	Pinellas	Long Key Beach Restoration	R-144 to R-145.6	Beach nourishment	2,800 linear feet
2000	Pinellas	Dredge Material Disposal and Honeymoon Island Beach Restoration	R-10 to R-12	Dredge disposal and sand placement	
2004	Pinellas	Treasure Island Beach Restoration	R-136 to R-141	Beach nourishment	
2004	Pinellas	Long Key Beach Restoration	R-144 to R-148	Beach nourishment	4,000 linear feet

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. c eggs, etc.)
2005	Pinellas	Sand Key Emergency Renourishment	R-56 to R-66 and R-72 to R-106	Beach nourishment	8.6 miles
2006	Pinellas	Treasure Island, Sunset, Long Key, Pass a Grill Emergency Renourishment	R-126 to R-146	Beach nourishment	9.5 miles
2006	Pinellas	Dredge Material Disposal and Mullet Key and Fort DeSoto Beach Restoration	R-177 to R-179.5 and R-181 to R-183	Dredge disposal and sand placement	4,500 linear feet
1997	St. Johns	Maintenance Dredging of Matanzas Inlet and Sand Placement at Summer Haven	R-197 to R-209		
2001	St. Johns	Maintenance Dredging of Matanzas Inlet and Sand Placement at Summer Haven			
2002	St. Johns	St. Johns County Shore Protection Project at St. Augustine	R-137 to R-152	Beach nourishment	2.5 miles
2003	St. Johns	St. Johns County Shore Protection Project at St. Augustine	R-132 to R-152	Beach nourishment	3.8 miles
2003	St. Johns	Maintenance Dredging of Matanzas Inlet and Sand Placement at Summer Haven	R-197 to R-209	Beach nourishment	
2005	St. Johns	St. Johns County Shore Protection Project at St. Augustine	R-137 to R-150	Beach nourishment	2.5 miles
2006	St. Johns			Beach driving	41.1 linear miles

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2007	St. Johns	Maintenance Dredging of Matanzas Inlet and Sand Placement at Summer Haven	R-200 to R-208	Beach nourishment	4,000 linear feet
2004	Volusia	Volusia County FEMA Berm	R-40 to R-145 and R-161 to R208	Beach nourishment	
2005	Volusia	Ponce de Leon Dredge and Beach Placement	R-143 to R-145	Dredge and sand placement	3,000 linear feet
2005	Volusia			Beach driving	50 miles
2006	Volusia	New Smyrna/Silver Sands Dune Restoration	R-161 to R-175	Beach restoration	5.4 miles
2006	Volusia	Volusia County FEMA Berm		Repair of right of way and beach placement	230 linear feet
2007	Volusia	Ponce de Leon Dredge and Beach Placement	R-158 to R-175	Dredge and sand placement	3.2 miles
PANAMA FIELD OFFICE					
1998	Bay	Panama City Beach beach nourishment	R-4.4 and R-93.2	Beach nourishment new project	16 miles
1998	Bay	Tyndall AFB driving on the beach	V-9 (virtual) to R-122	Driving on the beach for military missions	18 miles
1998	Bay	Lake Powell Emergency Opening	R- 0.5	Emergency Outlet opening	1,500 feet

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. c eggs, etc.)
1999	Bay	Panama City Beach beach nourishment amendment 1	R-0.5 to R-9	Beach nourishment completion	16 miles (no addition: take provided from original)
2000	Bay	Panama City Beach beach nourishment amendment 2	R-35 to R-71	Relief from tilling requirement Beach nourishment	16 miles (no addition: take provided from original)
2000	Bay	Panama City Beach beach nourishment amendment 3	R-35 to R-71	Relief from tilling requirement Beach nourishment	16 miles (no addition: take provided from original)
2000	Bay	Panama City Beach beach nourishment amendment 4	R-35 to R-71	Relief from tilling depth requirement and compaction testing sample numbers Beach nourishment	16 miles (no addition: take provided from original)
2001	Bay	East Pass re-opening	No R-monuments	Dredging of a closed inlet and dredged material placement on beach	2 miles
2001	Bay	Panama City Beach beach nourishment amendment 5	R-35 to R-71	Relief from tilling depth requirement Beach nourishment	16 miles (no addition: take provided from original)

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2001	Bay	City of Mexico Beach sand bypass system	Mexico Beach canal	Dredging and spoil disposal	3,700 feet 2.0 acres
2005	Bay	Panama City Beach beach nourishment amd. 5	R-4.4 and R-93.2	Post hurricane restoration	16 miles (no additional take provided from original)
2006	Bay	Tyndall Air Force Base INRMP	V-9 (virtual) to R-122	Integrated Natural Resources Mgmt Plan	18 miles
2006	Bay	Mexico Beach Canal Sand By Pass amendment 1	R-127 to R-129	By pass system improvements	5,000 feet
2007	Bay	Panama City Beach beach nourishment amendment 6	R-4.5 to R-30 and R-76 to R-88	New work and post hurricane restoration	31,500 feet of 16 miles total no additional take provided
2007	Bay	Panama City Beach nourishment amendment 8	2008 project: R-74 to R-91; Entire project: R-0.5 to R-91	Beach nourishment	17.9 miles

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. c eggs, etc.)
2000	Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin	Destin Dome OCS offshore oil and gas drilling	Gulf of Mexico federal waters	Oil and gas offshore exploration	Formal consultation w no take
2002	Escambia	Pensacola Beach beach nourishment	R-108 to R-143	Beach nourishment	8.3 miles Loggerhead 14 nests Green 1 nest Leatherback < 1 nes Kemp's ridley <1 nes
2005	Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf	FEMA beach berms post Hurricane Ivan emergency coordination – consultation not completed	UK	Emergency beach berms	Walton 20 miles Okaloosa 4.2 miles Mexico Bch 1 mile Panama City Bch Uf St Joseph peninsula Perdido Key UK Navarre UK

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2004	Franklin	Alligator Point beach nourishment	R-207 to R-210	Beach nourishment	2,500 feet Loggerhead,; 2 nests, green 1 nest; leatherback 1 nest
2007	Gulf	St. Joseph peninsula beach nourishment	R-67 to R-105.5	Beach nourishment	7.5 miles
2001	Okaloosa	Eglin AFB porous groin within season	Eglin AFB Test Sites 1 and 3	Experimental porous groin system	
2002	Okaloosa	Eglin 737 Sensor Test Site 13-A SRI	V-507	Military testing	0.01 acre 0.12 mile
2004	Okaloosa, Santa Rosa	Eglin AFB Advance Skills Training	R-502 to R-534	Military training	7 miles 70 acres
2002	Santa Rosa, Okaloosa, Gulf	Eglin AFB INRMP	V-621 to V-501	Integrated natural resources Management Program	17 miles
2003	Santa Rosa, Okaloosa	Eglin Marine Expeditionary Unit Training	V-621 to V-501	Military Marine training	17 miles

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2003	Santa Rosa, Okaloosa	Eglin AFB U.S. Army Ranger Los Banos	V-502 to V-533	Military Army training	7 miles
2004	Santa Rosa, Okaloosa	Eglin AFB Airborne Littoral Reconnaissance Test	V-501 to V-514	Military Naval testing	0.5 mile 15.2 acres
2005	Santa Rosa	Navarre beach nourishment emergency coordination – consultation not completed	R-192.5 to R-213.5	Emergency beach nourishment	4.1 miles
2005	Santa Rosa, Okaloosa	Eglin Air Force Base military mission & training Santa Rosa Island Programmatic	V-621 to V-501	Military missions	17 miles
2006	Santa Rosa	Navarre Beach restoration amendment 1		Walkover construction associated with beach nourishment	4.1 miles (no additional take provided from original)
2006	Santa Rosa	Navarre Beach restoration amendment 1		Walkover construction associated with beach nourishment	4.1 miles (no additional take provided from original)
2006	Santa Rosa	Navarre Beach restoration amendment 1		Walkover construction associated with beach nourishment	4.1 miles (no additional take provided from original)

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2006	Santa Rosa	Navarre Beach restoration amendment 1		Walkover construction associated with beach nourishment	4.1 miles (no additional take provided from original)
2004	Walton, Okaloosa	Walton County-Destin beach nourishment	R-39 (Okaloosa Co.) to R-21.93 (Walton Co.)	New Beach nourishment	6.7 miles Loggerhead: 11 nests green 1 nests; leatherback & Kemp's ridley: < 1 nest
2006	Walton	Western Lake Emergency Opening	R-72 to R-73	Emergency Outlet opening	0.5 miles 3.0 acres
2007	Walton	Eastern Lake Emergency Opening	R-94 to R-95	Emergency opening of coastal dune lake to GOM	0.5 mile
SOUTH FLORIDA FIELD OFFICE					

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. o eggs, etc.)
2003	Broward	Broward County Shore Protection Project		Port Everglades dredging and beach nourishment	3,390 feet
2003	Broward	Diplomat Beach Nourishment		Nourishment and 200 feet of riprap	
2004	Broward	Fishermen's Pier		Pier repair	14,910 square feet
2007	Broward	Hillsboro Inlet Maintenance Dredging and Beach Placement	315 feet of the Inlet and 500 feet of shoreline at R-25.	Inlet dredging and beach nourishment	500 feet
2007	Broward	Town of Hillsboro Beach Pressure Equalizing Modules (PEMs) Pilot Project	R-7 to R-12 1 mile of shoreline	Pilot project to investigate the effectiveness of the PEMs	1 mile
2005	Charlotte	Manasota Key Groin Construction	R-19 to R-20	Stump Pass dredging (material placed on beach); and groin construction	1,000 feet
2006	Charlotte	Stump Pass Dredging and Beach Nourishment	R-16.5 to R-18	Stump Pass dredging and beach nourishment	1,500 feet
2003	Collier	Keewaydin Island Limited Partnership T-groin Project	R-90 to R-91	Gordon Pass -- maintenance dredge; nourish the section of beach where groins are to be constructed; construct three t-groins	1,000 feet

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2005	Collier	Hideaway Beach	H-1 to H-5 and H-9 to H-12	Beach nourishment and T-groin construction	1.4 miles
2005	Collier	Collier County Beach Re-nourishment Project	Segments within R-22 and R-79	Beach nourishment	13.4 miles
2005	Collier	South Marco Island Beach Re-nourishment	R-144 to G-2	Beach nourishment	0.83 mile
2004	Indian River	Issuance of permits to homeowners for emergency coastal armoring			3,196 feet
2005	Indian River	Indian River County Beach Nourishment - Sectors 3 and 5	Gaps between R-21 and R-107	Dune restoration and beach nourishment	5.90 miles dunes 0.8 mile beach
2005	Indian River	Indian River County Beach Nourishment – Sector 7	R-97 to R-108	Beach nourishment	2.2 miles
2006	Indian River	Indian River County Beach Nourishment – Sectors 1 and 2	R-3.5 to R-12	Dune enhancement and beach nourishment	1.62 miles
2007	Indian River	Sebastian Inlet Channel and Sand Trap Dredging, Sectors 1 and 2 Beach Nourishment	R-3 to R-12	Sand trap dredging and beach nourishment	1.61 miles
2002	Lee	Gasparilla Island Beach Nourishment	R-10 to R-26.5 R-25, R-25.5, R-26	Beach nourishment; breakwater construction; and two T-head groins	3.2 miles

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2003	Lee	Bonita Beach Re-nourishment		Beach nourishment	3,922 feet
2005	Lee	Sanibel and Captiva Island Beach Nourishment	R-83 to R-109 and R-110 to R-118	Beach nourishment	6.0 miles
2007	Lee	Gasparilla Island Beach Nourishment (BO amendment)	South of R-26A	Beach nourishment	
2007	Lee	North Captiva Island Beach Nourishment	R-81 and 208 feet south of R-81A	Beach nourishment	0.23 mile
2002	Martin	Jupiter Island	R-75 to R-117	Beach nourishment	6.5 miles
2005	Martin	Martin County Shore Protection Project	R-1 to R-25.6	Beach nourishment	4.1 miles
2005	Martin	Jupiter Island Modification	R-76 to R-84 and R-87 to R-11	Beach nourishment	5 miles
2007	Martin	Sailfish Point Marina Channel Dredging and Beach Nourishment	R-36 to R-39	Channel dredging and beach nourishment	0.66 mile
2005	Miami-Dade	Bal-Harbour T-Groin Reconstruction	R-27 to R-31.5	Groin removal and reconstruction	0.85 mile

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2005	Miami-Dade	Bakers Overhaul AIW Maintenance Dredging	R-28 to R-32	Dredging and beach nourishment	0.85 mile
2006	Miami-Dade	Miami-Dade Beach Nourishment	3 segments within R-48.7 and R-61	Beach nourishment	3,716 feet
2007	Miami-Dade	Miami Beach Nourishment	R-67 to R-70	BO modification to June 7, 2006 BO	3,000 feet
2003	Palm Beach	Palm Beach Harbor M & O	200 feet south of the south jetty	Jetty sand tightening	200 feet
2004	Palm Beach	Boca Raton Inlet Sand Bypassing	200 feet south of R-223	Inlet sand bypassing and beach nourishment	500 feet
2005	Palm Beach	Palm Beach Shoreline Protection Project - Delray Segment	R-175 to R-188	Beach restoration	2.7 miles
2005	Palm Beach	Palm Beach Shoreline Protection Project - Ocean Ridge Section	R-153 to R-159	Beach nourishment	1.12 miles
2005	Palm Beach	South Lake Worth Inlet Sand Transfer Plant Reconstruction and Bypassing	135 feet south of R-151, to 275 feet south of R-152	STP reconstruction and bypassing	900 feet
2005	Palm Beach	Mid-Town Beach Nourishment Project	R-90.4 to R-101.4	Beach nourishment	2.4 miles
2005	Palm Beach	Palm Beach Harbor M & O	R-76 to R-79	Dredging and beach nourishment	3,450 feet

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2006	Palm Beach	Boca Raton Beach Nourishment Project – Central and South	R-216 to R-222 R-223.3 to R-227.9	Dredge shoal fronting Boca Raton Inlet and beach nourishment	2.3 miles
2006	Palm Beach	Palm Beach Nourishment Project – Reach 8	R-125 to R-134	Beach nourishment	2.17 miles
2006	Palm Beach	Sea Dunes Condominium Seawall		Seawall construction	0.03 acre
2006	Palm Beach	North Ocean Boulevard Rock Revetment	290 feet north of R-84; 1,150 feet south of R-85	Rock revetment construction	0.34 mile
2007	Palm Beach	Palm Beach Sand Transfer Plant Reconstruction	R-76 to R-79	Sand transfer plant reconstruction and discharge pipe extension	0.57 mile
2007	Palm Beach	Lake Worth Inlet Jetty Repair	200 feet north of R-75 and 200 feet south of R-76	Jetty repair	400 feet
2007	Palm Beach	Singer Island and South Palm Beach Emergency Dune Restoration	385' south of R-137 to 500' north of R-136; 500' south of R-60 to 850' south of R-65	Dune Restoration	6,135 feet

YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2007	Palm Beach	Jupiter Island ICWW Maintenance Dredging and Beach Nourishment	16,000 feet (130,000 cy) of the ICWW dredged; material placed between R-13 and R-19.	Channel dredging and beach nourishment	1.04 miles
2007	Palm Beach	North Boca Raton Beach Nourishment	T-205 to 181 feet south of R-212	Beach nourishment	1.45 miles
2007	Palm Beach	Jupiter Inlet and channel dredging	R-13 to R-17	Dune restoration	~ 4,000 linear feet
2007	Palm Beach	Jupiter Inlet Sand Trap Dredging and Sand Placement	Maintenance dredging of the inlet; beach compatible placed R-13 to R-19	Inlet dredging and beach nourishment	1.02 miles
2007	Palm Beach	Modification to a sheet pile and rubble-mound T-head groin system	500 feet north of R-94 south to R-95	T-groin repair, extension, construction	0.4 mile
2008	Palm Beach	Reach 8 dune restoration	R-125 to 350 feet south of R-134	Dune restoration	2.17 miles

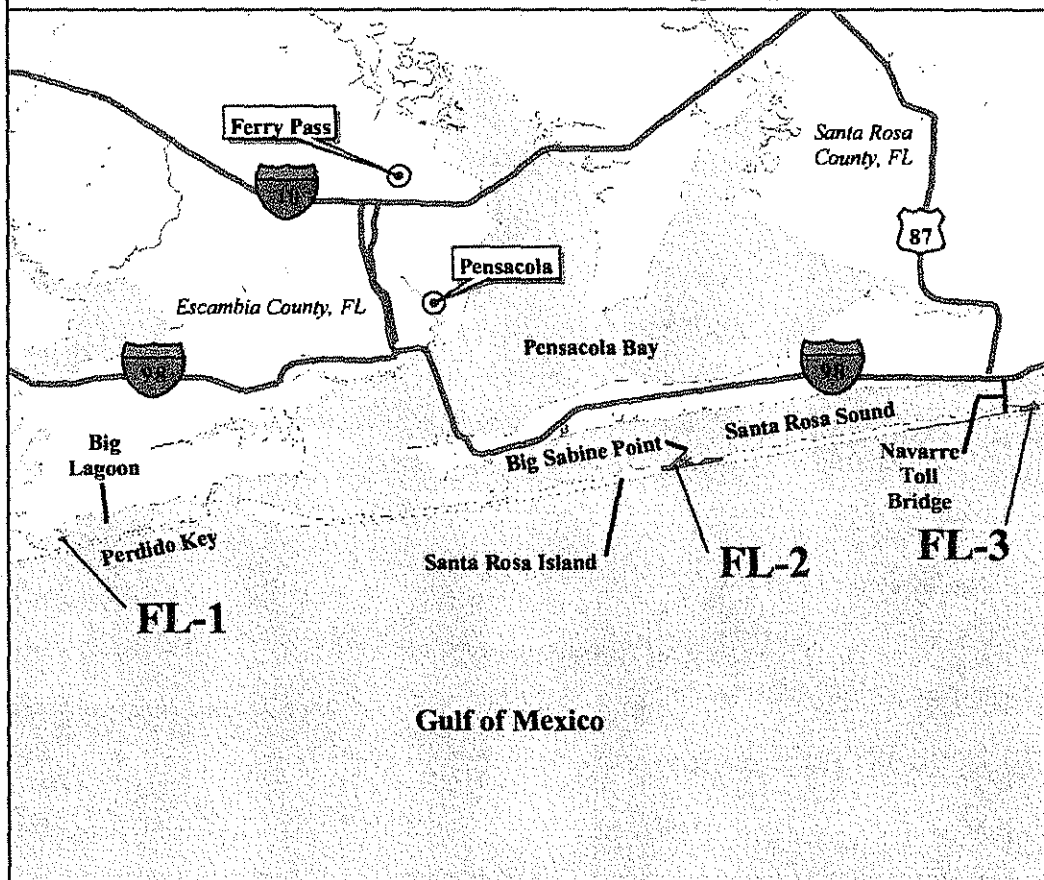
YEAR	COUNTY	PROJECT NAME	PROJECT LOCATION	PROJECT TYPE	ANTICIPATED INCIDENTAL TAKE (linear footage, no. of eggs, etc.)
2003	St. Lucie	Fort Pierce Shoreline Protection	R-33.8 to R-41	Beach nourishment; berm expansion; and six T-head groins	1.3 miles
2006	St. Lucie	Blind Creek Restoration and South St. Lucie Emergency Berm Remediation Project	R-98 to R-115 R-88 to R-90	Wetland restoration and beach nourishment	3.6 miles
2004	Sarasota and Manatee	Longboat Key Beach Nourishment	R-46A to R-29.5	Beach nourishment	9.45 miles
2005	Sarasota and Manatee	Longboat Key Beach Nourishment Project – BO Amendment			0.47 mile
2005	Sarasota	South Siesta Key	R-67 to R-77 plus 200 feet	Beach nourishment	2.1 miles
2007	Sarasota	Lido Key Beach Fill Placement Project	R-35.5 to R-44.2 2.27 miles	Beach nourishment	2.27 miles

Appendix B

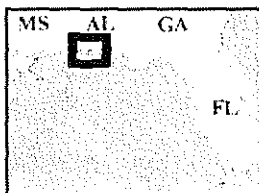
General Locations and Unit Descriptions of the Designated Critical Habitat for the Wintering Piping Plover

(Federal Register / Vol. 66, No. 132 / Tuesday, July 10, 2001 Rules and Regulations)

General locations of the designated critical habitat for the Wintering Piping Plover.



General Area



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Units: 1, 2 and 3

Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Units 1, 2, & 3

Unit FL-1: Big Lagoon. 8 ha (19 ac) in Escambia County.

The majority of the unit is within Big Lagoon State Recreation Area. This unit includes the peninsula and emerging sand and mudflats between 0.33 km (0.21 mi) west of the lookout tower along the shoreline and 0.24 km (0.15 mi) east of the lookout tower along the shoreline. Land along the shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All emerging sandbars to MLLW are included.

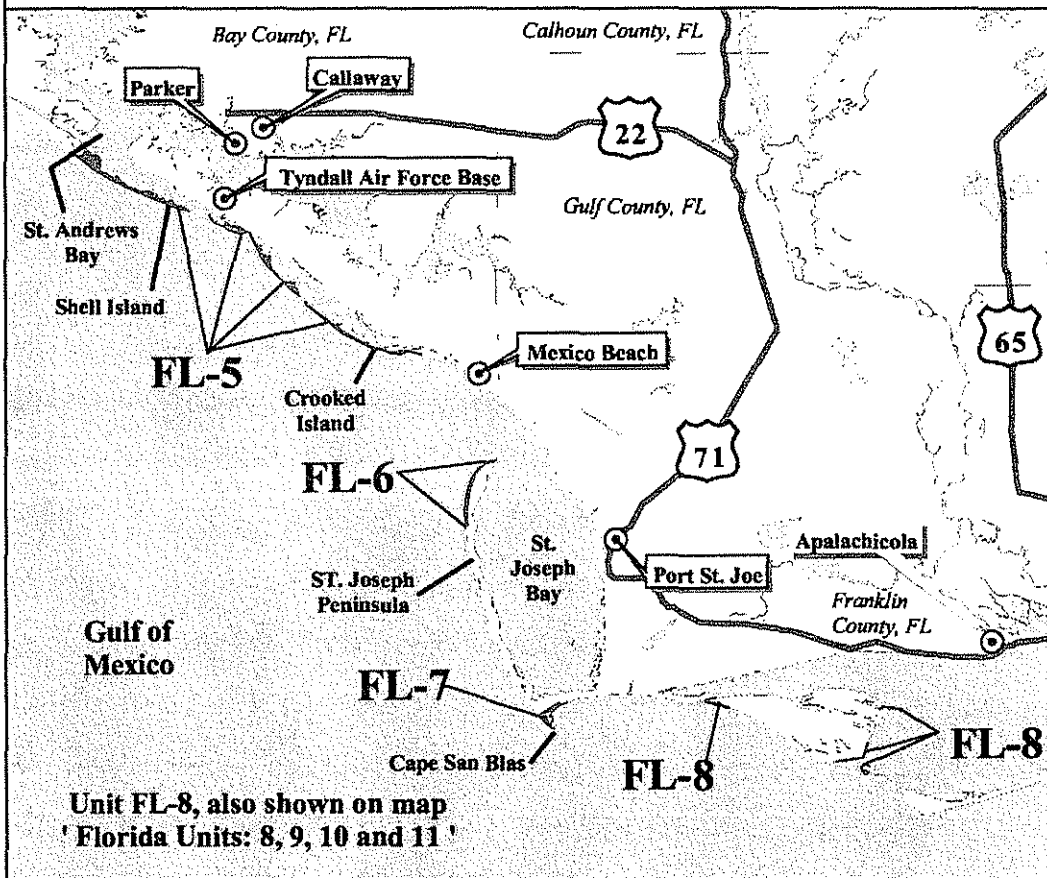
Unit FL-2: Big Sabine. 182 ha (450 ac) in Escambia County.

The majority of the unit is owned by the University of West Florida. This unit includes areas adjacent to Santa Rosa Sound of Big Sabine Point and adjacent embayment between 8.0 km (5.0 mi) and 11.6 (7.2 mi) east of the Bob Sike's Bridge. It begins 0.10 km (.06 mi) north of SR 399 to MLLW on the Santa Rosa Sound.

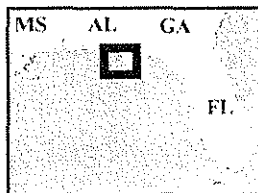
Unit FL-3: Navarre Beach. 48 ha (118 ac) in Escambia and Santa Rosa Counties.

The majority of the unit is owned by Eglin Air Force Base and Santa Rosa Island Authority. This unit includes lands on Santa Rosa Island Sound side, between 0.09 and 0.76 mi east of the eastern end of SR 399 to MLLW on Santa Rosa Sound side.

General locations of the designated critical habitat for the Wintering Piping Plover.



General Area



Distance: Miles

0 7 14



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

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Florida Units: 5, 6 and 7

Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Units 5, 6, & 7

Unit FL-5: Shell/Crooked Islands. 1789 ha (4419 ac) in Bay County.

The majority of the unit is within Tyndall Air Force Base and St. Andrews State Recreation Area. This unit includes all of Shell Island, Crooked Island West, and Crooked Island East from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

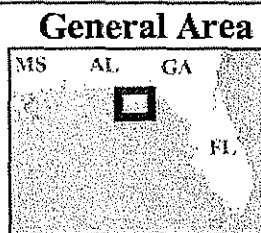
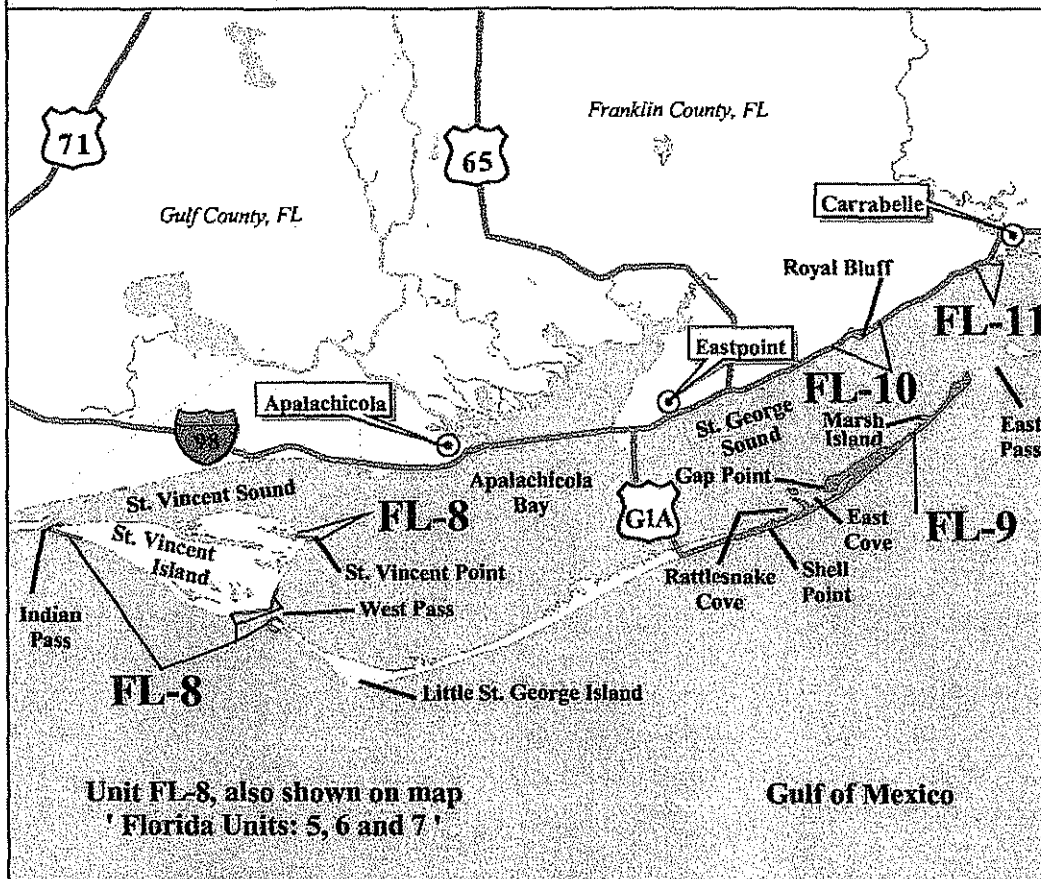
Unit FL-6: Upper St. Joe Peninsula. 182 ha (449 ac) in Gulf County.

The majority of the unit is within St. Joseph State Park. This unit includes the northern portion of the peninsula from the tip to 8.0 km (5.0 mi) south along the Gulf of Mexico from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL-7: Cape San Blas. 158 ha (390 ac) in Gulf County.

The entire unit is within Eglin Air Force Base. This unit includes the area known as the Cape between the eastern boundary of Eglin and mile marker 2.1, including the peninsula and all emerging sandbars. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

General locations of the designated critical habitat for the Wintering Piping Plover.



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Units: 8, 9, 10 and 11

Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Units 8, 9, 10, & 11

Unit FL-8: St. Vincent Island. 146 ha (361 ac) in Franklin County.

The majority of the unit is within St. Vincent National Wildlife Refuge. This unit includes the western tip of St. Vincent Island that is adjacent to Indian Pass (0.80 km (0.50 mi) east of tip along Indian Pass, and 1.9 km (1.2 mi) from tip southeast along Gulf of Mexico). The unit also includes St. Vincent Point from the inlet at Sheepshead Bayou east 1.6 km (1.0 mi) to include emerging oysters shoals and sand bars and extends south 0.21 km (0.13 mi) of St. Vincent Point. The unit includes the southeastern tip of St. Vincent Island extending north 1.4 km (0.90 mi) and south and west 2.1 km (1.3 mi). The western tip of Little St. George Island 0.80 km (0.50 mi) from West Pass is included (state owned lands). All sections of this unit include land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL-9: East St. George Island. 1433 ha (3540 ac) in Franklin County.

The majority of the unit is within St. George State Park. This unit begins 5.3 km (3.3 mi) east of the bridge and extends to East Pass. Shell Point, Rattlesnake Cove, Goose Island, East Cove, Gap Point, and Marsh Island are included. This unit includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur on the Gulf of Mexico, East Pass, and St. George Sound.

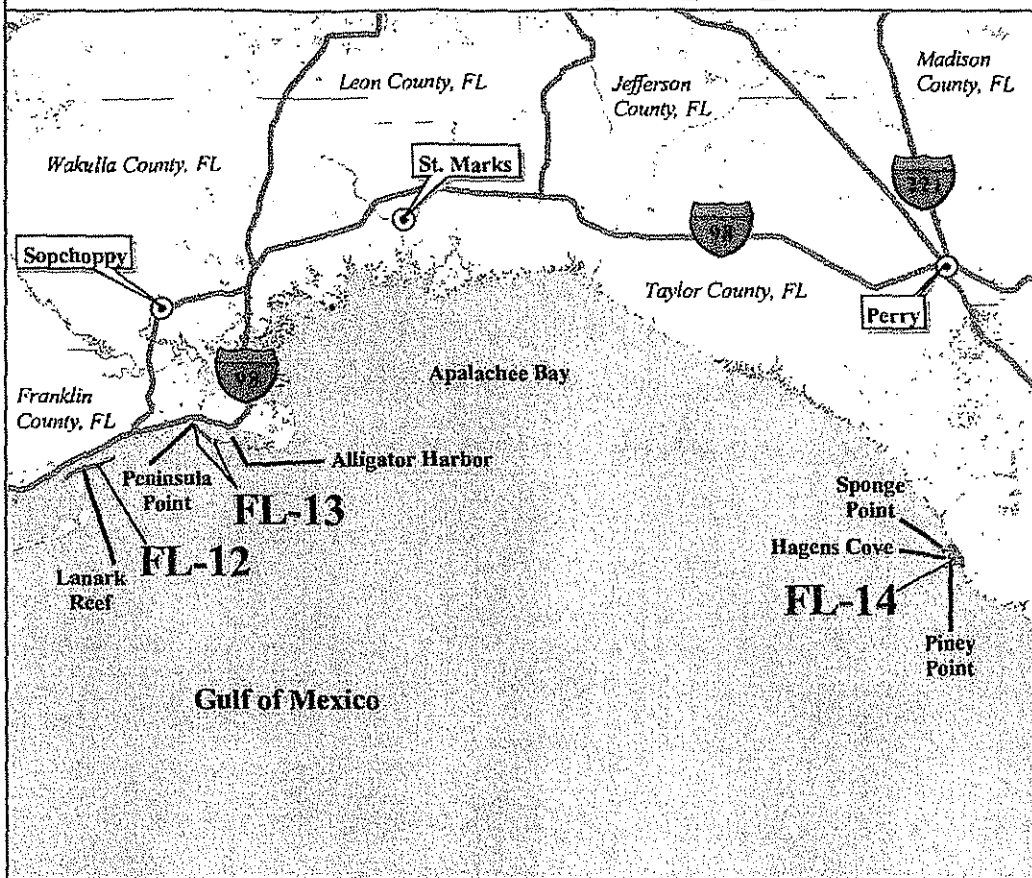
Unit FL-10: Yent Bayou. 153 ha (378 ac) in Franklin County.

The majority of the unit is State owned. This unit is adjacent to the area known as Royal Bluff. It includes the St. George Sound shoreline between 5.9 km (3.7 mi) and 9.5 km (5.9 mi) east of SR 65. It includes from MLLW to where densely vegetated habitat or developed structures such as SR 65, not used by the piping plover, begin and where the constituent elements no longer occur.

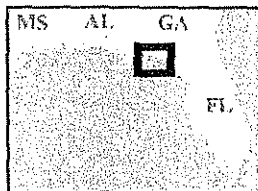
Unit FL-11: Carabelle Beach. 56 ha (139 ac) in Franklin County.

The area within this unit is privately owned. This unit is the peninsula created by Boggy Jordan Bayou. It includes St. George Sound shoreline (south of US 98) 1.6 km (1.0 mi) southwest along US 98 from the Carrabelle River Bridge and extends 1.9 km (1.2 mi) east along the St. George Sound shoreline. It includes from MLLW to where densely vegetated habitat or developed structures such as US 98, not used by the piping plover, begin and where the constituent elements no longer occur.

General locations of the designated critical habitat for the Wintering Piping Plover.



General Area



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Units: 12, 13 and 14

Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Units 12, 13, & 14

Unit FL-12: Lanark Reef. 260 ha (643 ac) in Franklin County.

The entire unit is State owned. This unit includes the entire island and emerging sandbars to MLLW.

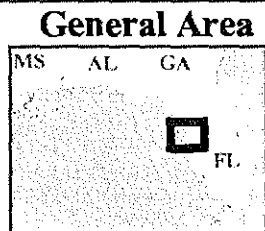
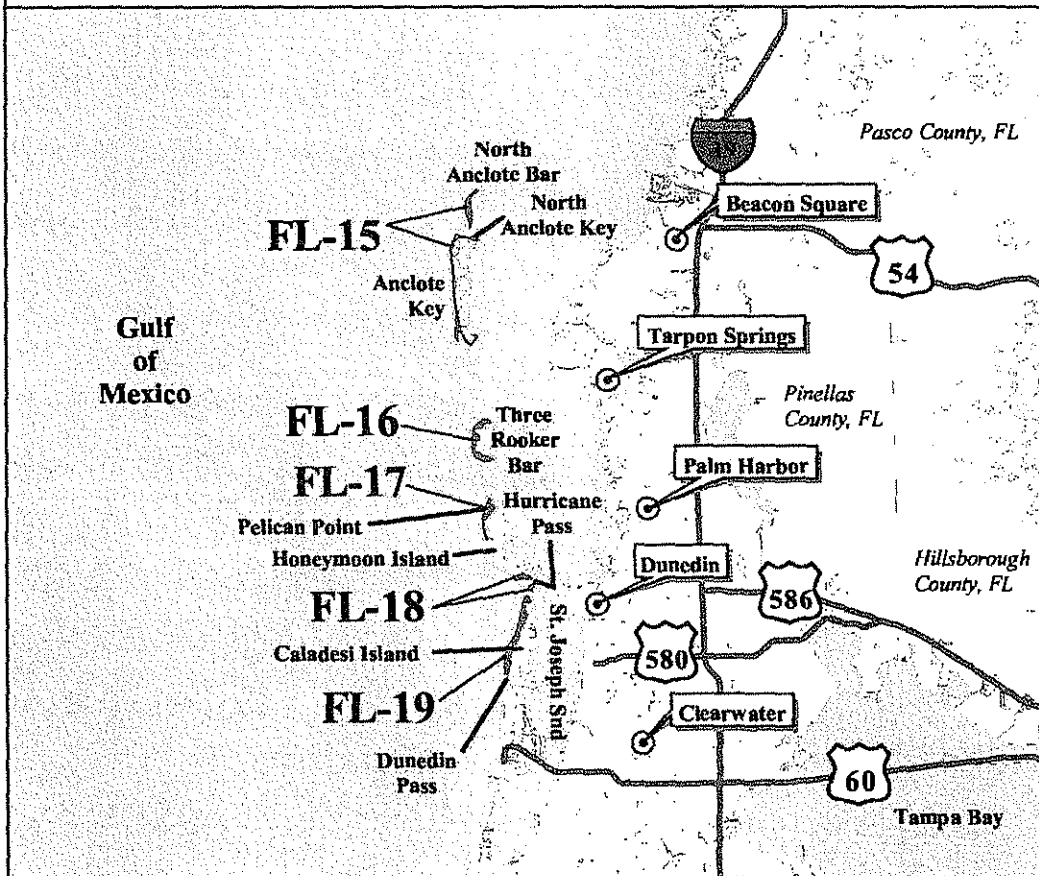
Unit FL-13: Phipps Preserve. 42 ha (104 ac) in Franklin County.

This unit includes all of Phipps Preserve (owned by The Nature Conservancy) and any emerging sandbars from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL-14: Hagens Cove. 486 ha (1200 ac) in Taylor County.

The majority of the unit is within Big Bend Wildlife Management Area. This unit includes all of Hagens Cove and extends from MLLW on north side of Sponge Point to MLLW on south side of Piney Point. The eastern boundary of this unit ends (0.20 mi) west of SR 361. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

General locations of the designated critical habitat for the Wintering Piping Plover.



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

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Florida Units: 15, 16, 17, 18 and 19

Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Units 15, 16, 17, 18, & 19

Unit FL-15: Anclote Key and North Anclote Bar. 146 ha (360 ac) in Pasco and Pinellas Counties.

The majority of the unit is within Anclote Key State Preserve. This unit includes all of North Anclote Bar to the MLLW and the north, south and western sides of Anclote Key from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL-16: Three Rooker Bar Island. 76 ha (188 ac) in Pinellas County.

The majority of the unit is within Pinellas County Aquatic Preserve. This unit includes all the islands and emerging sandbars of this complex to MLLW.

Unit FL-17: North Honeymoon Island. 45 ha (112 ac) in Pinellas County.

The majority of the unit is within Honeymoon Island State Recreation Area. This unit includes from Pelican Cove north to the far northern tip of Honeymoon Island. It includes the western shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur or the MLLW on the eastern shoreline.

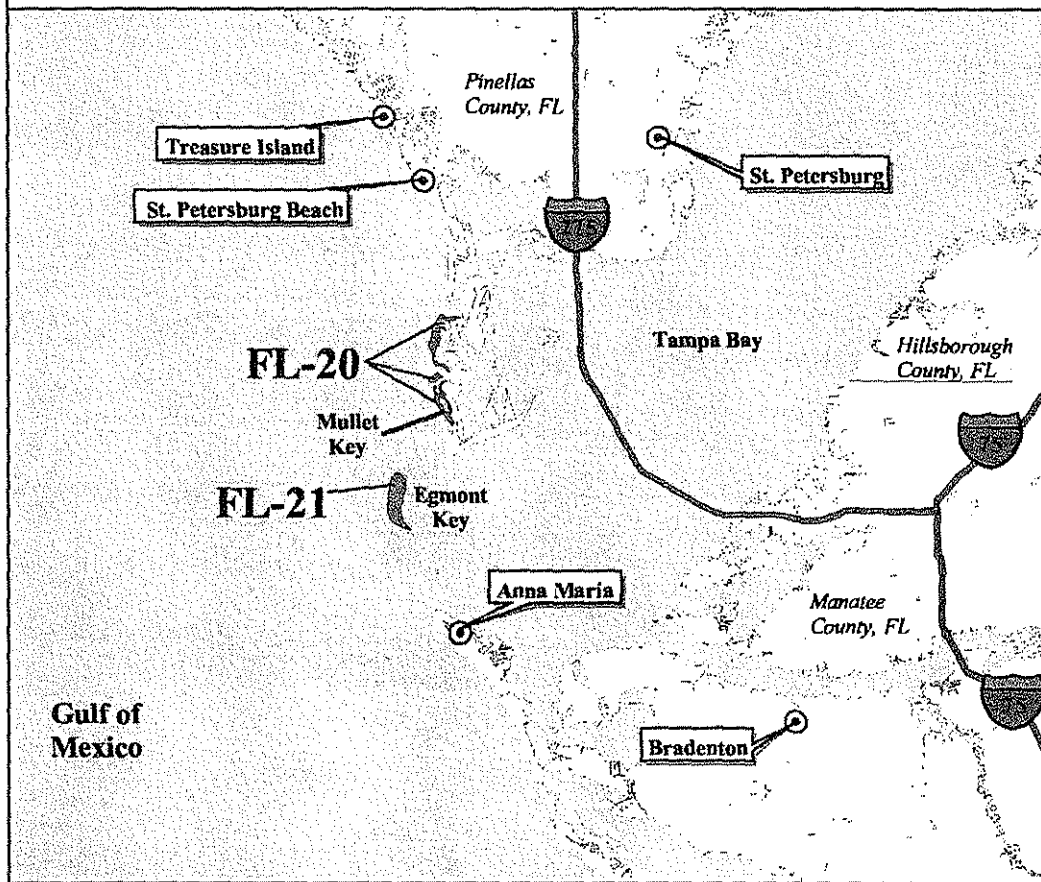
Unit FL-18: South Honeymoon Island. 28 ha (70 ac) in Pinellas County.

The majority of the unit is private land. This unit includes the southern end (southern-most 0.32 km (0.20 mi) on western side) of Honeymoon Island and encompasses the far southeastern tip and includes any emerging islands or sandbars to Hurricane Pass. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

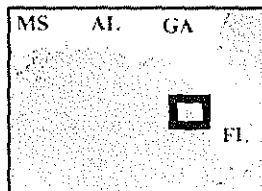
Unit FL-19: Caladesi Island. 120 ha (296 ac) in Pinellas County.

The majority of the unit is within Caladesi Island State Park. This unit extends from Hurricane Pass to Dunedin Pass on the Gulf of Mexico side. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

General locations of the designated critical habitat for the Wintering Piping Plover.



General Area



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Units: 20 and 21

Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Units 20 & 21

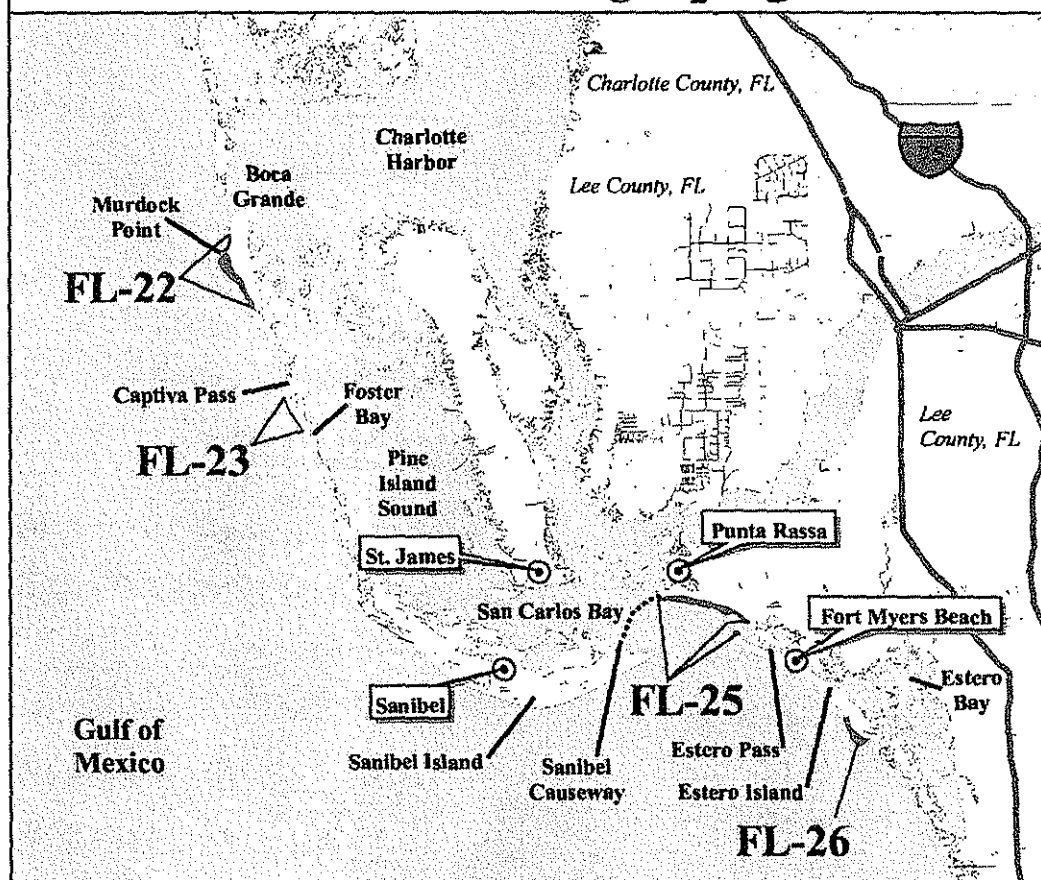
Unit FL-20: Shell Key and Mullet Key. 190 ha (470 ac) in Pinellas County.

The majority of the unit is within Fort Desoto Park. This unit includes the Shell Key Island complex. It also includes the northwest portion of Mullet Key including the western shorelines from Bunces Pass extending south, stopping 1.4 km (.86 mi) north of Ft. Desoto County Park pier. It includes from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

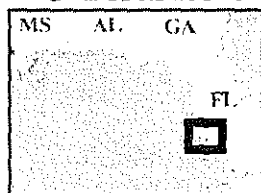
Unit FL-21: Egmont Key. 153 ha (377 ac) Hillsborough County.

The majority of the unit is within Egmont Key National Wildlife Refuge. This unit includes the entire island to MLLW.

General locations of the designated critical habitat for the Wintering Piping Plover.



General Area



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

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Florida Units: 22, 23, 25 and 26

Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Units 22, 23, 25, & 26

Unit FL-22: Cayo Costa. 175 ha (432 ac) in Lee County.

The majority of the unit, including its northern and southern boundaries, is within Cayo Costa State Park, and nearly all of the remaining area is in the Cayo Costa Florida Conservation and Recreation Lands (CARL) acquisition project. This unit begins at the northern limit of sandy beaches at the northern end of the island, extends through Murdock Point, which at present has a sandbar and lagoon system, and ends at the former entrance to Murdock Bayou. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL-23: North Captiva Island. 36 ha (88 ac) in Lee County.

The unit is within the Cayo Costa CARL land purchase project. This unit includes the western shoreline extending from 0.80 km (0.50 mi) south of Captiva Pass to approximately Foster Bay. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

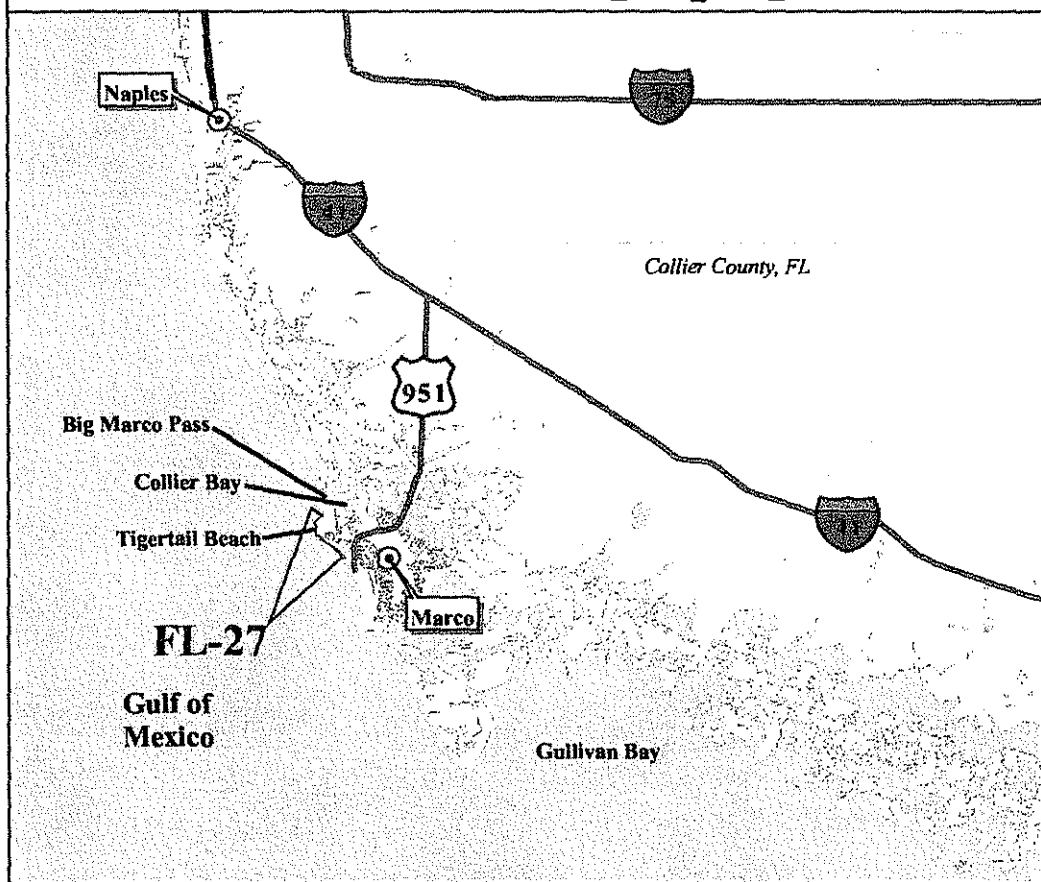
Unit FL-25: Bunche Beach. 187 ha (461 ac) in Lee County.

This unit is mostly within a CARL Estero Bay acquisition project. Bunche Beach (also spelled Bunch) lies along San Carlos Bay, on the mainland between Sanibel Island and Estero Island (Fort Myers Beach), extending east from the Sanibel Causeway past the end of John Morris Road to a canal serving a residential subdivision. The unit also includes the western tip of Estero Island (Bodwitch Point, also spelled Bowditch Point), including Bowditch Regional Park, operated by Lee County and, on the southwest side of the island facing the Gulf, the beach south nearly to the northwesterly intersection of Estero Boulevard and Carlos Circle. It includes land from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur or, along the developed portion of Estero Island.

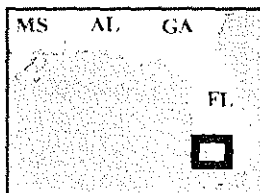
Unit FL-26: Estero Island. 86 ha (211 ac) in Lee County.

The majority of the unit is privately owned. The unit consists of approximately the southern third of the island's Gulf-facing shoreline starting near Avenida Pescadora to near Redfish Road. The unit excludes south-facing shoreline at the south end of the island that faces Big Carlos Pass rather than the Gulf. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

General locations of the designated critical habitat for the Wintering Piping Plover.



General Area



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Unit: 27

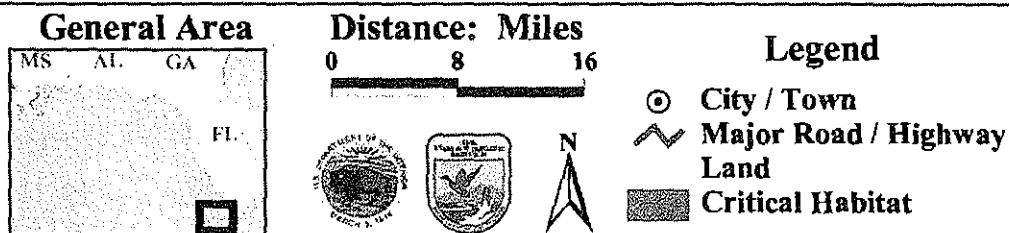
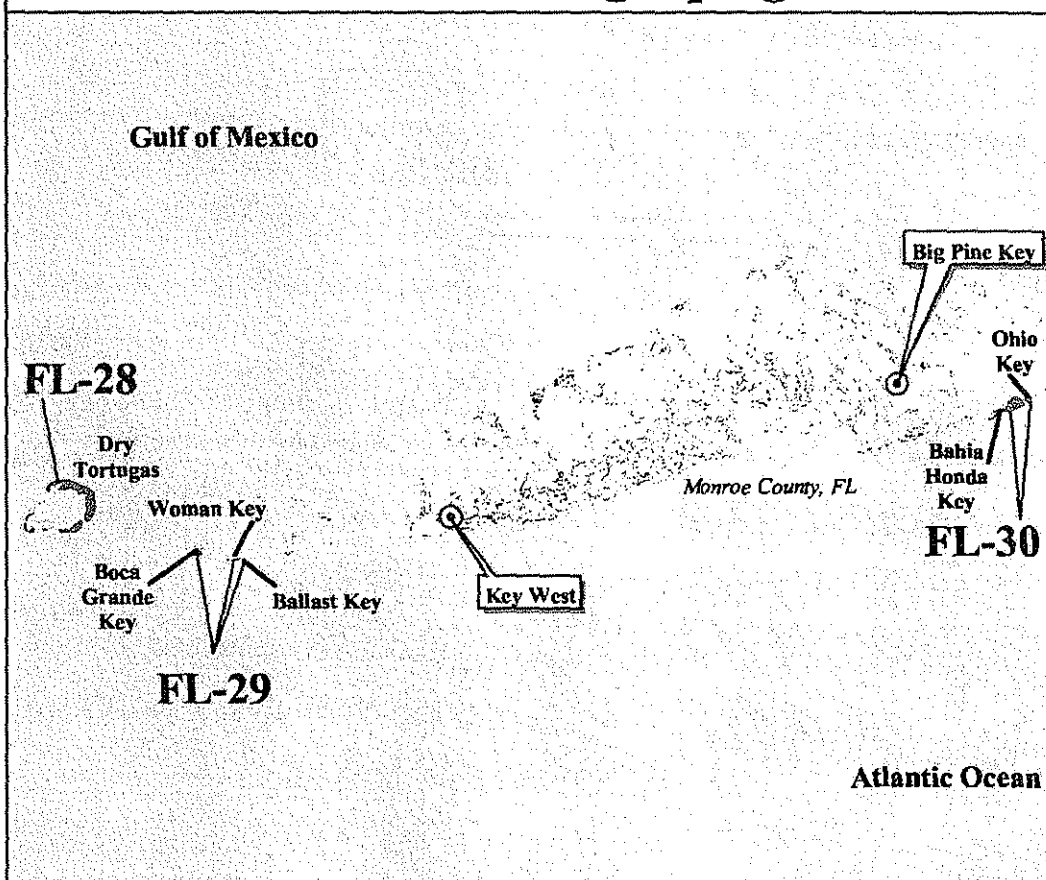
Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Unit 27

Unit FL-27: Marco Island. 245 ha (606 ac) in Collier County.

Most of the unit is at the Tigertail Beach County Park. The unit's northern border is on the north side of Big Marco Pass, including Coconut Island and all emerging sand bars. On the south side of Big Marco Pass, the boundary starts at the north boundary of Tigertail Beach County Park and extends to just south of the fourth condominium tower south of the County Park. The placement of the southern boundary assures that the unit includes all of Sand Dollar Island, the changeable sandbar off Tigertail Beach. The western boundary includes all the sand bars in Big Marco Pass but excludes Hideaway Beach. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

General locations of the designated critical habitat for the Wintering Piping Plover.



Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Units: 28, 29 and 30

Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Units 28, 29, & 30

Unit FL-28: Marquesas Keys. 2,937 ha (7,256 ac) in Monroe County.

The unit comprises the roughly circular atoll that encloses Mooney Harbor, including Gull Keys and Mooney Harbor Key. The entire unit is within Key West National Wildlife Refuge. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

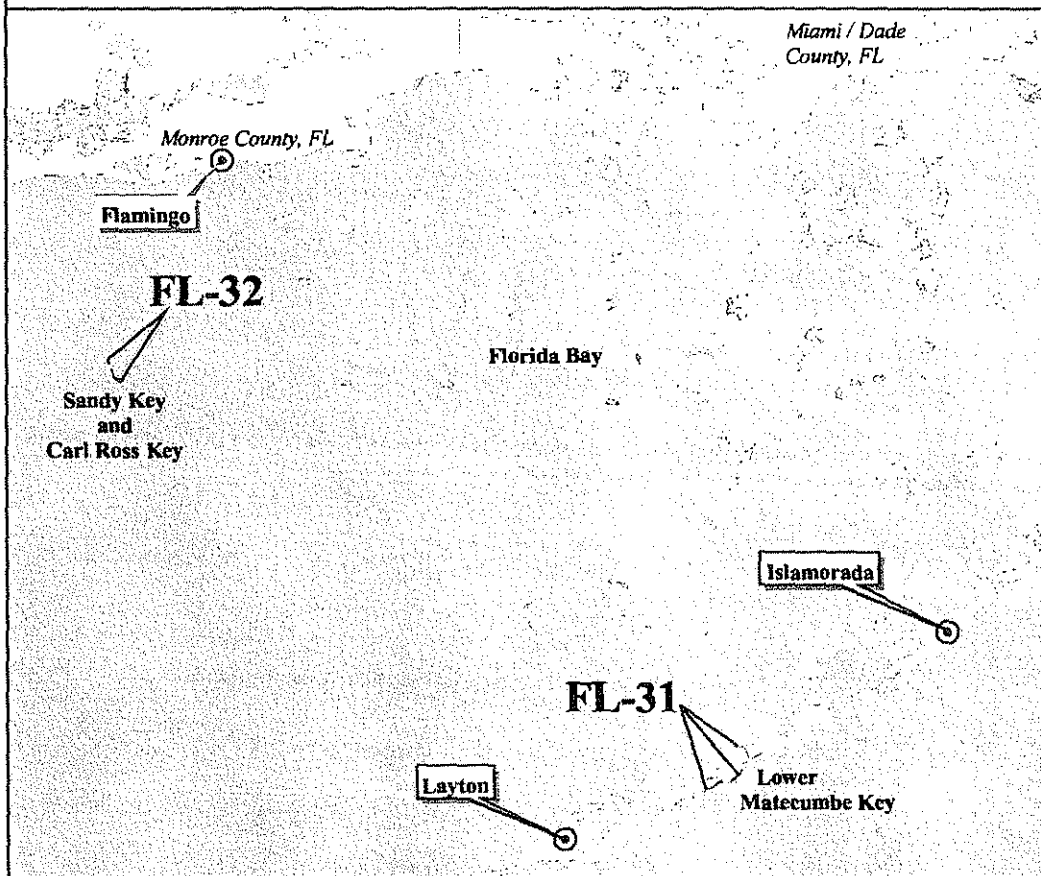
Unit FL-29: Boca Grande/Woman/Ballast Keys. 56 ha (138 ac) in Monroe County.

These Keys are east of the Marquesas Keys and west of Key West. Boca Grande and Woman Keys are within Key West National Wildlife Refuge. Ballast Key is privately owned. This unit consists only of sandy beaches and flats between the MLLW and to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

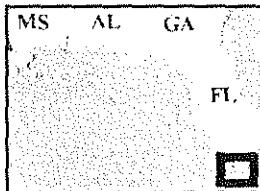
Unit FL-30: Bahia Honda/Ohio Keys. 372 ha (918 ac) in Monroe County.

This unit comprises Bahia Honda Key (including a small island off its southwest shore), which is almost entirely owned by Bahia Honda State Park, plus Ohio Key, which is privately owned. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

General locations of the designated critical habitat for the Wintering Piping Plover.



General Area



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Units: 31 and 32

Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Units 31 & 32

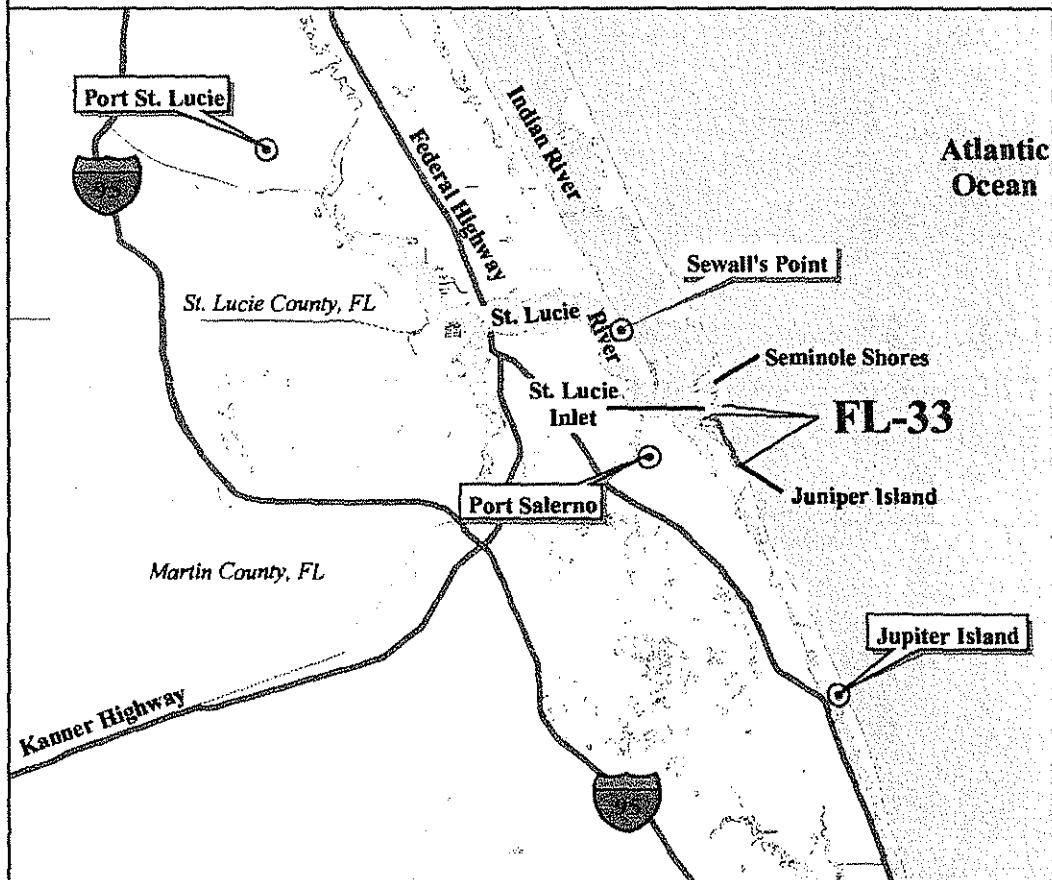
Unit FL-31: Lower Matecumbe Key. 19 ha (48 ac) in Monroe County.

Part of the unit is at Anne's Beach Park, an Islamorada Village Park. The remaining parts are at Sunset Drive (Lower Matecumbe Beach) and at Costa Bravo Drive (Port Antiqua Homeowners Beach) on the Florida Bay side of the island. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

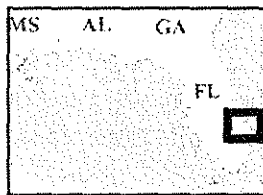
Unit FL-32: Sandy Key/Carl Ross Key. 67 ha (165 ac) in Monroe County.

This unit consists of two adjoining islands in Florida Bay, roughly south of Flamingo in Everglades National Park. The entire area is owned and managed by the National Park Service. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

General locations of the designated critical habitat for the Wintering Piping Plover.



General Area



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Unit: 33

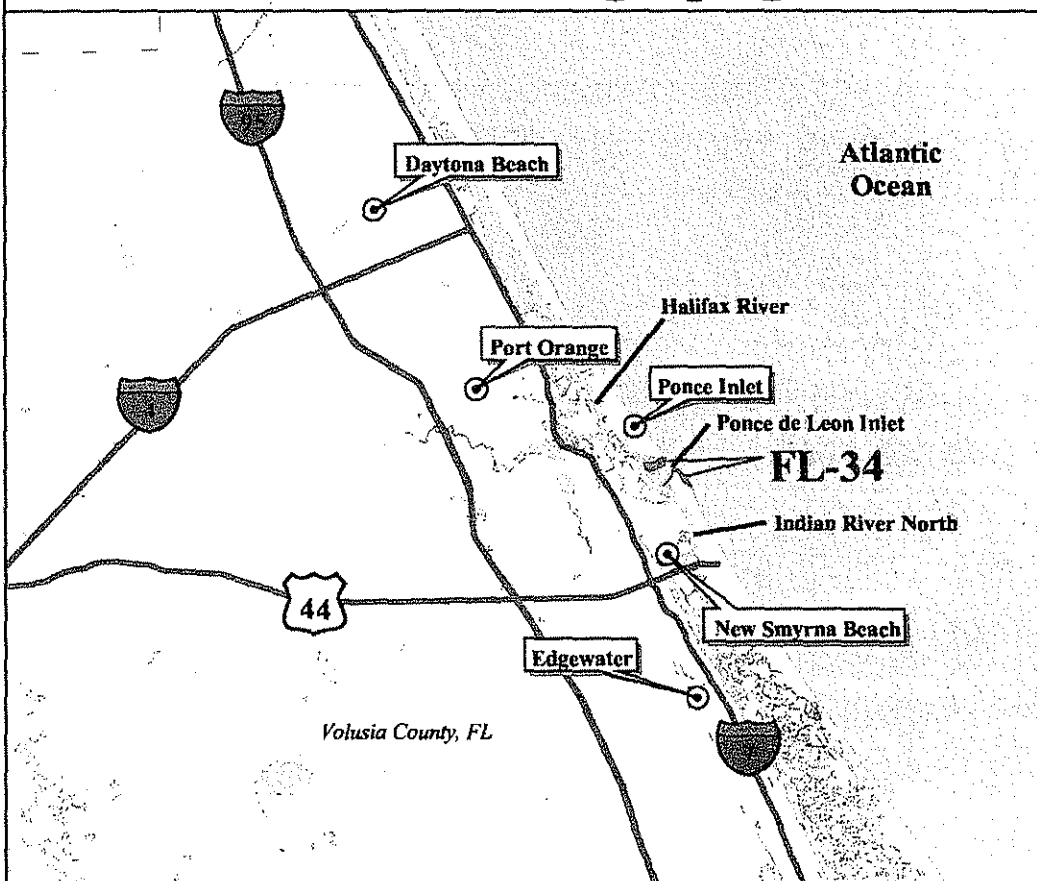
Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Unit 33

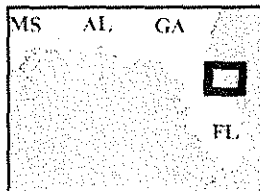
Unit FL-33: St. Lucie Inlet. 114 ha (282 ac) in Martin County.

The unit includes a small area south of the jetty on the north shore of St. Lucie Inlet, from the jetty west 0.42 km (0.26 mi). While the two sides of the inlet are privately owned, the great majority of the unit is on public land in the Saint Lucie Inlet State Preserve, administered by Jonathan Dickinson State Park. It begins on the sandy shoreline south of Saint Lucie Inlet and extends along the Atlantic Ocean shoreline 2.6 km (1.6 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur. The unit does not include sandbars within the inlet.

General locations of the designated critical habitat for the Wintering Piping Plover.



General Area



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Unit: 34

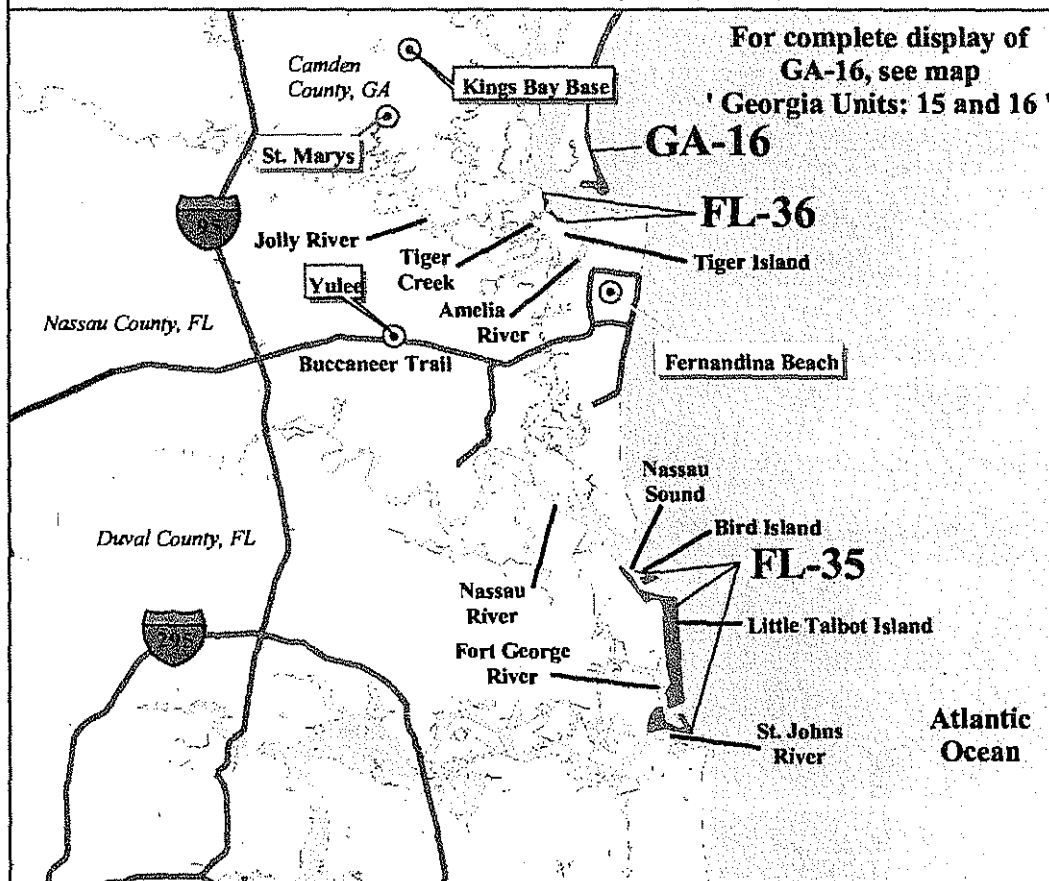
Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Unit 34

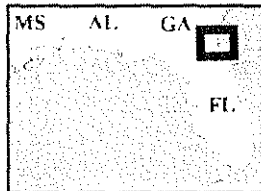
Unit FL-34: Ponce de Leon Inlet. 68 ha (168 ac) in Volusia County.

The majority of the unit is within Smyrna Dunes Park and Lighthouse Point Park. This unit includes shoreline extending from the jetty north of Ponce de Leon Inlet west to the Halifax River and Inlet junction. It includes shoreline south of Ponce de Leon Inlet from the inlet and Halifax River junction, extending east and south along the Atlantic Ocean shoreline 1.2 km (.70 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

General locations of the designated critical habitat for the Wintering Piping Plover.



General Area



Distance: Miles



Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Units: 35 and 36

Some locations have been slightly enlarged for display purposes only.

Narrative Unit Description – Florida Units 35 & 36

Unit FL-35: Nassau Sound- Huguenot. 950 ha (2347 ac) in Duval County.

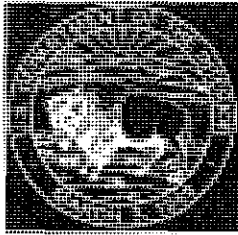
The majority of the unit is within Big Talbot Island State Park, Little Talbot Island State Park, and the Timucuan Ecological and Historical Preserve. This unit includes all emergent shoals and shoreline east of Nassau River Bridge and extends to the inlet of the St. John's River. Amelia Island and the northern 2.7 km (1.7 mi) shoreline along Talbot Island are not included. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL-36: Tiger Islands. 53 ha (130 ac) in Nassau County.

This unit is privately owned. This unit extends from the mouth of Tiger Creek and runs north along Tiger Island 0.8 km (0.5 mi) and south along Little Tiger Island 1.4 km (0.9 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur. Emerging sandbars to MLLW are also included.

Appendix C

Shorebird Survey Guidelines And Data



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Piping and Snowy Plover Non-breeding Season Survey Guidelines*

June 2007

*In coordination with the Florida Fish and Wildlife Conservation Commission, we recommend these guidelines for conducting piping and snowy plover non-breeding season surveys. These guidelines combine the survey protocol from the International Piping Plover Census and the International Shorebirds Survey (ISS). Please note that these guidelines only pertain to routine plover population monitoring and that a separate set of guidelines may be recommended for the purposes of evaluating potential project impacts.

1. Sites should be selected based on geographic features, suitability of habitat, and ability for you to adequately and consistently survey the site.
2. We have prepared a survey form for your use (enclosed). We also have the form in an Excel file if you need it. Let us know.
3. Monitoring should be conducted July 15 through May 15 which mostly follow ISS census dates listed below. The ISS schedule usually results in three surveys per month. If this is not feasible, try to do at least two surveys per month on the ISS census dates. Surveys should be conducted on ISS dates plus or minus 2 days (example: a survey scheduled for the 15th could be conducted on any day from the 13th through the 17th.)

Spring Migration

February 25
March 5
March 25
April 5
April 15
April 25
May 5
May 15

Fall Migration

July 15
July 25
August 5
August 15
August 25
September 5
September 15
September 25
October 5

Winter

October 15
October 25
November 5
November 15
November 25
December 5
December 15
December 25
January 5
January 15
January 25
February 5
February 15

4. To the extent possible, surveys should be conducted when birds are feeding. The best time is at low tide, but surveys can also be conducted on a falling or rising tide provided that the feeding areas are not completely covered. During high tide, birds will be roosting. Although piping plovers often roost near feeding areas, the birds will be much more difficult to locate.
5. If conducting the surveys by ATV or vehicle, driving speeds should be limited to 5 mph (8 mph) so that birds may be more easily observed. Avoid driving on feeding areas (e.g., flats) during low tides and avoid driving over the wrack line or areas of dense seaweed which provide food and cover for shorebirds.
6. Do not drive on the upper beach, in the dunes, or over beach vegetation.
7. If beach scarps or high tides require driving above the high tide line, avoid those areas with known sea turtle nests or shorebird breeding areas (combined nesting seasons for turtles and shorebirds are from February through October 31).
8. Avoid conducting surveys during poor weather conditions (e.g., high winds, rain).
9. Negative data is as important as positive data. Indicate when you have surveyed and no birds were observed.
10. Although piping and snowy plovers are the target species for the surveys, any additional observations of other species will help us to identify shorebird concentration areas and management needs.
11. The FWS and the FWC would appreciate receiving copies of your survey data. Please provide the information to the following individuals:

Patty Kelly
U.S. Fish and Wildlife Service
1601 Balboa Avenue
Panama City, FL 32405
(850) 769-0552 x228
Fax (850) 763-2177
Patricia_Kelly@fws.gov

John Himes
Florida Fish and Wildlife Conservation
Commission
3911 Highway 2321
Panama City, FL 32409-1658
(850) 265-3676
Fax (850) 747-5690
John.Himes@MyFWC.com

Above all, have fun and please try and minimize disturbance to the birds!

Piping Plover and Snowy Plover Survey Results in FL.

Surveyor(s) name: _____ Date: _____
 Location: _____ start GPS _____ end _____
 GPS _____
 Ownership if known: public _____ private _____
 Time surveyed: from _____ to _____ Temperature: _____ C° or F° _____
 Tide stage: low _____ Mid _____ High _____ (rising _____/falling _____)
 Disturbance: Number of people on beach _____ Number of dogs leashed _____ unleashed _____

of Piping plovers seen: _____
 Circle location: dunes foredune mid-beach tidal zone bay shoreline mudflat other _____
 Bands seen: Right Leg _____ Left Leg _____
 GPS _____
 Bands seen: Right Leg _____ Left Leg _____
 GPS _____

of Snowy plovers seen: _____
 Circle location: dunes foredune mid-beach tidal zone bay shoreline mudflat other _____
 Bands seen: Right Leg _____ Left Leg _____
 GPS _____
 Bands seen: Right Leg _____ Left Leg _____
 GPS _____
 Bands seen: Right Leg _____ Left Leg _____
 GPS _____
 Bands seen: Right Leg _____ Left Leg _____
 GPS _____

of Red Knots seen: _____
 Circle location: dunes foredune mid-beach tidal zone bay shoreline mudflat other _____
 Bands seen: Right Leg _____ Left Leg _____
 GPS _____
 Bands seen: Right Leg _____ Left Leg _____
 GPS _____

Other Species Seen:	Number:	Comments:
Black-bellied Plover		
American Golden Plover		
Wilson's Plover		
Semipalmated Plover		
Killdeer		
American Oystercatcher		
Greater Yellowlegs		
Lesser Yellowlegs		
Solitary Sandpiper		
Willet		
Spotted Sandpiper		
Whimbrel		
Marbled Godwit		
Ruddy Turnstone		
Sanderling		

Semipalmated Sandpiper		
Western Sandpiper		
Least Sandpiper		
White-rumped Sandpiper		
Baird's Sandpiper		
Pectoral Sandpiper		
Dunlin		
Stilt Sandpiper		
Peep sp.		
Short-billed Dowitcher		
Long-billed Dowitcher		
Other:		

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: 4

CONTRACT/PROJECT NAME: Estero Island Emergency Berm Construction Phase Services

CONSULTANT: Coastal Engineering Consultants, Inc.

PROJECT NO.: _____

SOLICIT NO.: Estero Island Beach Renourishment

CONTRACT NO.: RFQ-21-09-EN

REQUESTED BY: Chadd Chustz, Environmental Project Manager DATE OF REQUEST: 3/1/2023

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: May 1, 2023

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: May 1, 2023

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: May 1, 2023

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: May 1, 2023

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____
Department Director Date

By: _____
Contracts Manager Date

ACCEPTED:

By: Michael C. Hoff May 1, 2023
Consultant/Provider Date

TOWN APPROVAL:

By: _____
Town Manager Date

SCOPE OF PROFESSIONAL SERVICES

Estero Island Emergency Berm Construction Phase Services

INTRODUCTION

Due to the time frame required to obtain Federal Emergency Management Agency (FEMA) approval for the emergency berm, the start of construction was delayed such that the entire project will be constructed during shorebird nesting season. The funds for this monitoring were included in the final request to FEMA for public assistance and to the State of Florida and as such are eligible for reimbursement. The Florida Department of Environmental Protection is requiring the Town to abide by the beach nourishment permit for the emergency berm. The permit requires the following:

Shorebird Protection. The Permittee shall adhere to the shorebird protection conditions during the shorebird breeding cycle, which includes nesting.

a. Shorebird breeding season dates for this project area are **February 15 through September 1** (note that while most species have completed the breeding cycle by September 1, flightless young may be present through September and must be protected if present).

b. Bird survey routes must be established and monitored throughout the entire breeding season in any parts of the project area where: 1) potential shorebird breeding habitat occurs, and 2) project activities are expected to occur at any time within the breeding season. Breeding season surveys shall begin on the first day of the breeding season or 10 days prior to project commencement (including survey activities and other pre- construction presence on the beach), whichever is later.

c. Bird surveys shall be conducted in all potential beach-nesting bird habitats within the project boundaries that may be impacted by construction or pre-construction activities. One or more shorebird survey routes shall be established by the Permittee to cover project areas which require shorebird surveys. These routes shall be determined in coordination with the FWC Regional Biologist (or their designee) prior to the initiation of construction. Routes shall not be modified without prior notification to the FWC.

d. During the pre-construction and construction activities associated with the project, the Permittee shall ensure that surveys for detecting breeding activity and the presence of flightless chicks shall be completed **on a daily basis** by a qualified bird monitor. This shall be completed prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt breeding behavior or cause harm to the birds or their eggs or young.

Shorebird Monitor Requirements. The Permittee shall ensure that nesting and breeding shorebird surveys are conducted by trained, dedicated individuals (Bird Monitors) with proven shorebird identification skills and avian survey experience.

Shorebird Survey Protocols. Bird survey protocols, including downloadable field data sheets, are available on the FSD website. All breeding activity shall be reported to the FSD website within one week of data collection. If the use of this website is not feasible for data collection, the FWC Regional Biologist (or their designee) shall be contacted for alternative methods of reporting. The Permittee shall ensure that the Bird Monitors use the following survey protocols:

a. Surveys shall be conducted by walking the length of all survey routes and visually surveying for the presence of shorebirds exhibiting breeding behavior, shorebird chicks or shorebird juveniles, as outlined in the FSD Breeding Bird Protocol for Shorebirds and Seabirds. Use of binoculars (minimum 8x40) is required and use of a spotting scope may be necessary to accurately survey the area. If an ATV or other vehicle is needed to cover large survey routes, the Bird Monitor shall stop at intervals of no greater than 600 feet to visually inspect for breeding activity.

b. Once breeding or nesting behavior is confirmed by the presence of a scrape, eggs or young, the Permittee (or their designee) shall notify the FWC Regional Biologist (or their designee) within 24 hours.

Shorebird Buffer Zones and Travel Corridors. The Permittee shall require the Bird Monitors and Contractor(s) to meet the following:

a. The Bird Monitors shall establish a disturbance-free buffer zone around any location within the project area where the Bird Monitor has observed shorebirds engaged in breeding behavior, including territory defense. A 300-foot buffer shall be established around each nest or around the perimeter of each colonial nesting area. A 300-foot buffer shall also be placed around the perimeter of areas where shorebirds are seen digging nest scrapes or defending nest territories. All construction activities, movement of vehicles, stockpiling of equipment, and pedestrian traffic are prohibited in the buffer zone. **Smaller, site-specific buffers may be established if approved in writing by the FWC Regional Biologist (or their designee). Travel corridors shall be designated and marked outside the buffer areas for pedestrian, equipment, or vehicular traffic.**

b. The Bird Monitors shall keep breeding sites under sufficient surveillance to determine if birds appear agitated or disturbed by construction or other activities in adjacent areas. If birds appear to be agitated or disturbed by these activities, then the Bird Monitors shall immediately widen the buffer zone to a sufficient size to protect breeding birds.

c. The Bird Monitors shall ensure that reasonable and traditional pedestrian access is not blocked in situations where breeding birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beach-goers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be allowed when breeding was initiated within 300 feet of an established beach access pathway. The Bird Monitors shall work with the FWC Regional Species Conservation Biologist to determine if pedestrian access can be accommodated without compromising nesting success. These site-specific buffers must be determined in coordination with the FWC Regional Biologist (or their designee).

d. The Bird Monitors shall ensure that the perimeters of designated buffer zones shall be marked according to *Guidelines for Posting Shorebird and Seabird Sites in Florida* available at: <https://flshorebirdalliance.org/media/1055/fsapostingguidelines.pdf> with posts, twine and the FWC-approved signs stating "Do Not Enter, Important Nesting Area" or similar language around the perimeter (see example of signage for marking designated buffer zones at <http://myfwc.com/conservation/you- conserve/wildlife/shorebirds/>). Posts shall not exceed 3 feet in height once installed. Symbolic fencing (twine, string or rope) should be placed between all posts at least 2.5 feet above the ground and rendered clearly visible to pedestrians. If pedestrian pathway and/or equipment travel corridor modifications are approved by the FWC Regional Biologist (or their designee), these shall be clearly marked. **Posting shall be maintained in good repair until no active nests, eggs, or flightless young are present.** Although solitary nesters may leave the buffer zone temporarily with their chicks, the posted area continues to provide a potential refuge for the family until breeding is complete. Breeding is not considered to be completed until all chicks have fledged.

e. The Permittee shall ensure that no construction activities, pedestrians, moving vehicles, or stockpiled equipment are allowed within the buffer area.

f. The Permittee shall ensure that the Bird Monitors designate and mark travel corridors outside the buffer areas so as not to cause disturbance to breeding birds. Heavy equipment, other vehicles, or pedestrians may transit past breeding areas in these corridors. However, other activities such as stopping or turning heavy equipment and vehicles shall be prohibited within the designated travel corridors adjacent to the breeding site.

g. When flightless chicks are present within or adjacent to travel corridors, construction-related vehicles shall not be driven through the corridor unless a Bird Monitor is present to adequately monitor the travel corridor. The Permittee shall require the contractor with the oversight of the Bird Monitors to avoid any chicks that may be in the path of moving vehicles. The Permittee shall also require the contractor with the oversight of the Bird Monitors to level any tracks, ruts, or holes that may be capable of trapping flightless chicks, while avoiding any impacts to the chicks.

Notification. Any injury or death of a shorebird (including crushing eggs or young) resulting from project activities shall be reported immediately to the FWC Regional Biologist (or their designee).

Task 5: Shorebird Monitoring

CEC shall retain approved Bird Monitors to conduct the Permit required monitoring and reporting during emergency berm construction. Daily monitoring and reporting for nesting shorebirds shall begin 10 days prior to construction and continue through July 6, 2024. CEC and Bird Monitors shall assist FWC local representatives with establishing Permit required buffers and travel corridors. CEC shall provide technical support services to the Town.

Total Cost (of Job): \$24,610

EXHIBIT B

Date: May 1, 2023

COMPENSATION AND METHOD OF PAYMENT
ESTERO ISLAND BEACH RENOURISHMENT PHASE I

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
Task 5	Shorebird Monitoring	\$24,610	LS	W.I.P.P.
TOTAL		\$24,610		

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 5/1/2023, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated 5/1/2023, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: May 1, 2023

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE *** FOR
ESTERO ISLAND BEACH RENOURISHMENT PHASE I

Consultant or Sub-Consultant Name: Coastal Engineering Consultants, Inc.
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Standard Rate Schedule Included in Master Contract			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: May 1, 2023

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

ESTERO ISLAND BEACH RENOURISHMENT PHASE I

CONSULTANT OR SUB-CONSULTANT NAME: Coastal Engineering Consultants, Inc.

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.405/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
	Breakfast
	Lunch
	Dinner
In accordance with the Runzheimer rate service for Travel utilizing the "average", dated 5/4/06	\$12.01 \$11.82 \$24.72
Reproduction (Photocopy) 8 1/2" x 11"	\$0.15/Page
8 1/2" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
Permit Fees	Actual Cost
Bird Monitors	\$200/Day
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

*NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: May 1, 2023

TIME AND SCHEDULE OF PERFORMANCE

ESTERO ISLAND BEACH RENOURISHMENT PHASE I

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number of Calendar Days for Completion from Date of Notice to Proceed
Task 5	Shorebird Monitoring	107	107

EXHIBIT D

Date: May 1, 2023

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

ESTERO ISLAND BEACH RENOURISHMENT PHASE I

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
Bird Monitors	Corinne Price, Cape Coral Edwin Wilke, Bonita Springs Erica McCaughey, Bonita Springs Scott Blake				X	

1. **Requested Motion:**

Meeting Date: June 5, 2023

Motion to approve STA #8 authorizing the appropriation of additional funds for Axis International to continue to provide planning and zoning professional services.

Why the action is necessary:

This request for additional funds allows continuation of these services, retroactive to the last week of April 2023.

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Axis International provides planning and zoning consulting services for the Town of Fort Myers Beach. Every year this contract has had to have a supplemental funding from the current year's budget to pay for last year's invoicing.

Attachments:

1. STA Form_Town of Fort Myers Beach_5_5_2023

Financial Impact:

\$98,800

6. **Alternative Action**

7. **Management Recommendations:**

Management recommends approval to enable continuation of Axis as a consulting firm and provide a more accurate annual cost projection for these consultation services.

8. **Recommended Approval:**

Patty Prevost, Code Supervisor/STR Coordinator
Steve Poposki, Community Development Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 5/24/2023
Approved - 5/24/2023
Approved - 5/25/2023
Approved - 5/25/2023
Final Approval - 5/26/2023

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: STA # 8

CONTRACT/PROJECT NAME: Technical Support, GIS, Special Project Management,
Comprehensive Plan and LDC Support, Workforce Housing and Miscellaneous Assigned Tasks
Extension

CONSULTANT: Axis Infrastructure

PROJECT NO.: _____

SOLICIT NO.: RFQ #20-22-AD

CONTRACT NO.: _____

REQUESTED BY: Steven PoposkiComm Dev

DATE OF REQUEST: 4/25/2023

PURCHASE ORDER NUMBER: _____

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: 11/01/2022

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: 11/01/2022

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: 11/01/2022

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: 11/01/2022

It is understood and agreed that the acceptance of this modification by the
CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: [Signature] 5/4/23 By: _____
Department Director Date Contracts Manager Date

By: [Signature] 5/5/2023
Finance Department Date

ACCEPTED: Axis Infrastructure

By: _____
Consultant/Provider Date

TOWN APPROVAL:

By: _____
Town Manager Date

Date to Proceed: 4/2023

Cost of STA: \$ _____

Completion Due Date: 9/30/2023

Date: 4/25/2023

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES
Technical Support, GIS, Special Project Management, Comprehensive Plan and LDC Support,
Workforce Housing and Miscellaneous Assigned Tasks Extension

Overview

STA NO. 7: Planning and Zoning Technical Support, GIS, Special Project Management

The following services will be provided by Axis Infrastructure:

- 1:** Planning and Zoning staff, permit review, technical analysis as required by the Comprehensive Plan and Land Development Code.
- 2:** Coordinate with Town departments, advisory boards, and Town Council public hearings.
- 3:** Coordinate special projects, manage comprehensive plan and LDC updates, manage GIS resource and other planning assets.
- 4:** Coordinate with Town Manager and Town Council to assist in developing strategies to support and implement priority planning and development issues.
- 5:** Provide services as of April 26, 2023.

Hourly Breakdown:

Senior Planner/Planning Manager	\$120
Planner/GIS	\$100

Total Cost (of Job): **\$98,800.00**

EXHIBIT BDate: 4/25/2023**COMPENSATION AND METHOD OF PAYMENT FOR****Permitting and Floodplain Management Support Services Post – Disaster Recovery****Section 1. BASIC SERVICES/TASK(S)**

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
#1	<u>Technical Support, GIS, Special Project Management, Comprehensive Plan and LDC Support, Workforce Housing and Miscellaneous Assigned Tasks</u>	\$98,800	NTE	WIPP
TOTAL (Unless list is continued on next page)		\$98,800	NTE	

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 10/1/2021, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto 10/01/2021 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 10/31/2022

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR Permitting and Technical Support, GIS, Special Project Management, Comprehensive Plan and LDC Support, Workforce Housing and Miscellaneous Assigned Tasks

Consultant or Sub-consultant Name: Axis Infrastructure
(A separate Attachment No. 1 should be included for each Sub-Consultant)

[illegible]

***NOTE:** Direct Payroll hourly rate means the actual gross hourly wage paid.

****NOTE:** Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 4/25/2023

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR
Technical Support, GIS, Special Project Management, Comprehensive Plan and LDC Support,
Workforce Housing and Miscellaneous Assigned Tasks

CONSULTANT OR SUB-CONSULTANT NAME: Axis Infrastructure
(A separate Attachment No. 2 should be included for each Sub-Consultant)

[illegible]

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: 4/25/2023

TIME AND SCHEDULE OF PERFORMANCE FOR

Technical Support, GIS, Special Project Management, Comprehensive Plan and LDC Support,
Workforce Housing and Miscellaneous Assigned Tasks

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
#1	Technical Support, GIS, Planning as of April 26, 2023	158	158 days

EXHIBIT DDate: 10/31/2022

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S) FOR

Technical Support, GIS, Special Project Management, Comprehensive Plan and LDC Support, Workforce Housing and Miscellaneous Assigned Tasks

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage
					Yes No
1	Planning Analytics, LLC				X

1. **Requested Motion:**

Meeting Date: June 5, 2023

Final Reading and Public Hearing on proposed Ordinance 23-08 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, ADDING SECTIONS 34-269 PARALLELOGRAM LOT SETBACKS, AND ASSOCIATED DEFINITIONS IN CHAPTER 34, ARTICLE I., SECTION 34-2 DEFINITIONS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Why the action is necessary:

The ordinance will allow the development of parallelogram lots with rectangular homes.

What the action accomplishes:

The ordinance will allow the development of parallelogram lots with rectangular homes.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

ordinance

4. **Submitter of Information:**

5. **Background:**

Several subdivisions within the community are platted with parallelogram lots. These oddly shaped lots make redevelopment more difficult because the homes have to be custom designed to fit the setbacks. The LPA recommended this ordinance amendment to allow encroachment into the setback of parallelogram lots to allow for rectangular homes.

Attachments:

1. Ordinance 23-08
2. Parallelogram lots June 5 TC
3. Exhibit A
4. Exhibit B Homebound Parallelogram Lot Proposal

Financial Impact:

unknown

6. **Alternative Action**

Recommend changes and adopt ordinance 23-08

7. **Management Recommendations:**

Approve and adopt ordinance 23-08 Parallelogram Lot Setbacks.

8. **Recommended Approval:**

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

Created/Initiated - 5/15/2023
Approved - 5/19/2023
Approved - 5/19/2023
Approved - 5/24/2023
Approved - 5/24/2023
Final Approval - 5/24/2023

ORDINANCE NO. 23-08

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, ADDING SECTIONS 34-269 PARALLELOGRAM LOT SETBACKS, AND ASSOCIATED DEFINITIONS IN CHAPTER 34, ARTICLE I., SECTION 34-2 DEFINITIONS; 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 April 11, 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 34-269 and Section 34-2; and

WHEREAS, on May 15, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on June 5, 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 34-269 Parallelogram Lot Setbacks, and Section 34-2 Definitions is hereby amended to read as found in attached Exhibit A

– Parallelogram Lot Setbacks and Amended Definitions:

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 5th day of June, 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 – Parallelogram Lot Setbacks and Amended Definitions





Proposed Solution

The proposed solution would require that new homes on these parallelogram lots meet the side setback requirement but would provide flexibility on the front and rear setback requirements. This would allow rectangular shaped homes to sit at an angle from the right of way, one side of the home could be built up to eight feet into the front and rear setback. This is similar to what you see in the blue shaded box above. The 25-foot front setback and 20-foot rear setback would still be required but would be measured from the middle of the front and rear property lines, to the middle of the parallel setback line.

This code change would allow the construction of more standard, rectangular homes, rather than homes custom designed to meet the setbacks created by the parallelogram lots. The code change would result in a sawtooth pattern at the street front, this pattern is visible in many of the parallelogram lot neighborhoods. It appears that the original houses on these parcels were allowed similar flexibility.



Attached Exhibit A includes two definitions and a new section describing allowable setbacks for parallelogram lots. The new proposed definition for Lot Width Measurement replaces two previous ways to measure lot widths. The previous definitions were based on when the lot was created, which required the user to research subdivision plats. The new definition is based on the average lot width within the area where the building will be located on the lot.

Side Setbacks

The original presentation from Homebound, included a request to decrease side setbacks also. Due to the angle of the lots, the width of the buildable area is less than the lot width along the front and rear property line would indicate. On a square lot you subtract the side setbacks from the width of the lot (as indicated by the measurement of the front and rear lot line lengths). However, on the parallelogram lots, the front and rear property lines do not connect the parallel lines at the closest point. For example, on a 50-foot-wide parallelogram lot, the effective lot width is approximately 46.5 feet.



The code amendment to allow flexibility with front and rear setback for these lots provides an opportunity for the parallelogram lots to avoid expensive custom design costs required by the unique angles of the buildable area. However, providing a decrease in the required side setback for parallelogram lots would give the owners of those lots special treatment, not afforded to other property owners having the same width lots but a different shape.

Requested Input

The proposed language will allow the encroachment of up to eight feet in the front and the rear setbacks for rectangular homes on parallelogram lots. At the initial Town Council hearing on May 15th, 2023 Counselor Veach made a motion to set a second hearing date, it was seconded by Counselor Woodson and passed unanimously.

Exhibits

Exhibit A – Parallelogram Lot Setbacks and Amended Definitions

Exhibit B – Homebound Proposal

Exhibit A – Parallelogram Lot Setbacks and Amended Definitions

Definitions Sec. 34-2:

Lot, Parallelogram is a four-sided parcel which has substantially parallel front and rear lot lines and substantially parallel side lot lines, which are not at a right angle (not 90°) to the front and rear lot lines.

Lot Measurement, Width is the shortest distance between the side lot lines at the front setback line. When side lot lines are not parallel, the lot width will be considered the average distance between the width measured at the front setback line and the rear setback line.

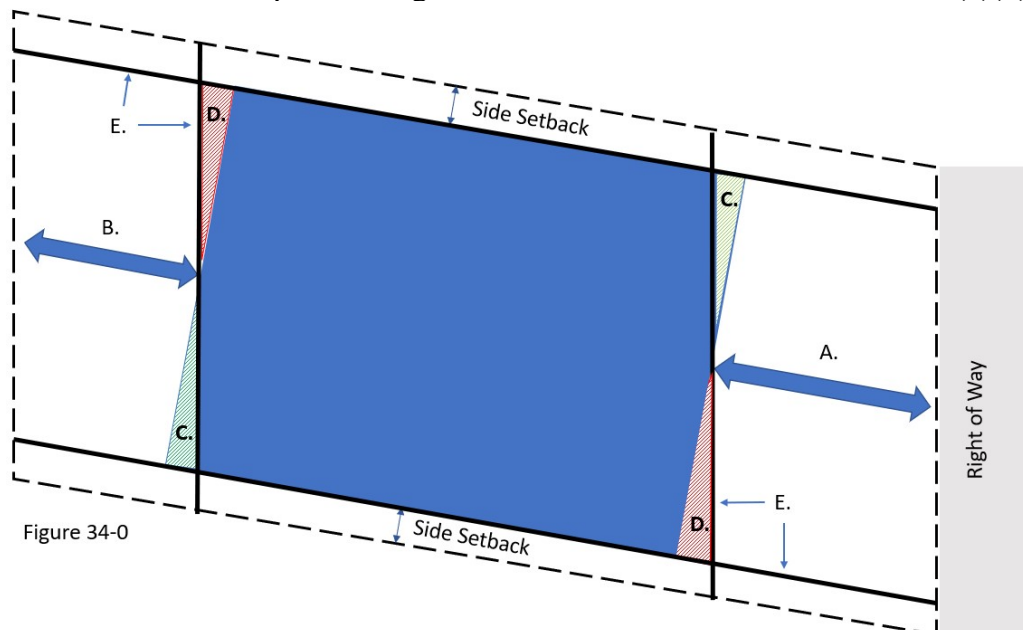
Lot measurement, width.

(1) For lots lawfully created prior to January 28, 1983, width of a lot shall be considered to be the average distance between straight lines connecting front and rear lot lines at each side of the lot, measured as straight lines between the foremost points of the side lot lines in front (where they intersect with the street line) and the rearmost points of the side lot lines in the rear.

(2) For lots lawfully created after January 28, 1983, width of a lot shall be considered to be the distance between the side lot lines (or a front and side lot line for corner lots) as measured along the minimum required street setback line. See [§ 34-637\(c\)](#) of this chapter for exceptions.

Sec. 34-269 – Parallelogram Lot Setbacks

- (a) For parallelogram lots, created prior to January 2023, front and rear setbacks shall be measured as depicted in figure 34-0 and described in Section 34-269(a)(1).



A. Front setback distance from midpoint of front lot line to midpoint of structure

B. Rear setback distance from midpoint of rear lot line to midpoint of structure

C. Encroachment area

D. Compensation area

E. Standard building setback lines

- (1) The front setback shall be measured from the midpoint of the front lot line to the midpoint of the parallel front setback line. The rear setback shall be measured from the midpoint of the rear lot line to the midpoint of the parallel rear setback line. Principal structures may encroach into the front or rear setback on either side of the midpoint by no more than 8 feet but must offset that encroachment on the other side of the midpoint by a compensating area equivalent to the encroachment.



**HB PROPOSAL FOR SETBACK
AMENDMENTS ON FORT MYERS BEACH
PARALLELOGRAM LOTS**

Date: 02/07/2023
Updated: 03/13/2023

EXISTING PROBLEM

Parallelogram shaped lots are relatively common across Fort Myers Beach and are adversely affected by the existing zoning code. Relative to a rectangular lot with identical dimensions, the skewed shape reduces lot width as the angle of the parallelogram increases beyond 90. The current code stops the reduction of side setbacks by lot width at 50' ($50' \times 15\% = 7.5'$) with the 7.5' minimum side setback. With some lots having an effective width of 46.5' or less, their effective buildable area is brought down to 31.5' or less. Similarly, buildable depth is significantly reduced on these lots with current front and rear setbacks; as houses are typically constructed with rectangular footprints, there becomes an unusable triangle of space at both the front and the rear. Not only does this severely constrain what can be rebuilt on these, but it is also inconsistent with the streetscape of these lots prior to Hurricane Ian. Figure 1 below shows the “sawtooth” front building line of houses along Fairweather Lane.



Figure 1

SITES AFFECTED BY PARALLELOGRAM SHAPED LOTS

There are several streets across the island of Fort Myers Beach containing lots fitting into the parallelogram classification. The degree of hardship varies based on how far the obtuse angle is beyond 90 degrees. The lots below range from approximately 102-112 degrees with 112 degree angle lots having the most restricted buildable area. The higher degree angle lots not only constrain the effective lot width more, but also create less usable depth due to the extended “leftover” triangles within the buildable footprint beyond a typical rectangle. The proposed solution below accounts for the variability in angle by providing less relief to a lower degree angle lot and more relief for a higher degree angle lot. The affected streets we have documented are listed below but not necessarily limited to these locations:

- Miramar Street (32)
- Fairweather Lane (37)
- Voorhis Street (7)
- Eucalyptus Court (19)
- Madison Court (8)
- Estero Boulevard (between Voorhis St and Madison Ct)(4)
- Hercules Drive (18)
- Coconut Drive (23)

In total, we are estimating that 148 lots on these streets are affected by this lot shape.

PROPOSED SOLUTION

Figures 2-6 below show some of the more typical lot types we are seeing on these streets with existing setbacks (red), compared to a rectangular lot of the same dimensions (green), and overlaying our proposed changes (blue) to see how the buildable footprint is affected. These figures also provide insight into the variability of the relief based on the different degree angle lots typical of each street. A few notes while reviewing the visual aids:

- The equivalent rectangular lot (green) is intended to set a control or base standard for buildable footprint as zoning codes are typically designed to standard rectangular lots. The buildable footprint should be compared to both the existing (red) and proposed changes (blue) to understand how the hardships are alleviated and not giving too much leeway for these lots.
- When comparing the existing (red) and proposed (blue) overlaid diagrams, note that the buildable footprint area remains virtually unchanged and is simply reallocating the area to be more rectangular and constructable.

FRONT AND REAR SETBACKS

Due to the skewed shape of the lot (and in turn, buildable footprint), it is very difficult for a house to make use of the leftover triangles at both front and back beyond a standard rectangle. Our proposal is to maintain a 25' setback from the front property line and 20' setback from the rear property line but rotate the setback line at its midpoint so it is perpendicular to the side property lines. The resulting buildable footprint is rectangular in shape, maintains the same buildable area on the lot, and mimics the existing "sawtooth" pattern of the streetscape where these parallelogram lots exist (see Figure 1).

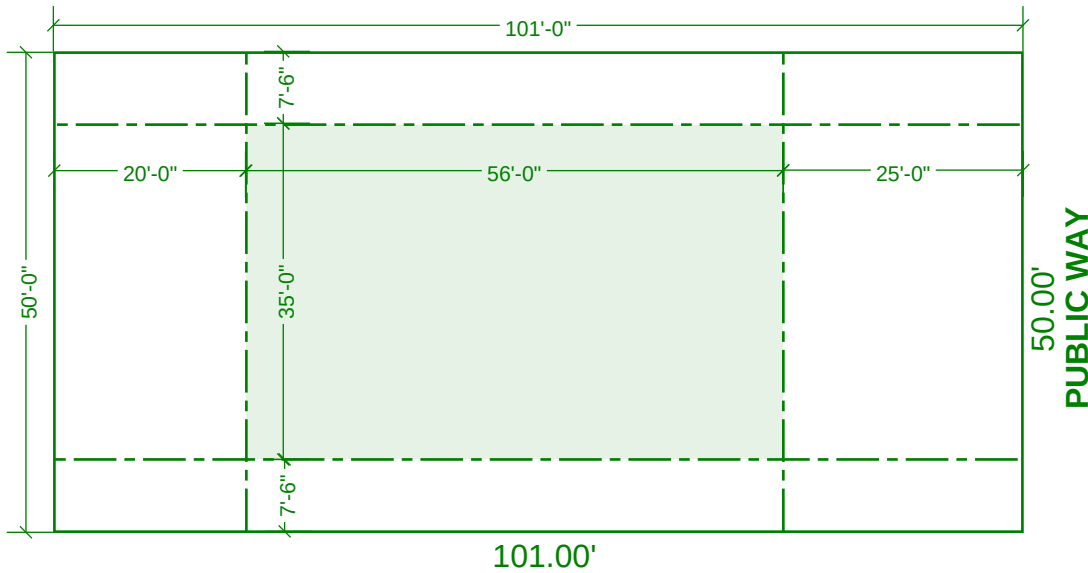
SIDE SETBACKS

Option A – The typical rules on side setbacks assumes minimum lot widths of 50' at which 15% of 50' = 7.5' setbacks and allows for a 35' buildable width. However, the parallelogram lots have 50' frontage and varying functional widths depending on the angle of the lot at which the 7.5' minimum becomes a hardship and limits the possible building width. The side setback based on lot width should be adjusted in a way that does not adversely affect the smallest or most constrained lots. Reducing the minimum side setback for parallelogram lots from 7.5' to 6' allows for functional lot widths of as little as 40' at which they would still have a buildable width of 28' (as opposed to 25' with the 7.5' minimum).

Option B - After reviewing the initial proposal with Patrick Vanasse, he requested historical perspective with regards to the side yard setbacks for potential precedent of side setbacks of less than 7.5'. In our research, we discovered Ordinance 21-04 from 6/10/2021 amending Fort Myers Beach Land Development Code for both Administrative Setback Variances and General Requirements on Nonconforming Lots. There were previously modifications to setbacks for nonconforming lots under Section 34-3273 with a minimum footprint of 40' wide by 75' depth allowing a reduction of side setbacks to 10% of lot width or 5' minimum (whichever is greater). Ordinance 21-04 removed this relief in lieu of Section 34-268 for where Administrative Setback Variances were defined for lots with "an unusual shape or orientation"; this route likely made sense at the time to review on a case-by-case basis as fewer permits were going through the city and nonconforming lots were typically rarer.

As the majority of Fort Myers Beach residents are rebuilding post Hurricane Ian, it makes sense to revert back to incorporating modifications to setbacks for smaller nonconforming lots into the Land Development Code to aid in homeowners to start rebuilding quicker. With the reduction to 10% of lot width or 5' minimum side setbacks in mind for lots below 50' wide, I would also argue that lot width measurement should be redefined as the "effective lot width" based on dimension between side property lines along a line perpendicular to the side property line as all of these parallelogram lots have smaller effective widths than the current definition by the street frontage or along the street setback line (see appendix for existing lot width measurement definitions).

FIGURE 2
209 MIRAMAR STREET



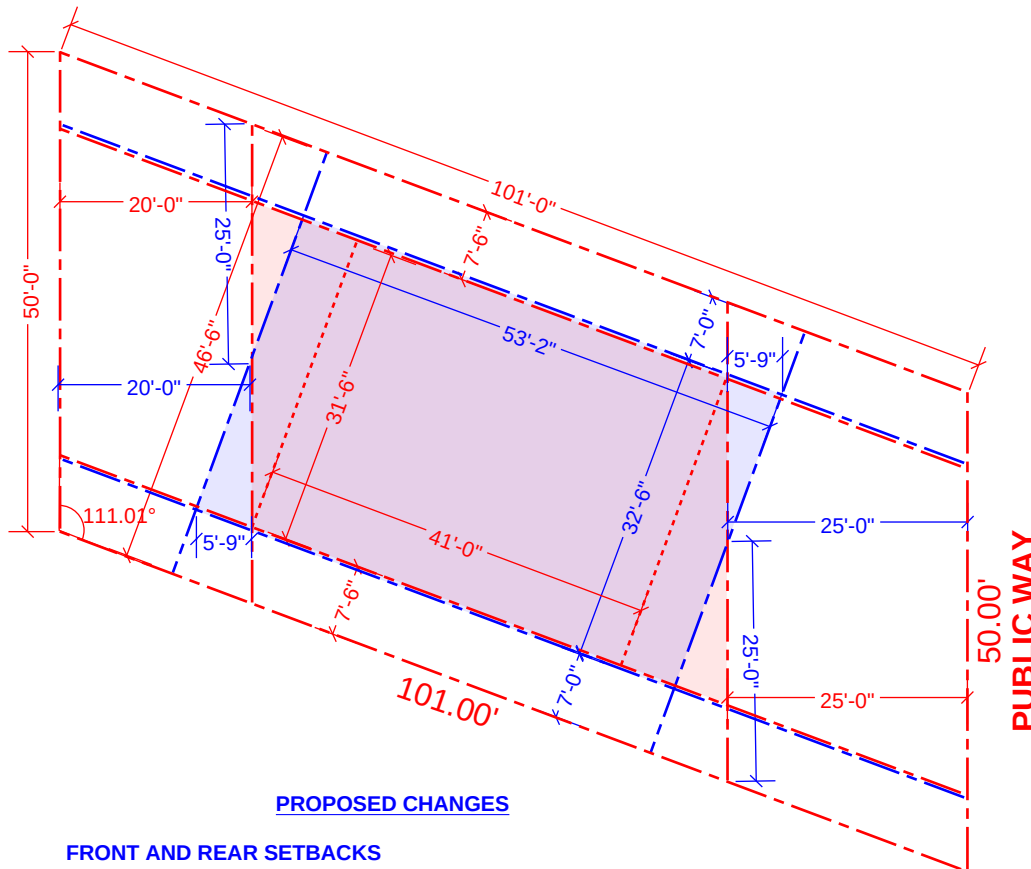
EXISTING RECTANGULAR LOT (50'W x 101'D)

FRONT SETBACK
25'

REAR SETBACK
20'

SIDE SETBACK
15% LOT WIDTH
OR 7.5' MIN.

BUILDABLE FOOTPRINT
35'-0" WIDE
56'-0" DEEP



EXISTING PARALLELOGRAM LOT (50'W x 101'D)

FRONT SETBACK
25'

REAR SETBACK
20'

SIDE SETBACK
15% LOT WIDTH
OR 7.5' MIN.

BUILDABLE FOOTPRINT
31'-6" WIDE
41'-0" DEEP

PROP. PARALLELOGRAM LOT (50'W x 101'D)

FRONT SETBACK
25' @ MIDPOINT OF LOT;
SETBACK LINE PERP. TO
SIDE PROPERTY LINES

REAR SETBACK
20' @ MIDPOINT OF LOT;
SETBACK LINE PERP. TO
SIDE PROPERTY LINES

SIDE SETBACK
15% LOT WIDTH
OR 6.0' MIN.

BUILDABLE FOOTPRINT
32'-6" WIDE (OPT. A)
36'-6" WIDE (OPT. B)
53'-2" DEEP

PROPOSED CHANGES

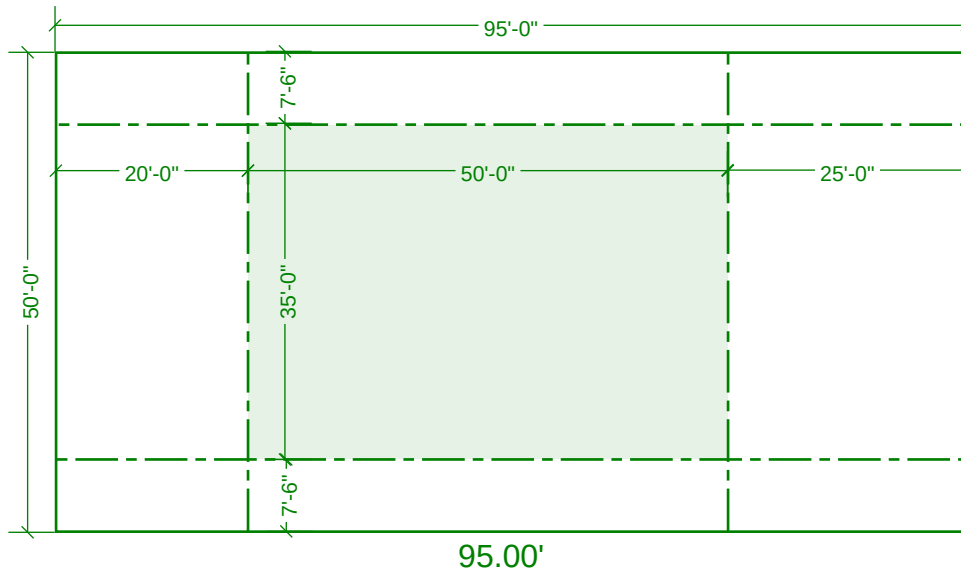
FRONT AND REAR SETBACKS

MEASURE 25' SETBACK; ROTATE LINE AT MIDPOINT PERPENDICULAR TO SIDE PROPERTY LINES TO EXTEND USABLE FOOTPRINT

SIDE SETBACKS

OPTION A - MAINTAIN 15% LOT WIDTH, BUT DECREASE MINIMUM TO 6'-0" MIN. SO BUILDABLE WIDTH NOT PUNISHED FOR SUB 50' LOT WIDTHS.
OPTION B - 10% LOT WIDTH, OR 5'-0", WHICHEVER IS GREATER.

FIGURE 3
223 FAIRWEATHER LANE



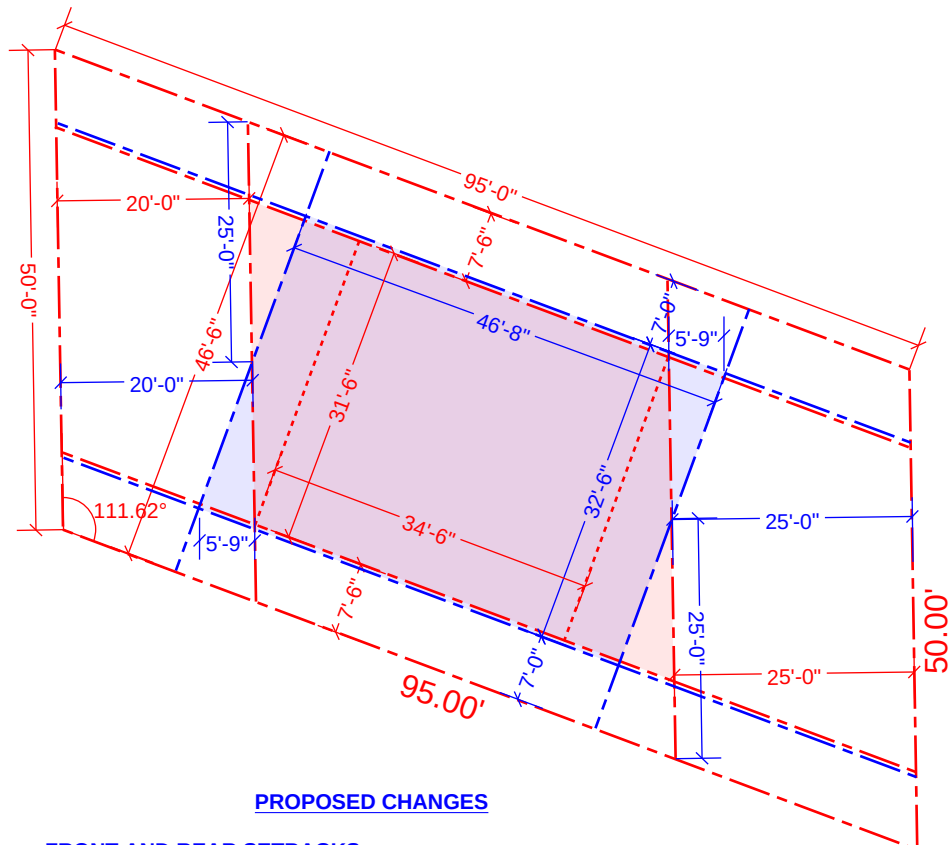
EXISTING RECTANGULAR LOT (50'W x 95'D)

FRONT SETBACK
25'

REAR SETBACK
20'

SIDE SETBACK
15% LOT WIDTH
OR 7.5' MIN.

BUILDABLE FOOTPRINT
35'-0" WIDE
50'-0" DEEP



EXISTING PARALLELOGRAM LOT (50'W x 95'D)

FRONT SETBACK
25'

REAR SETBACK
20'

SIDE SETBACK
15% LOT WIDTH
OR 7.5' MIN.

BUILDABLE FOOTPRINT
31'-6" WIDE
34'-6" DEEP

PROP. PARALLELOGRAM LOT (50'W x 95'D)

FRONT SETBACK
25' @ MIDPOINT OF LOT;
SETBACK LINE PERP. TO
SIDE PROPERTY LINES

REAR SETBACK
20' @ MIDPOINT OF LOT;
SETBACK LINE PERP. TO
SIDE PROPERTY LINES

SIDE SETBACK
15% LOT WIDTH
OR 6.0' MIN.

BUILDABLE FOOTPRINT
32'-6" WIDE (OPT. A)
36'-6" WIDE (OPT. B)
46'-8" DEEP

PROPOSED CHANGES

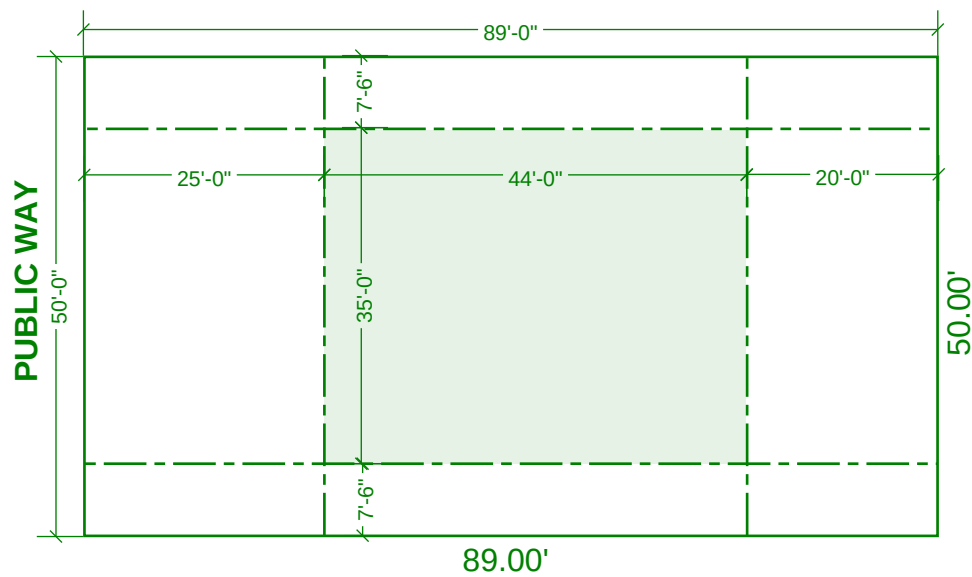
FRONT AND REAR SETBACKS

MEASURE 25' SETBACK; ROTATE LINE AT MIDPOINT
PERPENDICULAR TO SIDE PROPERTY LINES TO EXTEND
USABLE FOOTPRINT

SIDE SETBACKS

OPTION A - MAINTAIN 15% LOT WIDTH, BUT DECREASE
MINIMUM TO 6'-0" MIN. SO BUILDABLE WIDTH NOT
PUNISHED FOR SUB 50' LOT WIDTHS.
OPTION B - 10% LOT WIDTH, OR 5'-0", WHICHEVER IS
GREATER.

FIGURE 4
270 FAIRWEATHER LANE



**EXISTING RECTANGULAR
LOT (50'W x 89'D)**

FRONT SETBACK

25'

REAR SETBACK

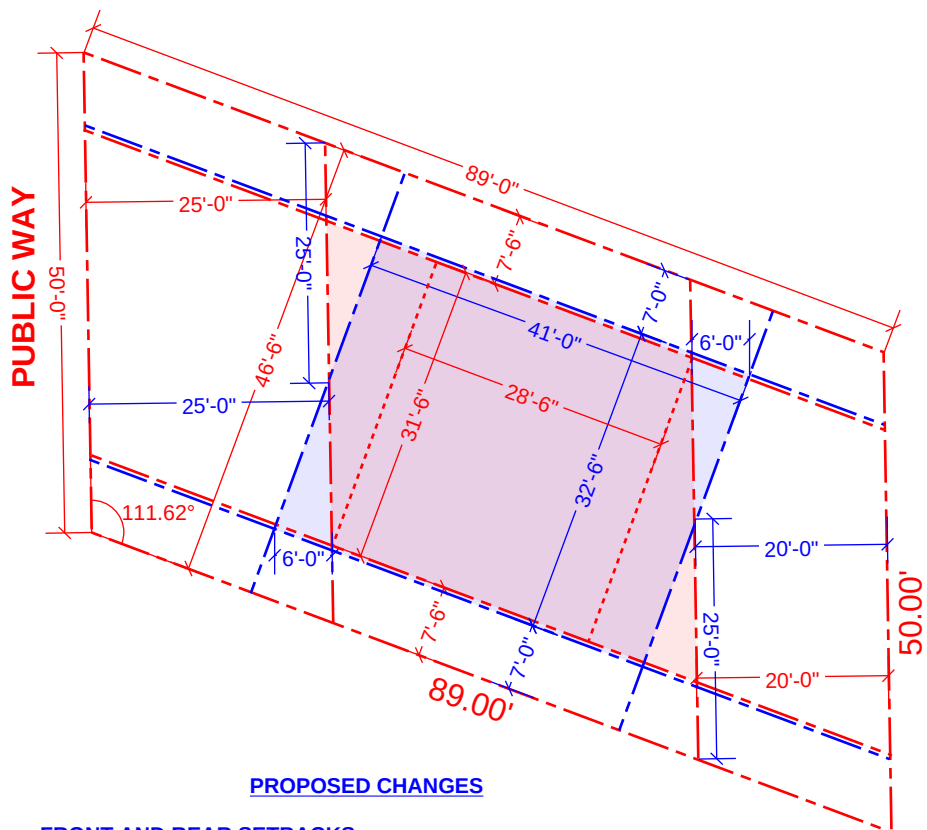
20'

SIDE SETBACK

15% LOT WIDTH
OR 7.5' MIN.

BUILDABLE FOOTPRINT

35'-0" WIDE
44'-0" DEEP



**EXISTING PARALLELOGRAM
LOT (50'W x 89'D)**

FRONT SETBACK

25'

REAR SETBACK

20'

SIDE SETBACK

15% LOT WIDTH
OR 7.5' MIN.

BUILDABLE FOOTPRINT

31'-6" WIDE
28'-6" DEEP

**PROP. PARALLELOGRAM LOT
(50'W x 89'D)**

FRONT SETBACK

25' @ MIDPOINT OF LOT;
SETBACK LINE PERP. TO
SIDE PROPERTY LINES

REAR SETBACK

20' @ MIDPOINT OF LOT;
SETBACK LINE PERP. TO
SIDE PROPERTY LINES

SIDE SETBACK

15% LOT WIDTH
OR 6.0' MIN.

BUILDABLE FOOTPRINT

32'-6" WIDE (OPT. A)
36'-6" WIDE (OPT. B)
41'-0" DEEP

PROPOSED CHANGES

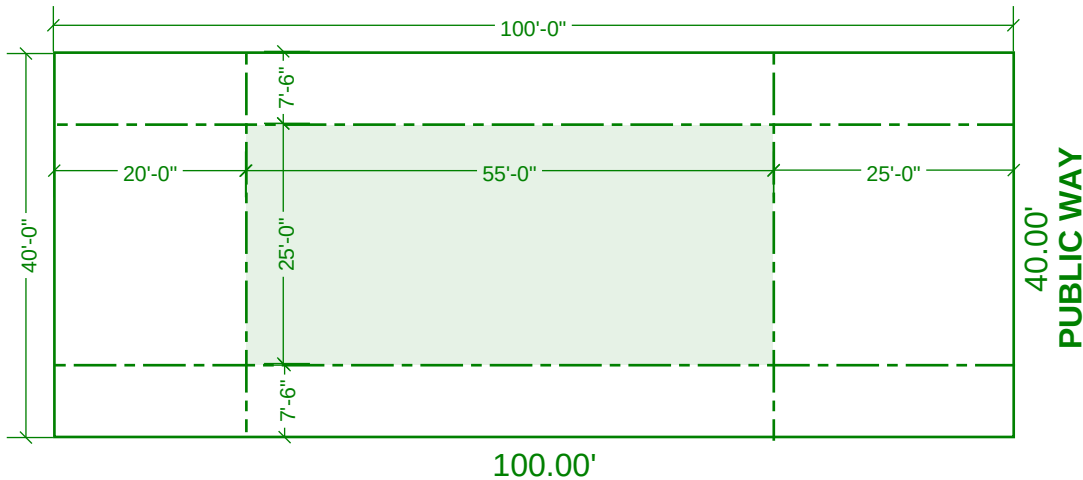
FRONT AND REAR SETBACKS

MEASURE 25' SETBACK; ROTATE LINE AT MIDPOINT
PERPENDICULAR TO SIDE PROPERTY LINES TO EXTEND
USABLE FOOTPRINT

SIDE SETBACKS

OPTION A - MAINTAIN 15% LOT WIDTH, BUT DECREASE
MINIMUM TO 6'-0" MIN. SO BUILDABLE WIDTH NOT
PUNISHED FOR SUB 50' LOT WIDTHS.
OPTION B - 10% LOT WIDTH, OR 5'-0", WHICHEVER IS
GREATER.

FIGURE 5
151 MADISON COURT



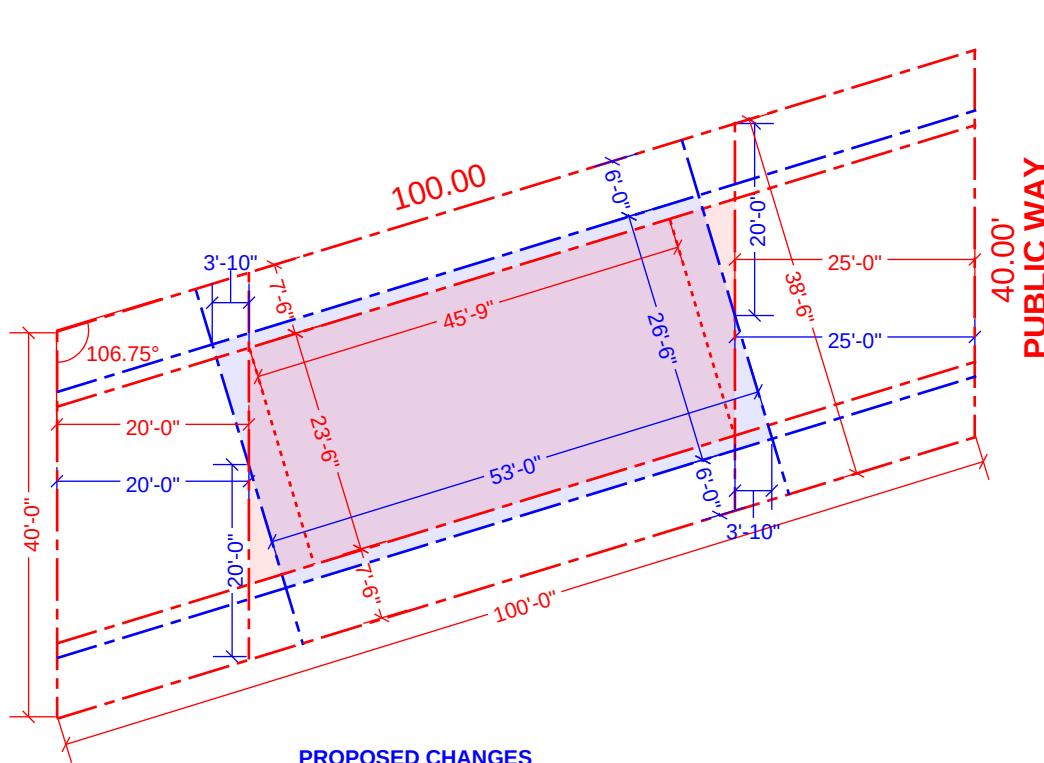
EXISTING RECTANGULAR LOT (40'W x 100'D)

FRONT SETBACK
25'

REAR SETBACK
20'

SIDE SETBACK
15% LOT WIDTH
OR 7.5' MIN.

BUILDABLE FOOTPRINT
25'-0" WIDE
55'-0" DEEP



EXISTING PARALLELOGRAM LOT (50'W x 101'D)

FRONT SETBACK
25'

REAR SETBACK
20'

SIDE SETBACK
15% LOT WIDTH
OR 7.5' MIN.

BUILDABLE FOOTPRINT
23'-6" WIDE
45'-9" DEEP

PROP. PARALLELOGRAM LOT (50'W x 101'D)

FRONT SETBACK
25' @ MIDPOINT OF LOT;
SETBACK LINE PERP. TO
SIDE PROPERTY LINES

REAR SETBACK
20' @ MIDPOINT OF LOT;
SETBACK LINE PERP. TO
SIDE PROPERTY LINES

SIDE SETBACK
15% LOT WIDTH
OR 6.0' MIN.

BUILDABLE FOOTPRINT
26'-6" WIDE (OPT. A)
28'-6" WIDE (OPT. B)
53'-0" DEEP

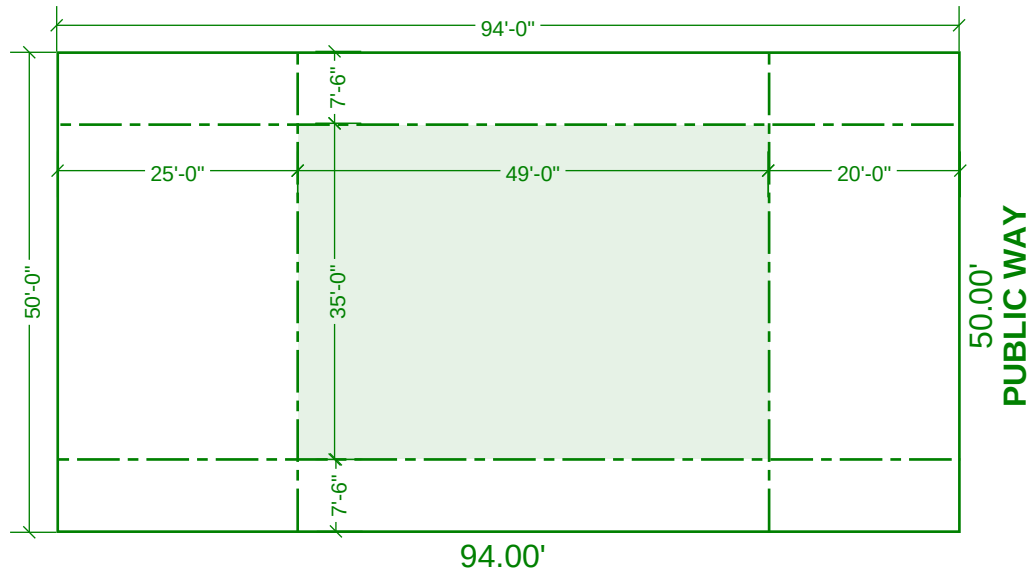
FRONT AND REAR SETBACKS

MEASURE 25' SETBACK; ROTATE LINE AT MIDPOINT
PERPENDICULAR TO SIDE PROPERTY LINES TO EXTEND
USABLE FOOTPRINT

SIDE SETBACKS

OPTION A - MAINTAIN 15% LOT WIDTH, BUT DECREASE
MINIMUM TO 6'-0" MIN. SO BUILDABLE WIDTH NOT
PUNISHED FOR SUB 50' LOT WIDTHS.
OPTION B - 10% LOT WIDTH, OR 5'-0", WHICHEVER IS
GREATER.

FIGURE 6
135 COCONUT DRIVE



EXISTING RECTANGULAR LOT (50'W x 94'D)

FRONT SETBACK

25'

REAR SETBACK

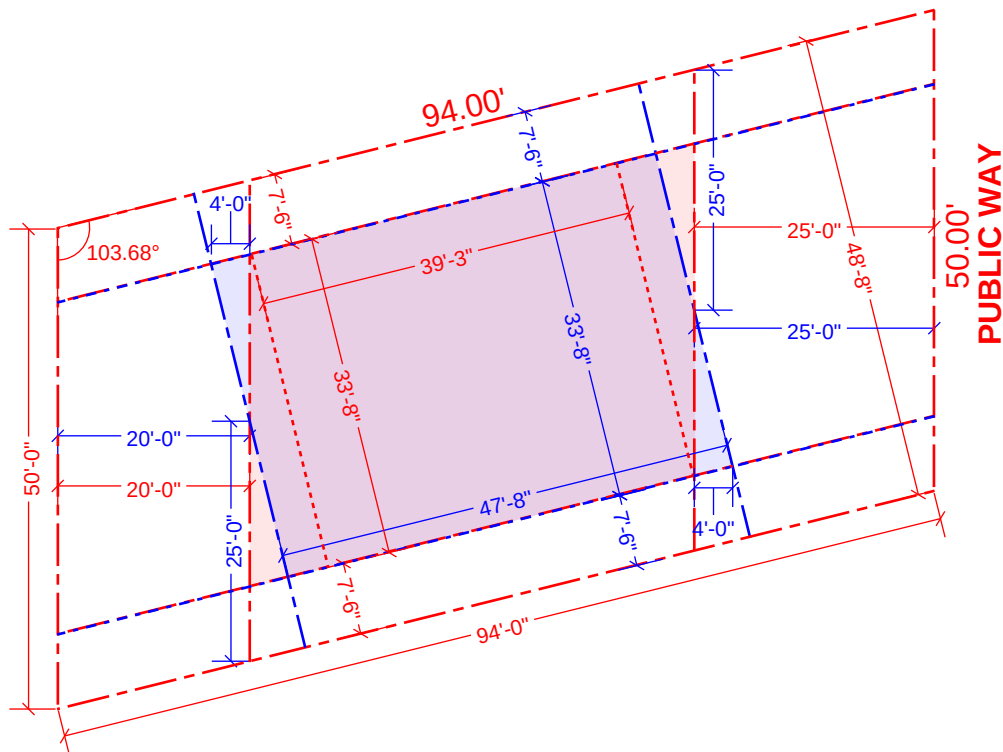
20'

SIDE SETBACK

15% LOT WIDTH
OR 7.5' MIN.

BUILDABLE FOOTPRINT

35'-0" WIDE
49'-0" DEEP



EXISTING PARALLELOGRAM LOT (50'W x 94'D)

FRONT SETBACK

25'

REAR SETBACK

20'

SIDE SETBACK

15% LOT WIDTH
OR 7.5' MIN.

BUILDABLE FOOTPRINT

33'-8" WIDE
39'-3" DEEP

PROP. PARALLELOGRAM LOT (50'W x 94'D)

FRONT SETBACK

25' @ MIDPOINT OF LOT;
SETBACK LINE PERP. TO
SIDE PROPERTY LINES

REAR SETBACK

20' @ MIDPOINT OF LOT;
SETBACK LINE PERP. TO
SIDE PROPERTY LINES

SIDE SETBACK

15% LOT WIDTH
OR 6.0' MIN.

BUILDABLE FOOTPRINT

33'-8" WIDE (OPT. A)
38'-8" WIDE (OPT. B)
47'-8" DEEP

PROPOSED CHANGES

FRONT AND REAR SETBACKS

MEASURE 25' SETBACK; ROTATE LINE AT MIDPOINT
PERPENDICULAR TO SIDE PROPERTY LINES TO EXTEND
USABLE FOOTPRINT

SIDE SETBACKS

OPTION A - MAINTAIN 15% LOT WIDTH, BUT DECREASE
MINIMUM TO 6'-0" MIN. SO BUILDABLE WIDTH NOT
PUNISHED FOR SUB 50' LOT WIDTHS.
OPTION B - 10% LOT WIDTH, OR 5'-0", WHICHEVER IS
GREATER.

APPENDIX

Lot Width Measurement Definition

1. Per Section 34-2 Definitions, Lot measurement, width.

- For lots lawfully created prior to January 28, 1983, width of a lot shall be considered to be the average distance between straight lines connecting front and rear lot lines at each side of the lot, measured as straight lines between the foremost points of the side lot lines in front (where they intersect with the street line) and the rearmost points of the side lot lines in the rear.
- For lots lawfully created after January 28, 1983, width of a lot shall be considered to be the distance between the side lot lines (or a front and side lot line for corner lots) as measured along the minimum required street setback line. See § 34-637(c) of this chapter for exceptions.

2. Per Section 34-638 Minimum Setbacks, 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).

1. **Requested Motion:**

Meeting Date: June 5, 2023

First reading and Public Hearing on proposed Ordinance 23-10 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 17-39, AND AMENDING THE AREA FOR CONSUMPTION ON PREMISES AND THE MASTER CONCEPT PLAN FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 645 OLD SAN CARLOS 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 June 20, 2023 at 9:00 a.m.

Why the action is necessary:

The applicant has submitted a request to amend the master concept plan. An ordinance amendment requires two public hearings before the Town Council.

What the action accomplishes:

The action will schedule the second hearing.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

The property owner has submitted an application requesting an amendment to the Master Concept Plan that proposes to add seating and extend the consumption on premise area. They have included a revised plan and parking calculations as part of their application.

The adopted resolution identifies Parcel #1 as 645 Old San Carlos Blvd. and the conditions of approval designate it with uses of consumption on premise and restaurants. Parcel #2 is identified as the submerged land lease area. The applicant's request expands the service and seating areas in the master concept plan. The applicant has not proposed an amendment to any other conditions of approval.

Attachments:

1. 23-10, Ordinance 23-10 RE Old Seaport CPD(146181913.1)-C
2. Exhibit B COP Area MCP
3. Exhibit C MCP for overall site
4. Staff Report TC 6.5.23
5. CPD cover letter 2023
6. Adopted RES 17-39
7. Schedule of Uses
8. Snug Parking - Proposed Parking Calculations
9. Part I - C - Comp Plan
10. Part I - D - Design Stds
11. Part I - E - Decision making
12. PH Application
13. PD PH-D form
14. Ex 6-2a 2018 Boundary survey
15. Ex 6-2b Updated Survey

16. Ex 6-3 Area Location Map

Financial Impact:

unknown

6. **Alternative Action**

Recommend conditions and schedule a second hearing for the requested ordinance

7. **Management Recommendations:**

Schedule a second hearing for the ordinance.

8. **Recommended Approval:**

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

Created/Initiated - 5/22/2023
Approved - 5/22/2023
Approved - 5/25/2023
Final Approval - 5/25/2023

ORDINANCE 23-10

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 17-39, AND AMENDING THE AREA FOR CONSUMPTION ON PREMISES AND THE MASTER CONCEPT PLAN FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 645 OLD SAN CARLOS 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 ("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, Robert Fowler ("Applicant"), authorized agent for Olde Seaport Place Inc. with property generally located at 645 Old San Carlos Boulevard and identified by STRAP numbers 24-46-23-W3-00026.0000, 24-46-23-W3-00026.0030, and 24-46-23-W2-000000.0000 ("Property"), filed an application to replace Town Resolution No. 17-39, and amend the master concept plan to increase the area for consumption of alcohol on premises for the previously approved commercial planned development zoning of the Property; and

WHEREAS, the Property is in the Pedestrian Commercial and Tidal Water categories of the Future Land Use Map of the Comprehensive Plan of the Town; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 09, 2023; and

WHEREAS, at the May 09, 2023, public hearing 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, as required by Town Land Development Code (LDC) Section 34-85; and

WHEREAS, at the May 09, 2023, public hearing the LPA recommended approval by a 5-0 vote; and

WHEREAS, on June 05, 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 LDC Section 34-85; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was legally advertised and held before the Town Council on June 20 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, the documents in the record, and the testimony of all interested persons, as required by LDC Section 34- 85; and

WHEREAS, Exhibit A provides the approved property development regulations, the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

WHEREAS, the Town Council finds the Application to replace Town Resolution No. 17-39 and amend the area for consumption of alcohol on premises and the master concept plan for the commercial planned development zoning, is **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** 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 request to replace Town Resolution No. 17-39 and amend the area for consumption of alcohol on premises and the master concept plan for the commercial planned development zoning, does/does not meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES/DENIES** the Application.

Section 3. Town Resolution 17-39 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, and the amended COP area Master Concept Plan set forth in Exhibit B, and the Existing Overall Master Concept Plan set forth in Exhibit C, and all exhibits 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 6. 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 7. 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 Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this 20th day of June 2023.

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

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 Ordinance was filed in the Office of the Town Clerk on this ____ day of June 2023.

EXHIBITS

- Exhibit A -** Schedule of Conditions, Uses and Deviations
- Exhibit B -** Updated Master Concept Plan for COP
- Exhibit C -** Master Concept Plan for overall site

EXHIBIT A - CONDITIONS OF APPROVAL

1. Development must be consistent with the master concept plan (MCP) titled "Olde Seaport of Fort Myers Beach" (Exhibit B) for case DCI 17-0005, last revised 8/3/17, except as modified by conditions or deviations discussed herein. In accordance with LDC Section 34216(b)(S), the MCP must be updated to reflect the deviations and conditions approved by Town Council. If changes to the MCP are subsequently pursued, appropriate approvals will be required.
2. The following limits apply to the project and uses: Schedule of Uses:

Parcel #1 (North Parcel - 645 Old San Carlos Blvd.)

- Consumption on Premises Single-purpose Parking Lot Personal Services Restaurants
- Seating areas

Parcel #2 (Submerged Land Lease)

- Boat slips
- Docks
- Marina & accessory uses
- Seating areas (in connection with adjacent parcels, restaurants and food preparation areas see Exhibit C for restaurant square footages and parking calculations)
- Consumption on Premises

Parcel #3 (South Parcel - 441/445 Old San Carlos Blvd.)

- Single-purpose Parking Lot

Parcel #4 (Butler Act property)

- Seating areas (in connection with adjacent parcels restaurants and food preparation areas)
- Consumption on Premises **(additional COP area of 3,451 square feet added in the latest Master Concept Plan)**

Accessory uses on all parcels:

- Bay access if available Essential services
- Essential services equipment

3. Nothing in this rezoning, including any of the attached conditions, may be construed as a variance from the provisions of LDC Chapter 6, Article IV Floodplain regulations.
4. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.
5. The development must comply with LDC Sec. 14-76 requirements for sea turtle conservation

applicable to new development.

6. No structure may be placed in or over, and no work may occur in, any navigable water of the United States unless properly authorized by the United States Army Corps of Engineers or its designee.
7. No stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be constructed or altered on the subject property, including submerged lands and riparian leased areas, without property permit or exemption, and unless in compliance with all conditions of such permit or exemption, from the South Florida Water Management District or Florida Department of Environmental Protection, as applicable. Stormwater management for the subject property must comply with all applicable requirements of the Land Development Code at the time of development order approval and must provide for the capture and retention of all stormwater on the site.
8. Approval of this rezoning does not address the compliance or noncompliance of proposed building elevations with the commercial design standards included in LDC Chapter 34, Article 111, Division 7. Development of the subject property must meet the commercial design standards effective at the time of local development order approval.
9. Docks for use by occupants of principal uses on the subject property, docks for lease to non-occupants of principal uses on the subject property, and docks for use by water taxi or water shuttle are limited to the areas within the existing submerged land leases and submerged land described in Exhibit A. These docks are and must remain accessory to the principal use(s) of the subject property. The number of slips within the area of a submerged land lease may not exceed the number authorized by that lease without proper approval. Construction of additional or replacement docks must comply with all applicable requirements of the LDC and all applicable state and federal regulations at the time of permitting. No live-aboard units are allowed.
10. Hours of operation:
 - All restaurants and outdoor seating areas may operate from 8:00AM to 10:00 PM.
 - Consumption on Premises in conjunction with outdoor seating shall be from 11:30AM-10:00PM. Live entertainment permitted only inside the buildings, limited to non-amplified, acoustical music.
11. Steamers must be located outside of the Marina Village at Snug Harbor Condominium building.
12. No deliveries will be permitted between 9:00PM and 7:00AM.
13. Commercial garbage collection must be provided six days a week (excluding Sundays).
14. Parking lot must be reconfigured to allow vehicular traffic flow without dead-ends.

15. Public restroom facilities must be provided in Unit C of the Marina Village at Snug Harbor Condominium building.
16. Upon the completion of the street side restaurant on parcel #1 (issuance of certificate of occupancy) no beach parking of any kind (Single-purpose Parking Lots only) shall be permitted on the subject properties at any time, all designated parking spaces shall be used for the uses established in this resolution.

NOTES FOR COP EXTENSION AND ADDITIONAL IMPROVEMENTS REQUEST:

1. ALL IMPROVEMENTS TO DATE AND CURRENT OPERATIONS ARE CONSISTENT WITH TOWN COUNCIL RESOLUTION 17-39/DCI17-0005. THIS REQUEST IS TO EXTEND THE COP AREA BY 3451 SF AND ADD A NUMBER OF IMPROVEMENTS/FACILITIES TO THE SITE.

2. ADDITIONAL IMPROVEMENTS/STRUCTURES ARE PROPOSED AS FOLLOWS:

- AN ADDITIONAL 14 FT X 65 FT (910 SF) COVERED SEATING/COP AREA EAST OF THE CURRENT FACILITIES IN THE 2018 BUTLER ACT PROPERTY:
 - SET-BACKS TO THE PROPERTY LINE AND WATER; 0 FT
 - COVERAGE; MAX 910 SF
 - MAX. HEIGHT; 20 FT ABOVE CURRENT DOCK LEVEL
- RAIL SEATING IS PROPOSED IN THE COP EXTENSION AREA, AS SHOWN ON THE PLAN:
 - SET-BACKS TO THE PROPERTY LINE AND WATER; 0 FT
 - COVERAGE; MAX. 210 SF
 - MAX. HEIGHT; N/A (NOT COVERED)
- A CHICKEE HUT IS PROPOSED IN THE COP EXTENSION AREA, AS SHOWN ON THE PLAN:
 - SET-BACK TO THE WATER; 3 FT
 - SET-BACK TO THE PROPERTY LINE; 3 FT
 - COVERAGE; MAX. 625 SF/25 FT X 25 FT
 - MAX. HEIGHT; 25 FT ABOVE EXISTING GRADE
- A PORTION OF THE EXISTING DOCK IS DESIGNATED AS A COP EXTENSION AREA
- A COVERED WALKWAY (NONE OF WHICH IS LOCATED WITHIN THE COP EXTENSION AREA) IS PROPOSED ALONG THE EXISTING BRICK WALKWAY RUNNING FROM THE STREET TO THE ENTRANCE TO THE OVER THE WATER SEATING:
 - SET-BACKS TO THE PROPERTY LINE AND WATER; 0 FT
 - COVERAGE; MAX. 2190 SF WITH MAX. WIDTH OF 10 FT
 - MAX. HEIGHT; 15 FT
- A COVERED HOSTESS STATION (NONE OF WHICH IS LOCATED WITHIN THE COP EXTENSION AREA) IS PROPOSED AT THE STREET ENTRY LOCATION, AS SHOWN ON THE PLAN. IT WILL BE CONNECTED TO THE COVERED WALKWAY AND SIGNAGE WILL BE PROVIDED AT THIS LOCATION.
 - SET-BACK TO WATER; 50 FT
 - SET-BACK TO STREET/PROPERTY LINE; 0 FT
 - COVERAGE; MAX. 80 SF/ 8 FT X 10 FT
 - MAX. HEIGHT; 15 FT

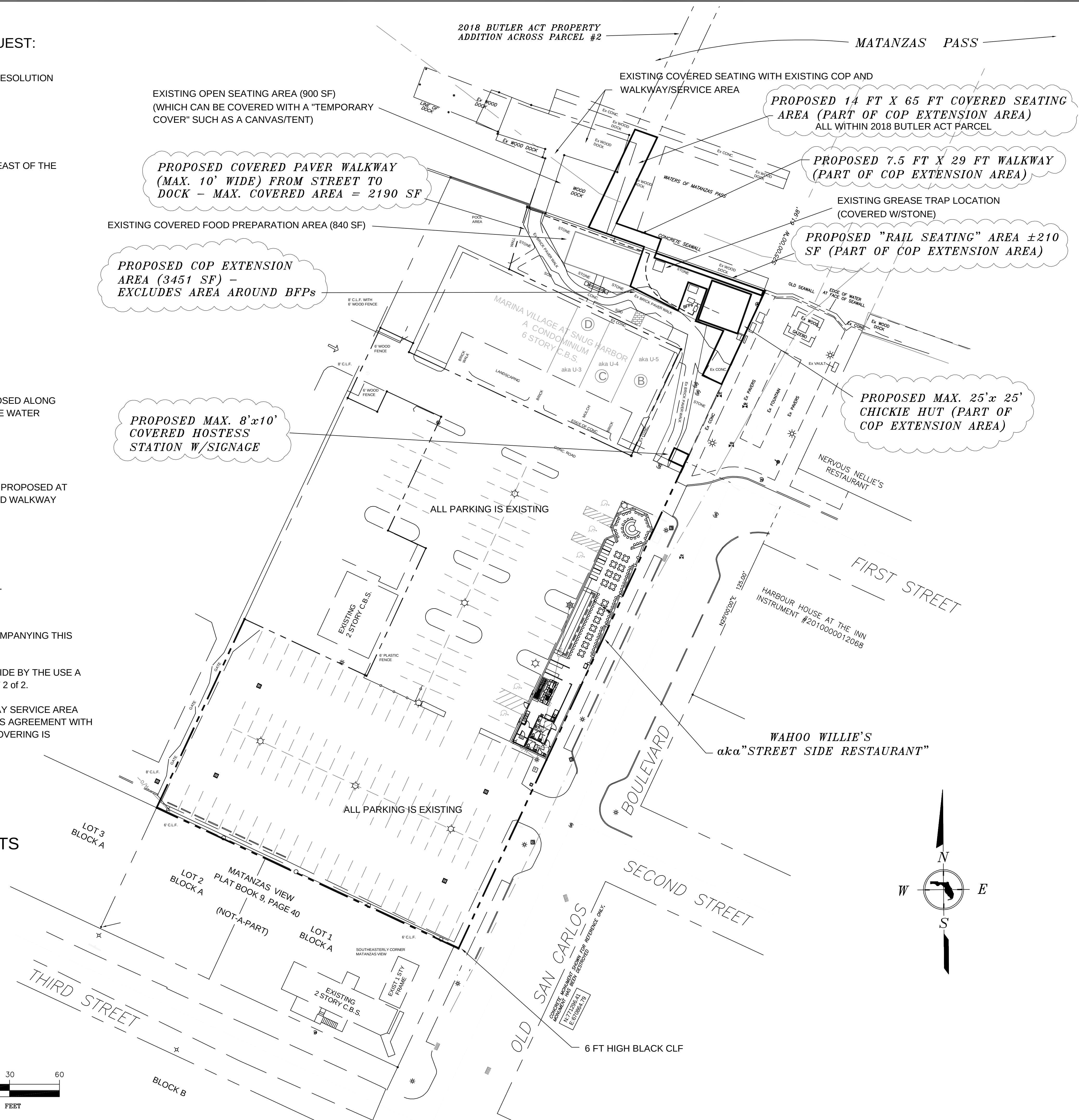
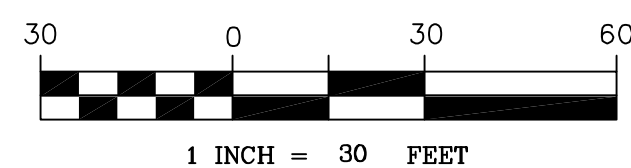
NOTE: THE TOTAL PROPOSED COP EXTENSION AREA IS 3451 SF. SEE SHEET 2 OF 2 FOR THE OVERALL DESIGNATED AREA.

3. ADEQUATE PARKING EXISTS FOR PROPOSED EXPANSION AREA. SEE PARKING CALCULATIONS ACCOMPANYING THIS PLAN.

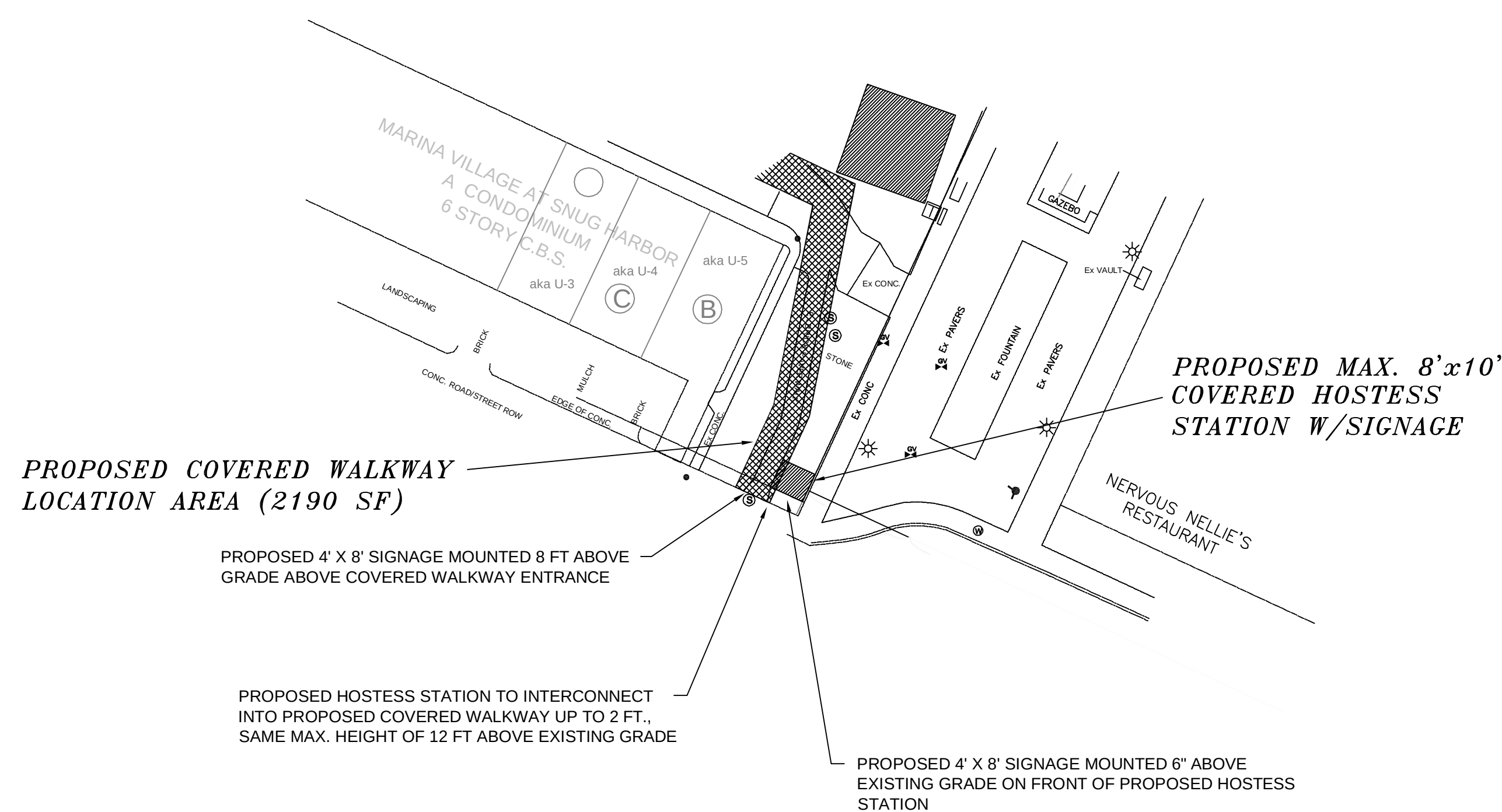
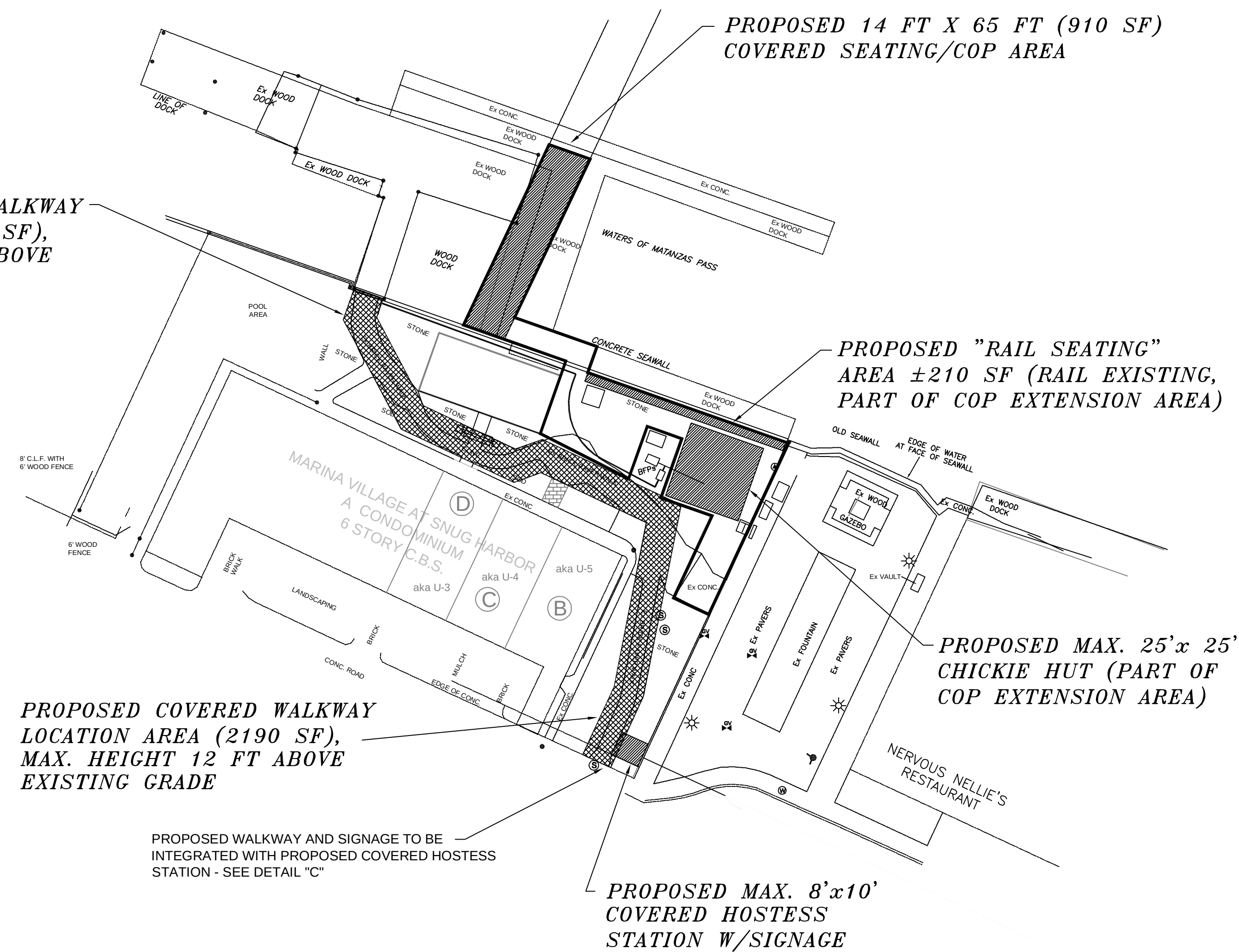
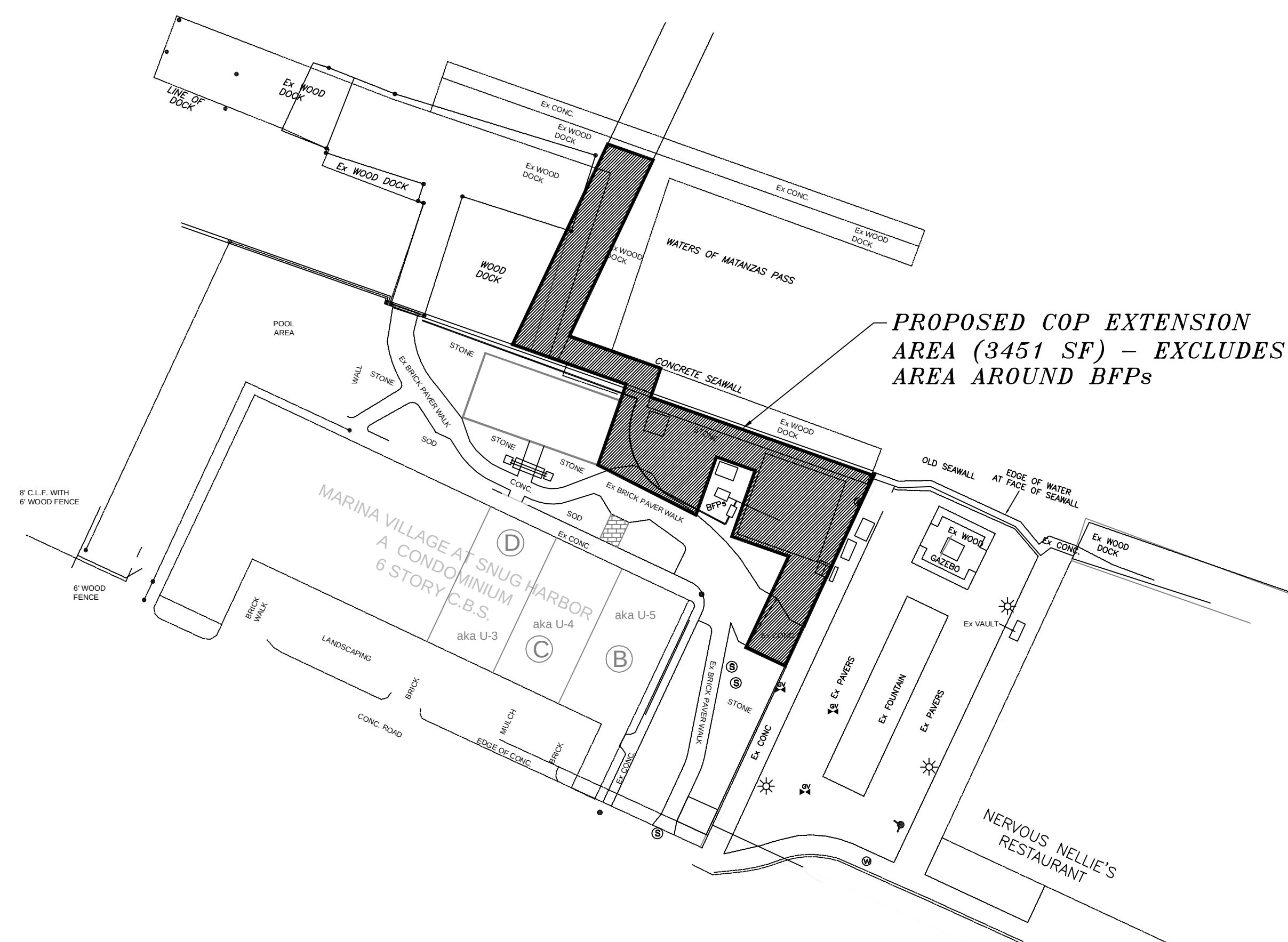
4. THE COP EXTENSION AREA WILL BE SEPARATED FROM THE ADJACENT STREET ROW ON THE EAST SIDE BY THE USE A BARRIER SIMILAR TO WHAT IS PRESENTLY LOCATED ON THE SITE. SEE DETAILS ON MCP DETAIL SHEET 2 of 2.

5. AS A POINT OF CLARIFICATION, THE EXISTING 900 SF OF OPEN SEATING AREA EAST OF THE WALKWAY SERVICE AREA CAN HAVE A TEMPORARY COVERING SUCH AS A CANVAS OR TENT LIKE STRUCTURE. PER THE OWNER'S AGREEMENT WITH THE STATE OF FLORIDA FOR THIS SUBMERGED LAND LEASE PARCEL, NO PERMANENT/STRUCTURAL COVERING IS PERMITTED.

SEE SHEET MCP 2 of 2 FOR DETAILS OF THE PROPOSED
COP EXTENSION AREA AND ASSOCIATED IMPROVEMENTS



SCALE: 1" = 30'	DAVID E. MCKEE, PE PROFESSIONAL ENGINEER P.E. 38347, STATE OF FLORIDA			
	CAD FILE: Olde Seaport	DESIGN BY: DEM DRAWN BY: DEM CHECKED BY: DEM DATE: 1/10/2023		
David E McKee, PE Engineering – Permitting – Land Development 5848 Kaylee Ann Drive Granite Falls, NC 28630 22180 Tallwood Court, #804 Estero, FL 33928 Phone (239) 898-4008 email: mckeeeng@gmail.com				
OLDE SEAPORT PLACE, INC. OVERALL MASTER CONCEPT PLAN Old Seaport Place, Inc. 489 Madison Court Fort Myers Beach, FL 33931				
			DATE △	REVISIONS:
			△	
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			△	
			△	
			SITE PLAN	

[illegible]

NOTES:

1. THIS PUBLIC HEARING AMENDMENT TO CPD (RES.15-01) REQUEST INCLUDES THE SAME FOUR PARCELS OF LAND AS THE ORIGINAL REQUEST (WITH CHANGES ONLY BEING MADE TO PARCELS #2 AND #4), AS FOLLOWS:

- STRAP NO. 24-46-23-W3-00026.0000 (645 OLD SAN CARLOS BLVD), ALSO SHOWN AS NORTH PARCEL #1 ON THE ACCOMPANYING SURVEY
- STRAP NO. 24-46-23-W3-00026.0030 (441/445 OLD SAN CARLOS BLVD), ALSO SHOWN AS SOUTH PARCEL #3 ON THE ACCOMPANYING SURVEY
- A NON-STRAPPED PARCEL, KNOWN AS A "BUTLER ACT" PARCEL, ALSO SHOWN AS PARCEL #4 ON THE ACCOMPANYING SURVEY

NO PARCEL #2 IS IDENTIFIED ON THE SURVEY. FOR THE PURPOSE OF THIS AMENDMENT REQUEST, THE SUBMERGED LAND LEASE WILL BE DESIGNATED AS PARCEL #2 (ALSO NOT STRAPPED)

THE RESTAURANT KNOWN AS NERVOUS NELLIE'S LOCATED TO THE EAST, WHILE NOT PART OF THIS CPD, UTILIZES A PORTION OF THE PARKING ON THESE PARCELS AND IS INCLUDED ON THE PARKING CALCULATIONS.

2. CURRENT LAND USE/ZONING:

PARCELS 1 & 3: LAND USE: PEDESTRIAN COMMERCIAL, ZONING: PER CURRENT APPROVAL (RES. 15-01)

PARCELS 2 & 4: LAND USE: TIDAL WATER, ZONING: PER CURRENT APPROVAL (RES. 15-01)
(NOTE: PARCEL 4 FORMERLY CONTAINED THE SNUG HARBOR RESTAURANT)

3. DESCRIPTION OF PROPOSED DEVELOPMENT ON EACH PARCEL;

PARCEL #1:
- COVERED FOOD PREPARATION AREA (LOBSTER POT); 850 SF - SUPPORTED BY KITCHEN OPERATIONS OUT OF UNIT D
- RESTAURANT W/COP: MAX. 3744 SF (300 SEATS)
- PARKING; 49 SPACES

PARCEL #2:
- OPEN SEATING (AWNING PERMITTED) AREA W/COP: 900 SF (75 SEATS)

PARCEL #3; NO CHANGES PROPOSED (REMAINS AS 74 SPACE PARKING LOT)

PARCEL 4;
- COVERED SEATING W/COP: 1600 SF (125 SEATS)
- WALKWAY: 390 SF AREA FOR SEATING ACCESS/SERVICE AREA

4. SITE DATA AND DEVELOPMENT REGULATIONS:

PARCEL #1/NORTH PARCEL; TOTAL AREA = 35,768 SF
- FOOD PREPARATION AREA: 850 SF (MIN. 3 FT SET-BACK, MAX. HEIGHT = 25 FT ABOVE EX. GRADE)
- RESTAURANT W/COP: 3744 SF (0 FT SET-BACK TO STREET, MAX. HEIGHT = 30 FT ABOVE EX. GRADE)

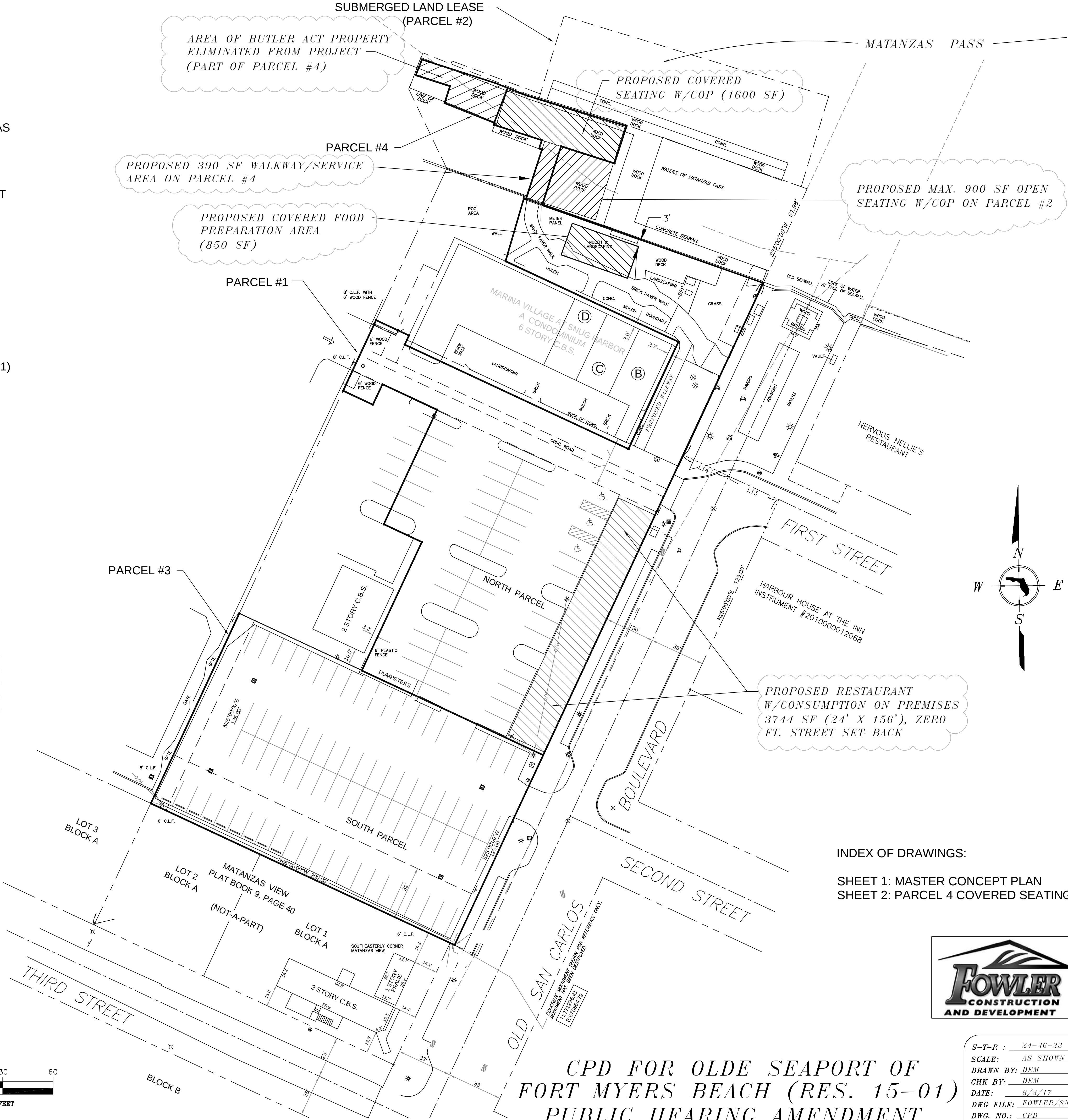
PARCEL #2/SUBMERGED LAND LEASE
- OPEN SEATING AREA W/COP: 900 SF (0 FT SET-BACK)

PARCEL #3/SOUTH PARCEL; TOTAL AREA = 25,000 SF (NO CHANGES)

PARCEL 4/BUTLER ACT PARCEL; TOTAL AREA = 3025 SF
- COVERED SEATING AREA W/COP: 1600 SF (0 FT SET-BACK, MAX. HEIGHT = 20 FT ABOVE CURRENT DOCK LEVEL)
- 390 SF WALKWAY/SERVICE AREA
- REMAINING AREA REMOVED FROM CPD

5. UNLESS OTHERWISE NOTED, EXISTING DOCKS AND WALKWAYS WILL REMAIN AND CONTINUE TO BE USED IN THE SAME MANNER.

6. UNITS "B", "C" AND "D" IN THE MARINA VILLAGE AT SNUG HARBOR, A CONDOMINIUM, ARE OWNED BY THE APPLICANT BUT NOT PART OF THIS REZONING REQUEST. THE ZONING OF MARINA VILLAGE IS "DOWNTOWN" AND ALL PROPOSED USES ARE CONSISTENT WITH THE CURRENT ZONING.



INDEX OF DRAWINGS:

SHEET 1: MASTER CONCEPT PLAN
SHEET 2: PARCEL 4 COVERED SEATING



S-T-R : 24-46-23
SCALE: AS SHOWN
DRAWN BY: DEM
CHK BY: DEM
DATE: 8/3/17
DWG FILE: FOWLER/SNUG
DWG. NO.: CPD
SHEET 1 OF 1

REVISIONS:
12/7/17 - remove parcel 1 (former "full belly dell") outdoor seating per hearing agreement

PROJECT
MASTER CONCEPT PLAN
OLD SEAPORT PLACE, INC.
2532 ESTERO BLVD, UNIT 504
FORT MYERS BEACH, FL 33931

Mckee Engineering Consultants, Inc.

Engineering Permitting Land Development
5235 Starboard Lane Granite Falls, NC 28630
Phone (239) 898-4008 email: mckeeeng@gmail.com
FL CERTIFICATE OF AUTHORIZATION #27145

DATE: _____
DAVID E. MCKEE
REGISTERED PROFESSIONAL ENGINEER
P.E. 38847, STATE OF FLORIDA



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Commercial Planned Development Amendment

CASE NUMBER: DCI Rezoning, 2023008

CASE NAME: 645 Old San Carlos Blvd., amend the existing Commercial Planned Development to additional seating and expand the consumption on premise.

TOWN COUNCIL HEARING DATE: June 5, 2023 at 9:00 AM

LPA HEARING DATE: May 9, 2023 at 9:00 AM

STAFF RECOMMENDATION: Consistent with the LDC and CPD

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

I. APPLICATION SUMMARY

Applicant/Owner: Jim Figuerado / David McKee

Request: The applicant is requesting an amendment to the existing CPD (Res 17-39) master concept plan to allow expanded seating areas and consumption on premise area.

Subject property: See attached site plan

Physical Address: 645 Old San Carlos Blvd

STRAP #: 24-46-23-W3-00026.0000

FLU: Pedestrian

Zoning: Commercial Planned Development

Adjacent zoning and land uses:

North:	Matanzas Pass Submerged Land Lease
South:	CPD and Downtown Marina Village at Snug Harbor; Restaurant and Parking lot; Harbour House at the Inn (SE)
East:	Downtown Old Seaport Place Inc.
West:	Commercial Mixed Moss Marina

II. BACKGROUND AND ANALYSIS

Background:

The property was approved for an amendment to the CPD in 2017 (Res 17-39) to allow an expansion of restaurant, seating and service area, and amend several elements of the master concept plan. The previous request included a submerged land lease area that is also included with the proposed amendment to the master concept plan. Several of the approved components of the master concept plan have been constructed and are operational.

Previous issues concerning the amendment from 2017 includes hours of operations and noise issues related to the use. The Town Council approved conditions of approval for service hours.

Analysis:

The proposed changes include a seating and service area that will have a canvas or other “soft” cover. The area of expansion include a covered paver walkway from the dock to the street; an additional consumption on premise (COP) and restaurant service area of 3,451 square feet between the building and water/submerged land area; and an 8x10 covered hostess stand adjacent to the driveway and Old San Carlos Boulevard right-of-way; a new 25’x25’ chikee within the proposed COP area; additional 7.5 x 29 feet walkway within proposed COP area; and an additional covered seating area of 14’x65’ within proposed COP area.

Neighborhood Compatibility:

The existing and proposed areas for restaurant and COP service share the grounds with an existing residential condominium building. Residents previously expressed concerns about noise and late-night alcohol consumption.

Findings and Conclusions:

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

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

The property with the current use and consumption on premises is existing. The materials provided by the applicant don't appear to address any changing conditions; however, they have provided a summary of how the request, located within the Pedestrian Commercial category, is consistent with the primarily commercial nature of the category.

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

The applicant has provided documentation expressing how the request is consistent with goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan, including how the Pedestrian Commercial category primary use is commercial activity.

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

The commercial use and activity have already been approved for the location. The property owner wishes to expand that activity, including restaurant seating and COP service areas.

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

The applicant provides no indication of environmentally critical areas being impacted.

- 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.*

The business is already in operation and the request is for an expansion of area.

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

The request will be in compliance with the applicable zoning provisions and supplemental regulations. The property is zoned CPD and the use of restaurant and consumption on premise is approved for the identified areas. The proposal is to expand within those same areas. The applicant has provided a parking analysis to show compliance with the LDC for the expansion area.

III. RECOMMENDATION

Staff finds that the amendment to the CPD meets the criteria set forth in Section 34-88 of the LDC. At the May 9, 2023 LPA hearing the LPA unanimously recommended approval of the request.

Therefore, staff recommends that the Town Council schedule a second hearing date for DCI2023008 for the adoption of Ordinance 23-10, to modify the master concept plan by expanding the restaurant and consumption on premises service areas within those areas already permitted to have both uses. Previously approved conditions have been updated to reflect current versions. All deviations are proposed to remain.

IV. CONDITIONS OF APPROVAL

1. Development must be consistent with the master concept plan (MCP) titled “Olde Seaport of Fort Myers Beach” for case DCI 2023008, last revised 1/10/2023, except as modified by conditions or deviations as discussed herein.
2. The following limits apply to the project and uses:
 - a. Schedule of uses:
 - i. Parcel #1 (North Parcel – 645 Old San Carlos Blvd.)
 1. Consumption on Premises
 2. Personal Services
 3. Restaurants
 4. Seating areas
 5. Retail store, small
 - ii. Parcel #2 (Submerged Land Lease)
 1. Boat slips
 2. Docks
 3. Marina and related activities
 4. Seating areas (in connection with adjacent parcels restaurants and food preparation areas)
 - iii. Parcel #3 (South Parcel – 441/445 Old San Carlos Blvd.)
 1. Parking lot, shared permanent
 - iv. Parcel #4 (Butler Act property)
 1. Seating areas (in conjunction with adjacent

Accessory uses on all parcels:
Bay access if available
Essential services
Essential service equipment

3. Nothing in this rezoning, including any of the attached conditions, may be construed as a variance from the provisions of LDC Chapter 6, Article IV Floodplain regulations.
4. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of the development order approval and permitting, except as specifically modified herein.
5. The development must comply with LDC Sec. 14-76 requirements for sea turtle conservation applicable to new development.
6. No structure may be placed in or over, and no work may occur in, any navigable waters of the United States unless property authorization by the United States Army Corps of Engineers or its designee.
7. No stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be constructed or altered on the subject property, including submerged lands and riparian leased areas, without property permit or exemption, and unless in compliance with all conditions of such permit or exemption, from the South Florida Water Management District or Florida Department of Environmental Protection, as applicable. Stormwater Management for the property must comply with all applicable requirements of the Land Development Code at the time of development order approval and must provide for the capture and retention of all stormwater on the site.
8. Approval of the rezoning does not address compliance or noncompliance of proposed building elevations with the commercial design standards included in LDC Chapter 34, Article III, Division 7. Development of the subject property must meet the commercial design standards effective at the time of the local development order approval.
9. Docks for use by occupants of principal uses on the subject property, docks for lease to non-occupants of principal uses on the subject property, and docks used by water taxi or water shuttle are limited to areas within the existing submerged land lease described in Exhibit A. These docks are and must remain accessory to the principal use(s) of the subject property. The number of slips within the area of the submerged land lease may not exceed the number authorized by that lease without proper approval. Construction of additional or replacement docks must comply with all applicable requirements of the LDC and all applicable state and federal regulations at the time of permitting. No live-aboard units allowed.

10. Hours of operation:

All restaurants and outdoor seating areas may operate from 8:00AM to 10:00 PM.

- Consumption on Premises in conjunction with outdoor seating shall be from 11:30AM-10:00PM. Live entertainment permitted only inside the buildings,

limited to non- amplified, acoustical music.

11. Steamers must be located outside of the Marina Village at Snug Harbor Condominium building.
12. No deliveries will be permitted between 9:00PM and 7:00AM.
13. Commercial garbage collection must be provided six days a week (excluding Sundays).
14. Parking lot must be reconfigured to allow vehicular traffic flow without dead-ends.
15. Public restroom facilities must be provided in Unit C of the Marina Village at Snug Harbor Condominium building.
16. Upon the completion of the street side restaurant on parcel #1 (issuance of certificate of occupancy) no beach parking of any kind (Single-purpose Parking Lots only) shall be permitted on the subject properties at any time, all designated parking spaces shall be used for the uses established in this resolution.

David E. McKee, Florida P.E. #38347
5848 Kaylee Ann Drive, Granite Falls, NC 28630
239/898-4008 mckeeeng@gmail.com

January 28, 2023

Submitted by email to: zoningpermits@fmbgov.com

Town of Fort Myers Beach
2523 Estero Blvd.
Fort Myers Beach, FL 33931

Re: Request for CPD Amendment via Public Hearing for COP/Seating Area Extension – Olde Seaport of Fort Myers Beach; Zoning Resolution #17-39 (DCI17-0005)

Ladies and Gentlemen:

Please find attached a complete Public Hearing Amendment application for the above referenced project. The application is being submitted by Mr. Jim Figuerado Of Old Seaport Place., Inc, the current property owner, with this office acting as an Authorized Agent. This application generally encompasses the same properties as the original approval, as follows:

- Strap No. 24-46-23-W3-00026.0000; 645 Old San Carlos Blvd. (parcel #1)
- Strap No. 24-46-23-W3-00026.0030; 441/445 Old San Carlos Blvd. (parcel #3)
- A Butler Act parcel lying north of 645 Old San Carlos Blvd., as designated on an earlier boundary survey, which has been included for reference. The area was the location of the old Snug Harbor Restaurant until it was demolished (parcel #4). It now is part of the covered seating for the Snug Harbor Restaurant facility. It was unstrapped at the time of the 2017 zoning request but is now strapped as 24-46-23-W2-00000.0000
- A portion of a submerged land lease lying north of 645 Old San Carlos Blvd. (parcel #2). This parcel, since the original rezoning approval in November 2017, has been modified with an approximate 14 ft wide portion now being a Butler Act parcel as shown on the recorded deed and updated survey accompanying this application. This Butler Act parcel is strapped; 24-46-23-W2-00000.0020, and its' designation as a Butler Act parcel allows the area to be covered.

No changes/modifications are proposed on parcel #3 but it provides part of the required parking so it is included in this application and maintains consistency with the original approval . Similarly, no changes are proposed on Butler Act Parcel #4. It has the 1600 sf of covered seating (with COP) and a 390 sf walkway service area (1990 sf total) as was approved in 2017.

Proposed amendments on the other two parcels are as follows:

Parcel #1: An extension of the COP/seating area, as shown in detail on Detail "A" on sheet 2 of 2 of the MCP. Within this extension area the construction of a Chickee Hut (max 25' x 25') and a rail seating area along the north side of the parcel are proposed (the rail is presently existing but will be upgraded and the seating will be added in an area not exceeding 210 sf). Additionally a covered walkway area (max. 2190 sf) and covered hostess station (max 8' x 10') with signage is proposed. The last two facilities are not included in the proposed COP extension area.

Parcel #2: An additional 14 ft x 65 ft area, or 910 sf is proposed for covered seating/COP usage to the east of the current seating areas. This is all within the 2018 Butler Act property, which allows for the covered seating. An adjacent 7.5 ft x 29 ft area along the existing dock is proposed for a pedestrian walkway and includes COP usage. The COP usage designation allows patrons to walk through the area while carrying an alcoholic beverage from the waiting area on Parcel #1 waiting area to a dining table on Parcels #2 or #4.

As a point of clarification the current 900 sf of open dining area on parcel #2 does not allow a permanent covered area since it is a submerged land lease area. However, a temporary cover such as a canvas or tent type structure is permitted.

The accompanying Master Concept Plan specifically identifies these changes via revision clouds and notes are provided outlining these proposed requests. Please note that sheet 2 of 2 provides for additional details that could not be clearly shown on the overall Master Concept Plan. All other facets of the rezoning approved in 2017 remain the same. Note that the overall COP/seating extension areas total 3451 sf on parcels #1 and #2 as shown Detail "A" on sheet 2.

In requesting this CPD Amendment it is understood that the Conditions of Approval outlined in the current Zoning Resolution 17-39 will be extended. Item #1 will obviously reflect a new Master Plan approval and item #16 is already in effect given the completion of the Street Side Restaurant. Uses, operation times and conditions and all other criteria remain the same. The area known as Parcel #2/ Submerged Land Lease is now bisected by a Butler Act parcel, said parcel allowing the construction of permanent roof/coverage structure.

The application includes the following:

- This cover letter
- Completed application for Public Hearing and related Supplement PH-D for the proposed changes with Mr. Figuerado providing the proper signature pages in paper form.
- Master Concept Plan, including a detail sheet (two sheet MCP)
- Updated Parking Calculations
- A separate Part I/Section C; Comprehensive Plan Compliance narrative
- A separate Part I/Section D; Design Standards Compliance narrative
- A separate part I/Section E; Decision Making Compliance narrative
- Schedule of Uses
- Variance report with map, property owners list and mailing labels (aka Exhibits 6-6 & 6-7)
- Area Location map (aka Exhibit 6-3)
- 2018 Butler Act property documentation
- Boundary surveys (aka Exhibit 6-2a, the earlier survey with parcel designations and Exhibit 6-2b, an updated survey showing the 2018 Butler Act Property over the submerged land lease)
- Copy of RES17-39 for reference

We have not provided an updated TIS as the roadway capacities have not changed during the course of this project's development. All road segments are currently failing. Additionally, renderings of the proposed facilities have not been provided. They will follow the same architectural theme as the current facilities, including the thatched roof design of Wahoo Willies (the "street side restaurant"), and will be provided at time of the Development Order activities for review and approval.

Town of Fort Myers Beach

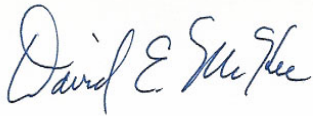
January 28, 2023

Page 3

All documents are provided in electronic form via email as directed by the Application instructions. Mr. Figuerado, the Owner and applicant, will submit directly to the Town original paper copies of the required signature sheets and a check for the required \$6500 application fee.

Should you have any questions regarding this application or require additional information, please contact me at 239/898-4008 or by email at: mckeeeng@gmail.com

Very Truly Yours,

A handwritten signature in blue ink that reads "David E. McKee". The signature is written in a cursive, flowing style. The name "David" is written in a larger, more prominent script, followed by "E." and "McKee".

David E. McKee, PE

RESOLUTION 17-39
THE TOWN OF FORT MYERS BEACH FLORIDA
DCI17-0005 – OLDE SEAPORT COMMERCIAL
PLANNED DEVELOPMENT AMENDMENT

WHEREAS, applicant Robert Fowler, authorized agent for Olde Seaport Place Inc. is requesting an amendment to an already approved Master Concept Plan consistent with Section 34-214 of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP numbers for the subject property are 24-46-23-W3-00026.0000, 24-46-23-W3-00026.0030, and 24-46-23-W2-000000.0000 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property is located at 645 Old San Carlos Boulevard Fort Myers Beach, FL 33931, zoned Commercial Planned Development on the Official Zoning Map and is located in the Pedestrian Commercial and Tidal Water categories of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on October 10, 2017; 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 34-85.

WHEREAS, the Town Council determined it is in the best interest of the Town to approve the request.

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Fort Myers Beach, Florida, as follows:

1. Determination.

Based upon the recommendations, testimony, and evidence presented by Town staff, LPA, applicant, and interested parties, the Town Council APPROVES the following:

- a. An amendment to an already approved Master Concept Plan. The request amends the approval as follows: Within Parcel #1 replace the 4,020 square feet of Open Air Shops with a 3,744 square foot restaurant (with up to 800 square feet of bar area) with COP (4COPSRX); Within Parcel #2 the 1,140 square feet of History House/Public Use area is replaced by 900 square feet of open restaurant seating that will be served by "on land" facilities; Within Parcel #4 reduce the amount of Butler Act property utilized from 2,697 square feet to 1,600 square feet (with COP) of covered seating and 390 square feet of walk-way service area (1,990 square feet total).

2. Findings and Conclusions of Law:

In accordance with the requirements of LDC Section 34-85 for granting a rezoning, the Town Council make the following findings and reach the following conclusions:

- A. There **exist** changed or changing conditions which make approval of the request appropriate.
- B. The request **is consistent** with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request **meets or exceeds** all performance and locational standards set forth for the proposed use.
- D. The request **will** protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request **will** be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use **will** be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code including Chapter 34.

3. Conditions of Approval

1. Development must be consistent with the master concept plan (MCP) titled "Olde Seaport of Fort Myers Beach" (Exhibit C) for case DCI17-0005, last revised 8/3/17, except as modified by conditions or deviations discussed herein. In accordance with LDC Section 34216(b)(5), the MCP must be updated to reflect the deviations and conditions approved by Town Council. If changes to the MCP are subsequently pursued, appropriate approvals will be required.

2. The following limits apply to the project and uses:

Schedule of Uses:

Parcel #1 (North Parcel – 645 Old San Carlos Blvd.)

Consumption on Premises
Single-purpose Parking Lot
Personal Services
Restaurants
Seating areas

Parcel #2 (Submerged Land Lease)

Boat slips

Docks

Marina & accessory uses

Seating areas (in connection with adjacent parcels, restaurants and food preparation areas see Exhibit B for restaurant square footages and parking calculations)

Consumption on Premises

Parcel #3 (South Parcel – 441/445 Old San Carlos Blvd.)

Single-purpose Parking Lot

Parcel #4 (Butler Act property)

Seating areas (in connection with adjacent parcels restaurants and food preparation areas)
Consumption on Premises

Accessory uses on all parcels:

Bay access if available

Essential services

Essential services equipment

3. Nothing in this rezoning, including any of the attached conditions, may be construed as a variance from the provisions of LDC Chapter 6, Article IV Floodplain regulations.
4. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.
5. The development must comply with LDC Sec. 14-76 requirements for sea turtle conservation applicable to new development.
6. No structure may be placed in or over, and no work may occur in, any navigable water of the United States unless properly authorized by the United States Army Corps of Engineers or its designee.
7. No stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be constructed or altered on the subject property, including submerged lands and riparian leased areas, without property permit or exemption, and unless in compliance with all conditions of such permit or exemption, from the South Florida Water Management District or Florida Department of Environmental Protection, as applicable. Stormwater management for the subject property must comply with all applicable requirements of the Land Development Code at the time of development order approval and must provide for the capture and retention of all stormwater on the site.

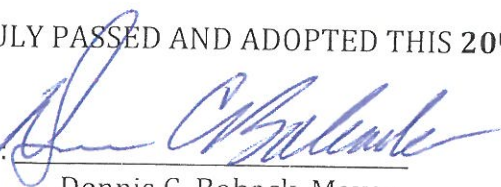
8. Approval of this rezoning does not address the compliance or noncompliance of proposed building elevations with the commercial design standards included in LDC Chapter 34, Article III, Division 7. Development of the subject property must meet the commercial design standards effective at the time of local development order approval.
9. Docks for use by occupants of principal uses on the subject property, docks for lease to non-occupants of principal uses on the subject property, and docks for use by water taxi or water shuttle are limited to the areas within the existing submerged land leases and submerged land described in Exhibit A. These docks are and must remain accessory to the principal use(s) of the subject property. The number of slips within the area of a submerged land lease may not exceed the number authorized by that lease without proper approval. Construction of additional or replacement docks must comply with all applicable requirements of the LDC and all applicable state and federal regulations at the time of permitting. No live-aboard units are allowed.
10. Hours of operation:
- All restaurants and outdoor seating areas may operate from 8:00AM to 10:00 PM.
 - Consumption on Premises in conjunction with outdoor seating shall be from 11:30AM-10:00PM. Live entertainment permitted only inside the buildings, limited to non-amplified, acoustical music.
11. Steamers must be located outside of the Marina Village at Snug Harbor Condominium building.
12. No deliveries will be permitted between 9:00PM and 7:00AM.
13. Commercial garbage collection must be provided six days a week (excluding Sundays).
14. Parking lot must be reconfigured to allow vehicular traffic flow without dead-ends.
15. Public restroom facilities must be provided in Unit C of the Marina Village at Snug Harbor Condominium building.
16. Upon the completion of the street side restaurant on parcel #1 (issuance of certificate of occupancy) no beach parking of any kind (Single-purpose Parking Lots only) shall be permitted on the subject properties at any time, all designated parking spaces shall be used for the uses established in this resolution.

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

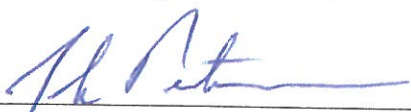
Dennis Boback, Mayor	AYE
Bruce Butcher, Member	AYE
Joanne Shamp, Member	AYE

Tracey Gore, Vice Mayor	AYE
Anita Cereceda, Member	AYE

DULY PASSED AND ADOPTED THIS 20th day **NOVEMBER, 2017.**

By: 
Dennis C. Boback, Mayor

Approved as to legal sufficiency:

By: 
Peterson Law Group
Town Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

EXHIBIT B

Olde Seaport of Fort Myers Beach

Parking Calculations with big boat at 136 total, Parcel 1 outdoor seating (Full Belly Deli) removed, lobby and finished utility areas in Nervous Nellies added (10,127 sf total in facility) and 132 parking spaces actually available: 11/27/17

Building/Description	Unit	QTY.	Calculated		Gross Total	Downtown Reduction	Required	Provided
			Parking					
Existing "Nervous Nellie's" - Food Service	SF	9127		8 per 1000 SF	73.0	0.5	36.5	36.5
Existing "Nervous Nellie's" - Bar Area	SF	1000		13 per 1000 SF	13.0	0.5	6.5	6.5
FMB Princess Cruise Ship (150 capacity)	per patron	136	0.3333333333	per patron	45.3	0.5	22.7	22.7
Outdoor & Covered Seating*	SF	3350		8 per 1000 sf	26.8	0.5	13.4	13.4
Parcel 1 street side Restaurant	SF	2944		8 per 1000 sf	23.6	0.5	11.8	11.8
Street side Restaurant Bar Area	SF	800		13 per 1000 sf	10.4	0.5	5.2	5.2
Ticket sales/Boat rentals - Condo Unit B**	SF	840		3 per 1000 sf	2.5	0.5	1.3	1.3
Bathrooms - Condo Unit C**	SF	400		8 per 10000 sf	3.2	0.5	1.6	1.6
Kitchen/Food preparation - Condo Unit D**	SF	600		8 per 1000 sf	4.8	0.5	2.4	2.4
Boat Slips (see breakdown below)	per slip	21		0.5 per slip	10.5	0.5	5.3	5.3
TOTAL REQUIRED SPACES							106.6	106.6

The actual number of existing spaces is 132 so sufficient parking exists

* includes all parcel 2 and 4 seating areas as well as 850 sf for Covered Food Preparation area on parcel 1

** each of the Commercial Condo units is about 1200 sf. Only a portion of the area in each is used with the rest of the area empty or dead storage. Units C&D are part of the restaurant operations so the same parking requirements were used. For Unit B "other retail or business" space calcs are used

Boat Slip breakdown (21 total, including Princess Cruise Ship):

Use by Marina Village - 1

Open slips for use by diners coming by boat - 8

Slips for rental boats (by Olde Seaport) -7

Slips rented to boatowners that keep their boats moored -5

EXHIBIT C

NOTES

1. THIS PUBLIC HEARING AMENDMENT TO CPD, RES. 15-01 REQUEST INCLUDES THE SAME FOUR PARCELS OF LAND AS THE ORIGINAL REQUEST WITH CHANGES ONLY BEING MADE TO PARCELS #2 AND #4), AS FOLLOWS:

- STRAP NO. 24-46-23-W3-00026 0000 (645 OLD SAN CARLOS BLVD), ALSO SHOWN AS NORTH PARCEL #1 ON THE ACCOMPANYING SURVEY
 - STRAP NO. 24-46-23-W3-00026 0030 (441445 OLD SAN CARLOS BLVD), ALSO SHOWN AS SOUTH PARCEL #3 ON THE ACCOMPANYING SURVEY
 - AVOID SUBMERGED LAND LEASE
 - PARCEL #4 ON THE ACCOMPANYING SURVEY
 - NO PARCEL #2 IS IDENTIFIED ON THE SURVEY FOR THE PURPOSE OF THIS AMENDMENT REQUEST. THE SUBMERGED LAND LEASE WILL BE DESIGNATED AS PARCEL #2 (ALSO NOT STRAPPED)

THE RESTAURANT KNOWN AS NERVOUS NELLIES LOCATED TO THE EAST WHILE NOT PART OF THIS CPD, UTILIZES A PORTION OF THE PARKING ON THESE PARCELS AND IS INCLUDED ON THE PARKING CALCULATIONS.

2. CURRENT LAND USE ZONING

PARCELS 1 & 3 LAND USE: PEDESTRIAN COMMERCIAL ZONING: PER CURRENT APPROVAL (RES. 15-01)

PARCELS 2 & 4 LAND USE: TIDAL WATER ZONING: PER CURRENT APPROVAL (RES. 15-01)
 (NOTE: PARCEL 4 FORMERLY CONTAINED THE SNUG HARBOR RESTAURANT)

3. DESCRIPTION OF PROPOSED DEVELOPMENT ON EACH PARCEL:

PARCEL #1:
 - COVERED FOOD PREPARATION AREA (LOBSTER POT), 850 SF - SUPPORTED BY KITCHEN OPERATIONS OUT OF UNIT D
 - RESTAURANT W/COOP: MAX. 3744 SF (300 SEATS)
 - PARKING: 49 SPACES

PARCEL #2:
 - OPEN SEATING (AWNING PERMITTED) AREA W/COOP: 900 SF (75 SEATS)

PARCEL #3: NO CHANGES PROPOSED (REMAINS AS 74 SPACE PARKING LOT)

PARCEL #4:
 - COVERED SEATING W/COOP: 1600 SF (125 SEATS)
 - WALKWAY: 390 SF AREA FOR SEATING ACCESS/SERVICE AREA

4. SITE DATA AND DEVELOPMENT REGULATIONS:

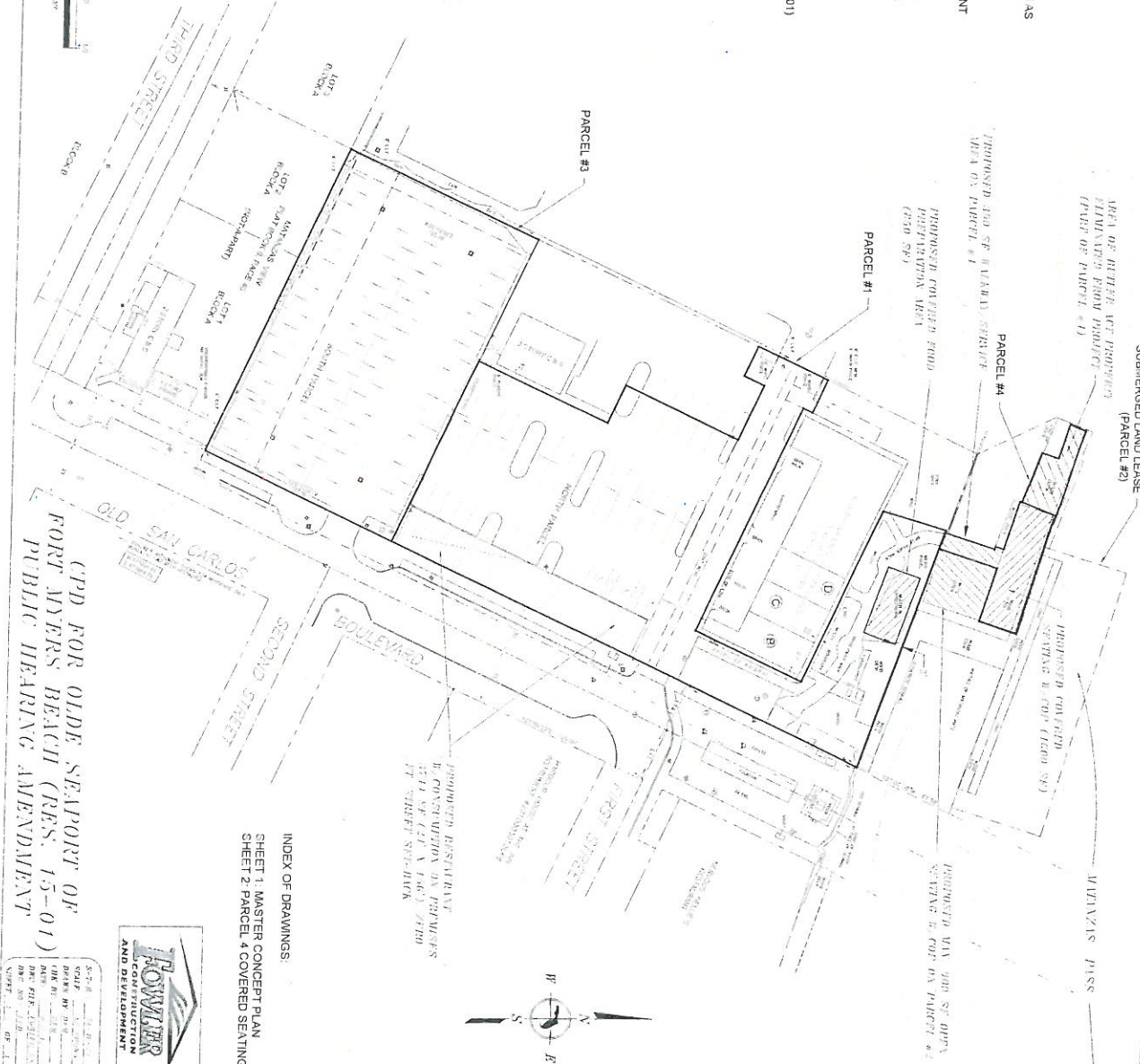
PARCEL #1/NORTH PARCEL: TOTAL AREA = 35,768 SF
 - FOOD PREPARATION AREA: 850 SF (MIN. 3 FT SET-BACK, MAX. HEIGHT = 25 FT ABOVE EX. GRADE)
 - RESTAURANT W/COOP: 3744 SF (0 FT SET-BACK TO STREET, MAX. HEIGHT = 30 FT ABOVE EX. GRADE)

PARCEL #2/SUBMERGED LAND LEASE
 - OPEN SEATING AREA W/COOP: 900 SF (0 FT SET-BACK)

PARCEL #3/SOUTH PARCEL: TOTAL AREA = 23,000 SF (NO CHANGES)

PARCEL #4/BUTLER ACT PARCEL: TOTAL AREA = 3025 SF
 - COVERED SEATING AREA W/COOP: 1600 SF (0 FT SET-BACK, MAX. HEIGHT = 20 FT ABOVE CURRENT DOCK LEVEL)
 - 390 SF WALKWAY/SERVICE AREA
 - REMAINING AREA REMOVED FROM CPD

5. UNLESS OTHERWISE NOTED, EXISTING DOCKS AND WALKWAYS WILL REMAIN AND CONTINUE TO BE USED IN THE SAME MANNER.
 6. UNITS "B", "C", AND "D" IN THE MARINA VILLAGE AT SNUG HARBOR, A CONDOMINIUM, ARE OWNED BY THE APPLICANT BUT A PART OF THIS RESOLVING REQUEST. THE ZONING OF MARINA VILLAGE IS "TOWNHOMES" AND ALL PROPOSED USES ARE CONSISTENT WITH THE CURRENT ZONING.



CPD FOR OLDE SEAPORT OF
 FORT MYERS BEACH (RES. 15-01)
 PUBLIC HEARING AMENDMENT

POWER
 CONSTRUCTION
 AND DEVELOPMENT

SCALE: 1" = 20'-0"
 DATE: 07/17/17
 DRAWN BY: J. L. BROWN
 CHECKED BY: J. L. BROWN
 PROJECT NO.: 15-01

INDEX OF DRAWINGS:
 SHEET 1 MASTER CONCEPT PLAN
 SHEET 2 PARCEL 4 COVERED SEATING

McKee Engineering Consultants, Inc.

Engineering Planning Land Development
 5520 Stonecrest Lane Suite 100, Fort Myers, FL 33903
 Phone: (239) 858-8000 Fax: (239) 858-8000
 E-MAIL: info@mckeeeng.com

PROJECT: MASTER CONCEPT PLAN
OLD SEAPORT PLACE, INC.
 2532 EDGEMOOR BLVD., UNIT 504
 FORT MYERS BEACH, FL 33931

12/7/17 - remove parcel 1 from "this bill" per 1. outline setting per hearing agreement

**Olde Seaport of Fort Myers Beach
Commercial Planned Development**

Schedule of Uses

Parcel #1 (North Parcel – 645 Old San Carlos Blvd.)

Consumption on Premises
Parking Lot, shared permanent
Personal Services
Restaurants
Covered Seating areas
Retail store, small

Parcel #2 (2018 Butler Act Parcel/Submerged Land Lease)

Boat slips
Docks
Marina & related activities
Seating areas (in connection with adjacent parcels, restaurants and food preparation areas) with covered seating in 2018 Butler Act Parcel area
Consumption on Premises

Parcel #3 (South Parcel – 441/445 Old San Carlos Blvd.)

Parking Lot, shared permanent

Parcel #4 (Butler Act property)

Covered Seating areas (in connection with adjacent parcels restaurants and food preparation areas)
Consumption On Premises

Accessory uses on all parcels:

Bay access
Essential services
Essential services equipment

Olde Seaport of Fort Myers Beach - Rezoning Request

Parking Calculations with two passenger ships at a total of 98 patrons, expansion of seating/COP Area (this request), lobby and finished utility areas in Nervous Nellies added (10,127 sf total in facility) and 132 parking spaces actually available: 1/10/23

Building/Description	Unit	QTY.	Calculated Parking	Gross Total	Downtown Reduction	Required	Provided
Existing "Nervous Nellie's" - Food Service	SF	9127	8 per 1000 SF	73.0	0.5	36.5	36.5
Existing "Nervous Nellie's" - Bar Area	SF	1000	13 per 1000 SF	13.0	0.5	6.5	6.5
Two 49 passenger tour boats	per patron	98	0.333333333 per patron	32.7	0.5	16.3	16.3
Outdoor & Covered Seating*	SF	3350	8 per 1000 sf	26.8	0.5	13.4	13.4
Additional seating/COP Area" - 1/10/23	SF	3451	8 per 1000 sf	27.6	0.5	13.8	13.8
Parcel 1 street side Restaurant	SF	2944	8 per 1000 sf	23.6	0.5	11.8	11.8
Street side Restaurant Bar Area	SF	800	13 per 1000 sf	10.4	0.5	5.2	5.2
Ticket sales/Boat rentals - Condo Unit B**	SF	840	3 per 1000 sf	2.5	0.5	1.3	1.3
Bathrooms - Condo Unit C**	SF	400	8 per 10000 sf	3.2	0.5	1.6	1.6
Kitchen/Food preparation - Condo Unit D**	SF	600	8 per 1000 sf	4.8	0.5	2.4	2.4
Boat Slips (see breakdown below)	per slip	10	0.5 per slip	5.0	0.5	2.5	2.5
TOTAL REQUIRED SPACES						111.3	111.3

The number of existing parking spaces is 132 so a 3451 SF Extension of the seating/COP Area is possible

* includes all parcel 2 and 4 seating areas as well as 850 sf for Covered Food Preparation area on parcel 1

** each of the Commercial Condo units is about 1200 sf. Only a portion of the area in each is used with the rest of the area empty or dead storage.
Units C&D are part of the restaurant operations so the same parking requirements were used. For Unit B "other retail or business" space calcs are used

Boat Slip breakdown (21 total minus the two Passenger tour boats = 19 others available):

Open slips for use by diners coming by boat - 9 (do not require parking spaces)
Slips for rental boats (by Olde Seaport) - 8
Slips rented to boatowners that keep their boats moored -2

**Olde Seaport of Fort Myers Beach
CPD: Resolution #17-39
Public Hearing Amendment Request**

Part I – C – Comprehensive Plan Compliance

The requests being made are generally an extension of previously approved uses and activities. Additional covered seating and extended COP areas along with “customer comforts” such as a covered walkway and highly visible hostess station with signage are being requested. The project, as previously zoned/approved, is in compliance with the Comprehensive Plan and will continue to be since there are no new uses or activities being requested.

Future Land Use Classifications for the properties where the use/extensions are being requested are Pedestrian Commercial and Tidal Water. The two land parcels (parcels #1 and #3), which are strapped and addressed, are Pedestrian Commercial and permit a wide array of commercial uses. The original Butler Act property (parcel #4) and the submerged land lease and 2018 Butler Act property (parcel #2) are within the Tidal Water Land Use and require that the activities generally be “water dependent”. The activities permitted by the two land use classifications are inter-related and dependent upon each other, as discussed herein, and continue to promote the overall development concept that has previously been undertaken.

Policy 4-B-6 of the Town of Fort Myers Beach Comprehensive Plan states the Pedestrian Commercial Land Use is “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 Villa Santini Plaza)”. The proposed uses within the Pedestrian Commercial area under this rezoning request, which are discussed below, are consistent with this Future Land Use criteria:

- Parcel #3, also known as the South parcel located at 441/445 Old San Carlos Blvd., is a 74 space parking lot that provides part the required parking for all the proposed uses requested by this application. No changes are being proposed.
- Parcel #1, also known as the North parcel located at 645 Old San Carlos Blvd., fronts Matanzas Pass. The parcel presently contains the covered food preparation area and the street side restaurant/Wahoo Willies, as approved by the previous zoning, and the parking and associated use of Unit D in the adjacent Marina Village Condo. An extension of the project COP/seating area is proposed. Within this extension area the construction of a Chickee Hut (max 25' x 25') and a rail seating area along the north side of the parcel are proposed (the rail is presently existing but will be upgraded and the seating will be added in an area not exceeding 210 sf). Additionally a covered walkway area (max. 2190 sf) and covered hostess station (max 8' x 10') with signage is proposed. The last two facilities are not included in the proposed COP extension area.

Policy 4-B-10 of the Comprehensive Plan defines Tidal Water as being “applied to all saltwater canals and all waters surrounding Estero Island that lie within the municipal boundary (out 1,000 feet)”. Allowable uses are water dependent such as water sports, boating, swimming and fishing. Fixed structures for water access are also permitted as long as they comply with LDC standards. The proposed uses within the Tidal Water Future Land Use Classification under this rezoning, which are discussed below, are consistent with this Future Land Use criteria:

- The previously designated Submerged Land Lease parcel, also known as Parcel #2 and located north of 645 Old San Carlos Blvd., was modified in 2018 by the designation of a portion of the property as Butler Act property (see below). The submerged land lease portion is will continue to be used for open seating w/COP, as approved by the previous zoning and the use of the existing docks for boating, fishing/charter activities and water related special events in connection with the use of this area will continue and be enhanced. One small adjacent area of walkway/dock is being proposed for COP usage. Note that the open seating area can be covered as well as long as a non-structural roof/covering is utilized.
- Parcel #2/2018 Butler Act parcel: An extension of covered seating/COP usage is proposed, 14 ft x 65 ft (910 sf), and will be utilized in the same manner as Parcel #4 is being used.
- The Butler Act parcel, also known as Parcel #4 and located north of 645 Old San Carlos Blvd. resulted from the fact that a former restaurant occupied the site prior to 1951. As such FDEP has no jurisdiction regarding the use of the property and it is subject to local criteria. This area now contains covered seating with COP usage and a service walkway from the upland property, as was approved by the previous zoning.

**Olde Seaport of Fort Myers Beach
CPD: Resolution #17-39
Public Hearing Amendment Request**

Part I – D – Design Standards Compliance

All facilities will be designed to be consistent with current architectural features. Final design/construction plans for the proposed improvements will not be prepared until the Development Order phase and it is understood final approval must be obtained for the architectural plans prior to building permit application.

This application does not include any true building structures since there will be no new enclosed air conditioned space constructed. All proposed structures are roof only type facilities or partially enclosed areas where the walls are non-structural in nature and/or are used to enhance the theme of the area through the design. In this case, the Olde Seaport theme creates facilities that are reminiscent of the Caribbean ports of the 1800's.

**Olde Seaport of Fort Myers Beach
CPD: Resolution #17-39
Public Hearing Amendment Request**

Part I – E – Decision–Making Compliance

This proposed development complies with the decision-making process in the LDC in the following manner:

- There are no errors or ambiguities in the current CPD (RES 17-19) that needs to be corrected.
- There exists changed conditions that make the approval of this request appropriate. The designation of a portion of the Submerged land lease as Butler Act property allows the additional covered seating with COP to be requested. The project has been in operation for some time and has shown itself to be a well operated facility. This track record supports the request for an extension of the COP area. Similarly, the operating history has shown the need for additional covered area for customer comfort and a better access point to improve operations.
- 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.
- The request meets or exceeds all performance and locational standards set forth for the proposed uses.
- Urban services are available and adequate to serve the proposed development.
- The proposed development will not have any impact on the environment or natural resources.
- The request is compatible with existing and other planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- The request will not place an undue burden upon existing transportation or other services and facilities. Additionally, the expansion of the development encourages the use of additional access by water and it has been planned to attract existing pedestrian traffic to the area.



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: 441/445, 645 Old San Carlos Blvd, FMB and adj. Butler Act & submerged lands

STRAP Number: 24-46-23-W3-00026.0000/.0030/W2-00000.0000/.0020 & unstrapped SSL

Applicant: Jim Figuerado Phone: 239/707-4687

Contact Name: David McKee Phone: 239/898-4008

Email: marinaman181@aol.com/mckeeeng@gmail.com Fax: _____

Current Zoning District: CPD (Resolution 17-39)

Future Land Use Map (FLUM) Category: Pedestrian Commercial & Tidal Water

FLUM Density Range: (see resolution) 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*: Jim Figuerado Phone: 239/707-4687

**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: 489 Madison Court, Fort Myers Beach, FL 33931

Email: marinaman181@aol.com Fax: _____

Contact Name: same as applicant Phone: _____



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: David McKee, PE Phone: 239/898-4008
Address: 5848 Kaylee Ann Drive, Granite Falls, NC 28630
Email: mckeeeng@gmail.com 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: CPD/Resolution 17-39/Olde Seaport CPD
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

PART III – Waivers

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

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

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

Signature

Printed Name

STATE OF _____ COUNTY OF _____

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

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

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

_____ as identification.

(SEAL)

Notary Public Signature

PART V Property Ownership (Multiple Owners)

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

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

DISCLOSURE OF OWNERSHIP INTEREST

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

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Name, Address and Office	Percentage of Stock
James Figuerado, President	100%
489 Madison Court	
Fort Myers Beach, FL 33931	
(for Olde Seaport Place, Inc.)	

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.

_____	James Figuerado
Signature	Printed Name

AFFIDAVIT

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

I, James Figuerado (name), as President (title)
of Olde Seaport Place, Inc. (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

Olde Seaport Place, Inc.

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

President

Signature

Title

James Figuerado

Typed or Printed Name

Date

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ___ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ 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-W3-00026.0000/.0030/W2-00000.0000/.0020 and adj. submerged land lease

Property Address: 441/445, 645 Old San Carlos Blvd, FMB 33931 and adj. property

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

☐ Yes. Property identified in subdivision: _____

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

B. Boundary Survey:

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 310 feet
Depth (please provide an average width if irregular in shape) 210 feet
Frontage on street: 310 feet. Frontage on waterbody: 151 feet
Total land area: 35,753 ☐ acres ☒ square feet

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

after coming across Sky Bridge, take first right onto Fifth Street and then turn right
onto Old San Carlos Blvd. Subject property is located at north end of Old San
Carlos Blvd. on left/west side

☒ 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 |

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: Olde Seaport Place CPD - COP/Seating Extension
Authorized Applicant: James Figuerado
STRAP Number(s): 24-46-23-W3-00026.0000/,0030(upland parcels), 24-46-23-W2-00000.0000/0.0020 (Butler Act parcels) and adj. submerged land lease (no strap)

Current Property Status: developed, "street side restaurant" recently completed
Current Zoning: CPD/Resolution 17-39
Future Land Use Map (FLUM) Category: Pedestrian Commercial and Tidal Water
Platted Overlay? ☒ yes, ☐ no FLUM Density Range:

Requested Action:

☐	DRI (with rezoning)
☐	Planned Development (also check below)
☐	Rezoning from: _____ to: _____
☒	Amendment to Master Concept Plan/attendant documentation

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)
1 -	on land site work to be done to allow for extended COP area/seating
2 -	2018 Butler Act property to be covered & COP area/seating
3 -	Existing walkway cover to be installed
4 -	Hostess station to be constructed
5 -	Chickee Hut to be constructed
Note: Phases may be constructed in an order other than listed above and some phases may be combined.	



Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

[illegible]

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.

[illegible]



Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

[illegible]

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.

[illegible]

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.

The full request to extend the COP and seating areas can not be approved
administratively as they increase the size of the project and the associated
intensity. They also require added parking (see calculations), which is available.

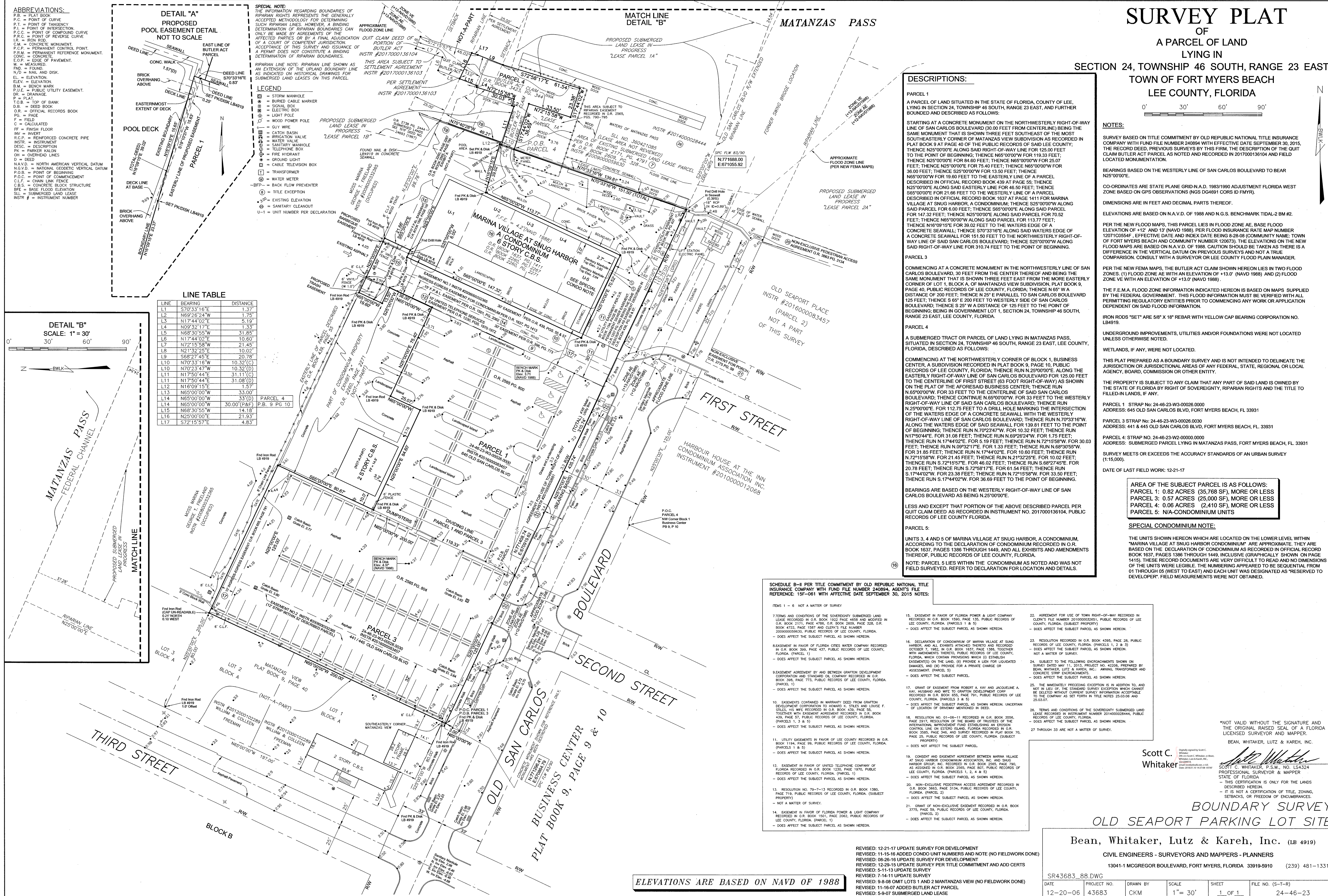
PART 2 Submittal Requirements

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
- Supplement Form PH-D
- Master Concept Plan
- Traffic Impact Statement
- Architectural Elevations
- Schedule of Uses
- 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.



SURVEY PLAT

OF
A PARCEL OF LAND
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
TOWN OF FORT MYERS BEACH
LEE COUNTY, FLORIDA

NOTES:

SURVEY BASED ON TITLE COMMITMENT BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY WITH FUND FILE NUMBER 240894 WITH EFFECTIVE DATE SEPTEMBER 30, 2015. THE RECORD DEED, PREVIOUS SURVEYS BY THIS FIRM, THE DESCRIPTION OF THE QUIT CLAIM BUTLER ACT PARCEL AS NOTED AND RECORDED IN 2017000136104 AND FIELD LOCATED MONUMENTATION.

BEARINGS BASED ON THE WESTERLY LINE OF SAN CARLOS BOULEVARD TO BEAR N25°00'00".

CO-ORDINATES ARE STATE PLANE GRID-N.A.D. 1983/1990 ADJUSTMENT FLORIDA WEST ZONE BASED ON GPS OBSERVATIONS (NGS D4681) CORRS ID FMRY.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

ELEVATIONS ARE BASED ON N.A.V.D. OF 1988 AND N.G.S. BENCHMARK TIDAL-2 BM #2.

PER THE NEW FLOOD MAPS, THIS PARCEL LIES IN FLOOD ZONE AE. BASE FLOOD ELEVATION OF +12' AND 13' (NAVD 1988). PER FLOOD INSURANCE RATE MAP NUMBER 1207100554, EFFECTIVE DATE AND INDEX DATE BEING 8-28-08 (COMMUNITY NAME: TOWN OF FORT MYERS BEACH AND COMMUNITY NUMBER 120873). THE ELEVATIONS ON THE NEW FLOOD MAPS ARE BASED ON N.A.V.D. OF 1988. CAUTION SHOULD BE TAKEN AS THERE IS A DIFFERENCE IN THE VERTICAL DATUM ON PREVIOUS SURVEYS AND NOT A TRUE COMPARISON. CONSULT WITH A SURVEYOR OR LEE COUNTY FLOOD PLAIN MANAGER.

PER THE NEW FEMA MAPS, THE BUTLER ACT CLAIM SHOWN HEREON LIES IN TWO FLOOD ZONES. (1) FLOOD ZONE AE WITH AN ELEVATION OF +13.0' (NAVD 1988) AND (2) FLOOD ZONE VE WITH AN ELEVATION OF +13.0' (NAVD 1988).

THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.

IRON RODS "SET" ARE 5/8" X 18" REBAR WITH YELLOW CAP BEARING CORPORATION NO. LB4919.

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

WETLANDS, IF ANY, WERE NOT LOCATED.

THIS PLAT PREPARED AS A BOUNDARY 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.

THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID PLAT IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.

PARCEL 1 STRAP NO. 24-46-23-W2-00026.0000
ADDRESS: 845 OLD SAN CARLOS BLVD, FORT MYERS BEACH, FL 33931

PARCEL 3 STRAP NO. 24-46-23-W2-00026.0030
ADDRESS: 441 & 445 OLD SAN CARLOS BLVD, FORT MYERS BEACH, FL 33931

PARCEL 4 STRAP NO. 24-46-23-W2-00000.0000
ADDRESS: SUBMERGED PARCEL LYING IN MATANZAS PASS, FORT MYERS BEACH, FL 33931

SURVEY MEETS OR EXCEEDS THE ACCURACY STANDARDS OF AN URBAN SURVEY (1:15,000).

DATE OF LAST FIELD WORK: 12-21-17

DESCRIPTIONS:

PARCEL 1
A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

STARTING AT A CONCRETE MONUMENT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAN CARLOS BOULEVARD (30.00 FEET FROM CENTERLINE) BEING THE SAME MONUMENT THAT IS SHOWN THREE FEET SOUTHEAST OF THE MOST SOUTHEASTERLY CORNER OF MATANZAS VIEW SUBDIVISION AS RECORDED IN PLAT BOOK 9 AT PAGE 40 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE N25°00'00" ALONG SAID RIGHT-OF-WAY LINE FOR 125.00 FEET TO THE POINT OF BEGINNING; THENCE N65°00'00" FOR 119.33 FEET; THENCE N25°00'00" FOR 84.60 FEET; THENCE N65°00'00" FOR 25.07 FEET; THENCE N25°00'00" FOR 75.40 FEET; THENCE N65°00'00" FOR 36.00 FEET; THENCE S25°00'00" FOR 13.50 FEET; THENCE N65°00'00" FOR 19.60 FEET TO THE EASTERLY LINE OF A PARCEL DESCRIBED IN OFFICIAL RECORD BOOK 438 AT PAGE 55; THENCE N25°00'00" ALONG SAID EASTERLY LINE FOR 46.80 FEET; THENCE S65°00'00" FOR 21.66 FEET TO THE WESTERLY LINE OF A PARCEL DESCRIBED IN OFFICIAL RECORD BOOK 1637 AT PAGE 1411 FOR MARINA VILLAGE AT SNUG HARBOR, A CONDOMINIUM; THENCE S25°00'00" ALONG SAID PARCEL FOR 6.00 FEET; THENCE S65°00'00" ALONG SAID PARCEL FOR 147.32 FEET; THENCE N25°00'00" ALONG SAID PARCEL FOR 70.52 FEET; THENCE N65°00'00" ALONG SAID PARCEL FOR 113.77 FEET; THENCE N16°09'15" FOR 38.02 FEET TO THE WATERS EDGE OF A CONCRETE SEAWALL; THENCE S70°33'16" ALONG SAID WATERS EDGE OF A CONCRETE SEAWALL FOR 151.50 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID SAN CARLOS BOULEVARD; THENCE S25°00'00" ALONG SAID RIGHT-OF-WAY LINE FOR 310.74 FEET TO THE POINT OF BEGINNING.

PARCEL 3
COMMENCING AT A CONCRETE MONUMENT IN THE NORTHWESTERLY LINE OF SAN CARLOS BOULEVARD, 30 FEET FROM THE CENTER THEREOF AND BEING THE SAME MONUMENT THAT IS SHOWN THREE FEET EAST FROM THE MORE EASTERLY CORNER OF LOT 1, BLOCK A, OF MATANZAS VIEW SUBDIVISION, PLAT BOOK 9, PAGE 40, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE N65°00'00" A DISTANCE OF 200 FEET; THENCE N25°00'00" TO SAN CARLOS BOULEVARD 125 FEET; THENCE S65°00'00" A DISTANCE OF 125 FEET TO THE POINT OF BEGINNING; BEING IN GOVERNMENT LOT 1, SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA.

PARCEL 4
A SUBMERGED TRACT OR PARCEL OF LAND LYING IN MATANZAS PASS, SITUATED IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF BLOCK 1, BUSINESS CENTER, A SUBDIVISION RECORDED IN PLAT BOOK 9, PAGE 10, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN N25°00'00" ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAN CARLOS BOULEVARD FOR 125.00 FEET TO THE CENTERLINE OF FIRST RIGHT-OF-WAY ALONG SAID BOULEVARD AS SHOWN ON THE PLAT OF THE AFORESAID BUSINESS CENTER; THENCE RUN N65°00'00" FOR 33 FEET TO THE CENTERLINE OF SAID SAN CARLOS BOULEVARD; THENCE CONTINUE N65°00'00" FOR 33 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SAID SAN CARLOS BOULEVARD; THENCE RUN N25°00'00" FOR 112.75 FEET TO A DRILL HOLE MARKING THE INTERSECTION OF THE WATERS EDGE OF A CONCRETE SEAWALL WITH THE WESTERLY RIGHT-OF-WAY LINE OF SAID SAN CARLOS BOULEVARD; THENCE RUN N70°33'16" ALONG THE WATERS EDGE OF SAID SEAWALL FOR 130.81 FEET TO THE POINT OF BEGINNING; THENCE RUN N70°33'16" FOR 10.32 FEET; THENCE RUN N17°50'44" FOR 31.08 FEET; THENCE RUN N69°26'24" FOR 1.75 FEET; THENCE RUN N17°44'02" FOR 19.18 FEET; THENCE RUN N72°15'58" FOR 30.03 FEET; THENCE RUN N08°02'12" FOR 1.33 FEET; THENCE RUN N65°00'00" FOR 31.85 FEET; THENCE RUN N17°44'02" FOR 10.60 FEET; THENCE RUN N72°15'58" FOR 21.45 FEET; THENCE RUN N21°32'25" FOR 10.02 FEET; THENCE RUN S72°15'58" FOR 46.02 FEET; THENCE RUN S69°27'45" FOR 20.78 FEET; THENCE RUN S72°15'58" FOR 61.54 FEET; THENCE RUN S17°44'02" FOR 23.38 FEET; THENCE RUN N72°15'58" FOR 33.50 FEET; THENCE RUN S17°44'02" FOR 36.69 FEET TO THE POINT OF BEGINNING.

BEARINGS ARE BASED ON THE WESTERLY RIGHT-OF-WAY LINE OF SAN CARLOS BOULEVARD AS BEING N25°00'00".

LESS AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PARCEL PER QUIT CLAIM DEED AS RECORDED IN INSTRUMENT NO. 2017000136104, PUBLIC RECORDS OF LEE COUNTY FLORIDA.

PARCEL 5
UNITS 3, 4 AND 5 OF MARINA VILLAGE AT SNUG HARBOR, A CONDOMINIUM, ACCORDING TO THE DECLARATION OF CONDOMINIUM RECORDED IN OFFICIAL RECORD BOOK 1637, PAGES 1386 THROUGH 1449, AND ALL EXHIBITS AND AMENDMENTS THEREOF, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

NOTE: PARCEL 5 LIES WITHIN THE CONDOMINIUM AS NOTED AND WAS NOT FIELD SURVEYED. REFER TO DECLARATION FOR LOCATION AND DETAILS.

SPECIAL CONDOMINIUM NOTE:

THE UNITS SHOWN HEREON WHICH ARE LOCATED ON THE LOWER LEVEL WITHIN "MARINA VILLAGE AT SNUG HARBOR CONDOMINIUM" ARE APPROXIMATE. THEY ARE BASED ON THE DECLARATION OF CONDOMINIUM AS RECORDED IN OFFICIAL RECORD BOOK 1637, PAGES 1386 THROUGH 1449, INCLUSIVE (GRAPHICALLY SHOWN ON PAGE 1415). THESE RECORD DOCUMENTS ARE VERY DIFFICULT TO READ AND NO DIMENSIONS OF THE UNITS WERE LEGIBLE. THE NUMBERING APPEARED TO BE SEQUENTIAL FROM 01 THROUGH 05 (WEST TO EAST) AND EACH UNIT WAS DESIGNATED AS "RESERVED TO DEVELOPER". FIELD MEASUREMENTS WERE NOT OBTAINED.

SCHEDULE B-II PER TITLE COMMITMENT BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY WITH FUND FILE NUMBER 240894, AGENT'S FILE REFERENCE: 15F-061 WITH EFFECTIVE DATE SEPTEMBER 30, 2015 NOTES:

ITEMS 1 - 6 NOT A MATTER OF SURVEY

7. TERMS AND CONDITIONS OF THE SOVEREIGNTY SUBMERGED LAND LEASE RECORDED IN O.R. BOOK 1922 PAGE 4888 AND MODIFIED IN O.R. BOOK 2171, PAGE 4786, O.R. BOOK 2608, PAGE 358, O.R. BOOK 4732, PAGE 1587 AND CLEK'S FILE NUMBER 20000000000000000000, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

8. EASEMENT AGREEMENT BY AND BETWEEN GRATON DEVELOPMENT CORPORATION AND STANDARD OIL COMPANY RECORDED IN O.R. BOOK 398, PAGE 773, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

9. EASEMENT AGREEMENT BY AND BETWEEN GRATON DEVELOPMENT CORPORATION AND STANDARD OIL COMPANY RECORDED IN O.R. BOOK 398, PAGE 773, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

10. EASEMENTS CONTAINED IN WARRANTY DEED FROM GRATON DEVELOPMENT CORPORATION TO HOWARD K. STILES AND LOUISE F. STILES, HIS WIFE RECORDED IN O.R. BOOK 430, PAGE 55, TOGETHER WITH EASEMENT AGREEMENT RECORDED IN O.R. BOOK 438, PAGE 57, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1, 3 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

11. UTILITY EASEMENTS IN FAVOR OF LEE COUNTY RECORDED IN O.R. BOOK 1194, PAGE 59, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

12. EASEMENT IN FAVOR OF UNITED TELEPHONE COMPANY OF FLORIDA RECORDED IN O.R. BOOK 1230, PAGE 1970, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

13. RESOLUTION NO. 79-7-13 RECORDED IN O.R. BOOK 1380, PAGE 719, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (SUBJECT PROPERTY) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

14. EASEMENT IN FAVOR OF FLORIDA POWER & LIGHT COMPANY RECORDED IN O.R. BOOK 1501, PAGE 2062, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

15. EASEMENT IN FAVOR OF FLORIDA POWER & LIGHT COMPANY RECORDED IN O.R. BOOK 1501, PAGE 130, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

16. DECLARATION OF CONDOMINIUM OF MARINA VILLAGE AT SNUG HARBOR, AND ALL EXHIBITS ATTACHED THERETO AND RECORDED OCTOBER 7, 1982, IN O.R. BOOK 1637, PAGE 1386, TOGETHER WITH AMENDMENTS THERETO, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, WHICH CONTAIN PROVISIONS WHICH (i) ESTABLISH EASEMENTS ON THE LAND, (ii) PROVIDE A LEND FOR UNLOCATED DAMAGES, AND (iii) PROVIDE FOR A PRIVATE CHARGE OR ASSESSMENT. (PARCELS 1 & 5) - DOES AFFECT THE SUBJECT PARCEL.

17. GRANT OF EASEMENT FROM ROBERT A. KAY AND JACQUELINE A. KAY, HUSBAND AND WIFE, TO GRATON DEVELOPMENT CORP. RECORDED IN O.R. BOOK 655, PAGE 791, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

18. RESOLUTION NO. 01-06-11 RECORDED IN O.R. BOOK 3556, PAGE 2177, RESOLUTION OF THE BOARD OF TRUSTEES OF THE INTERNATIONAL IMPROVEMENT FUND ESTABLISHING AN EROSION CONTROL LINE ON ESTERO ISLAND, FLORIDA RECORDED IN O.R. BOOK 3585, PAGE 346, AND SURVEY RECORDED IN PLAT BOOK 70, PAGE 25, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (SUBJECT PROPERTY) - DOES NOT AFFECT THE SUBJECT PARCEL.

19. CONSENT AND EASEMENT AGREEMENT BETWEEN MARINA VILLAGE AT SNUG HARBOR CONDOMINIUM ASSOCIATION, INC. AND SNUG HARBOR GROUP, INC. RECORDED IN O.R. BOOK 2585, PAGE 790, AS ASSIGNED IN O.R. BOOK 2585, PAGE 807, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1, 2, 4 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

20. NON-EXCLUSIVE PEDESTRIAN ACCESS AGREEMENT RECORDED IN O.R. BOOK 3643, PAGE 3134, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

21. GRANT OF NON-EXCLUSIVE EASEMENT RECORDED IN O.R. BOOK 3776, PAGE 59, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1 & 5) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

22. AGREEMENT FOR USE OF TOWN RIGHT-OF-WAY RECORDED IN CLEK'S FILE NUMBER 20000000000000000000, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (SUBJECT PROPERTY) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

23. RESOLUTION RECORDED IN O.R. BOOK 4395, PAGE 28, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (PARCELS 1, 2 & 3) - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

24. SUBJECT TO THE FOLLOWING ENCROACHMENTS SHOWN ON SURVEY DATED MAY 11, 2013, PROJECT NO. 42206, PREPARED BY BEAN, WHITAKER, LUTZ & KAREH, INC., AERIAL, TRANSFORMER AND CONCRETE STRIP ENCROACHMENTS. - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

25. THE IMMEDIATELY PRECEDING EXCEPTION IS IN ADDITION TO AND NOT IN LIEU OF THE STANDARD SURVEY EXCEPTION WHICH CANNOT BE SELECTED WITHOUT CURRENT SURVEY INFORMATION ACCESSIBLE TO THE COMPANY AS SET FORTH IN TITLE NOTES 25.03.06 AND 25.03.07.

26. TERMS AND CONDITIONS OF THE SOVEREIGNTY SUBMERGED LAND LEASE RECORDED IN INSTRUMENT NUMBER 2014000026444, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. - DOES AFFECT THE SUBJECT PARCEL AS SHOWN HEREON.

27. THROUGH 33 ARE NOT A MATTER OF SURVEY.

Scott C. Whitaker
Digitally signed by Scott C. Whitaker
DN: cn=Scott C. Whitaker, o=Bean, Whitaker, Lutz & Kareh, Inc., email=scott@bwllk.com, c=US
BEAN, WHITAKER, LUTZ & KAREH, INC.
13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

BOUNDARY SURVEY
OLD SEAPORT PARKING LOT SITE

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

SR43683_88.DWG
DATE 12-20-06 PROJECT NO. 43683 DRAWN BY CKM SCALE 1" = 30' SHEET 1 OF 1 FILE NO. (S-T-R) 24-46-23

ELEVATIONS ARE BASED ON NAVD OF 1988

REVISED: 12-21-17 UPDATE SURVEY FOR DEVELOPMENT
REVISED: 11-15-16 ADDED CONDO UNIT NUMBERS AND NOTE (NO FIELDWORK DONE)
REVISED: 08-26-16 UPDATE SURVEY FOR DEVELOPMENT
REVISED: 12-29-15 UPDATE SURVEY PER TITLE COMMITMENT AND ADD CERTS
REVISED: 5-11-13 UPDATE SURVEY
REVISED: 7-14-11 UPDATE SURVEY
REVISED: 9-8-08 OMIT LOTS 1 AND 2 MATANZAS VIEW (NO FIELDWORK DONE)
REVISED: 11-16-07 ADDED BUTLER ACT PARCEL
REVISED: 5-9-07 SUBMERGED LAND LEASE

SPECIFIC PURPOSE SURVEY

OF A PARCEL OF LAND

LYING IN

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

DISCLAIMER PARCEL
INSTR #2018000296813

SPECIAL NOTE:
THE INFORMATION REGARDING BOUNDARIES OF RIPARIAN RIGHTS REPRESENTS THE GENERALLY ACCEPTED METHODOLOGY FOR DETERMINING SUCH RIPARIAN LINES. HOWEVER, A BINDING DETERMINATION OF RIPARIAN BOUNDARIES CAN ONLY BE MADE BY AGREEMENTS OF THE AFFECTED PARTIES OR BY A FINAL ADJUDICATION OF A COURT OF COMPETENT JURISDICTION. ACCEPTANCE OF THIS SURVEY AND ISSUANCE OF A PERMIT DOES NOT CONSTITUTE A BINDING DETERMINATION OF RIPARIAN BOUNDARIES. THE RIPARIAN LINE SHOWN ALONG THE FREELAND LINE IS BASED ON THE EXECUTED SETTLEMENT AGREEMENT. THE ACTUAL UPLAND OWNERS RELATIVE TO THIS RIPARIAN LINE ARE FREELAND AND MARINA VILLAGE AT SNUG HARBOR. SEE RIPARIAN LINE AGREEMENT IN INSTR #2017000136103

0' 40' 80' 120'

LINE	BEARING	DISTANCE
L1	N17°44'02"E	38.69
L2	S72°15'58"E	33.50
L3	N17°44'02"E	23.38
L4	N72°55'17"W	52.73
L5	S19°29'00"W	8.53
L6	S73°02'04"E	9.63
L7	S70°33'16"E	3.77
L8	S70°33'16"E	1.37
L9	S18°00'15"W	1.57
L10	S19°19'32"W	20.00
L11	S70°40'26"E	42.20
L12	S28°00'00"W	62.33
L13	N69°26'24"W	1.75
L14	N17°44'02"E	5.19
L15	N72°15'58"W	30.03
L16	N02°32'17"E	1.33
L17	N69°40'55"W	1.16
L18	S19°19'32"W	6.14
L19	S67°13'47"W	12.88
L20	S70°40'28"E	49.21
L21	N17°50'44"E	31.10
L22	N70°33'16"W	27.11
L23	S72°15'58"E	32.15
L24	S25°24'07"W	37.84
L25	S72°15'58"E	1.35
L26	N17°44'02"E	10.04
L27	N17°44'02"E	13.34
L28	N70°33'16"W	14.08

DETAIL
LEASE
PARCEL 1B

LEASE
PARCEL 1C
5,721 SF.
(0.131 ACRES ±)

QUIT CLAIM DEED OF
PORTION OF
BUTLER ACT
DISCLAIMER PARCEL
2017000136104
FREELAND

MATANZAS PASS
FEDERAL CHANNEL

LEASE
PARCEL 1D
14,485 Sq. Feet
(0.333 ACRES ±)

THIS AREA SUBJECT TO
SETTLEMENT AGREEMENT
RECORDED IN
INSTR#2017000136103

LEASE
PARCEL 2
12,609 Sq. Feet
(0.290 ACRES ±)

R=2824.79'
Δ=3°05'13"
A=153.02'
CH=153.00'
BRG=S13°38'49"W

LEASE
PARCEL 1B
1,381 Sq. Feet
(0.032 ACRES ±)

LEASE PARCEL 1A
1,100 SF. (0.025 ACRES ±)

(O.R. BOOK 2280, PAGE 2267)
FND IRON
ROD
LB 4919

GEORGE FREELAND
INSTRUMENT #2008000332366

BENCH MARK
PK & Disk LB4919
Elev. 3.70
(NAVD 1988)

WEST
UPLAND PARCEL
OLD SEAPORT PLACE, INC.
24-48-23-W3-00028.0000
645 OLD SAN CARLOS
BOULEVARD

PARCEL 1
INSTR.#2016000083457

MARINA VILLAGE AT SNUG
HARBOR
O.R. BOOK 2280, PAGE 2271
(NOT-A-PART)

FND
NAIL & DISK
LB4919

WEST
UPLAND PARCEL
PARCEL 3
INSTR.#2016000083457

P.O.C.
WEST LEASE AREA
PARCEL 1A, PARCEL 1B,
PARCEL 1C, PARCEL 1D
NW CORNER
BLOCK 1 BUSINESS CENTER
PB 9, PAGE 10

LEGEND
(C) = CALCULATED
(D) = DEED
INSTR. = INSTRUMENT
M.H.W.L. = MEAN HIGH WATER LINE
O.R. = OFFICIAL RECORD
R/W = RIGHT-OF-WAY
P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
R = RADIUS
Δ = DELTA ANGLE
L = LENGTH
C = CHORD
CB = CHORD BEARING
P.B. = PLAT BOOK
PG. = PAGE

P.O.C.
LEASE PARCEL 2
SW CORNER
LOT 26, BLOCK "E"
CRESCENT PARK
ADDITION P.B. 4, PAGE 46

BUSINESS
CENTER
PB 9, PAGE 10

DETAIL
P.O.B.
POB LEASE
PARCEL 1B

SUBMERGED LAND LEASE AREA
OLD SEAPORT PLACE, INC.

AREA TABLE:
PARCEL 1A = 1,100 S.F.
PARCEL 1B = 1,381 S.F.
PARCEL 1C = 5,721 S.F.
PARCEL 1D = 14,485 S.F.
PARCEL 2 = 12,609 S.F.
TOTAL LEASE AREA = 35,296 S.F. (0.810 ACRES)

SKETCH OF LEASE PARCELS

Attachment A
Page 11 of 24 Pages
SSLL NO. 360421085

BWLK | CESINC
A Division of
Engineers • Environmental Scientists • Surveyors

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919 PH (239) 481-1331
SR43081_SLL.DWG
DATE 07-28-17 PROJECT NO. 43081 DRAWN BY RLC SCALE 1"= 80' SHEET 2 OF 13 FILE NO. (S-T-1) 24-46-23
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERED 223544 & 180707

LEGEND

SPC = STATE PLANE COORDINATE SYSTEM
 FLW = FLORIDA WEST ZONE
 □ = ELECTRIC BOX
 R/W = RIGHT-OF-WAY
 O.R. = OFFICIAL RECORD
 * = LIGHT POLE
 P.B. = PLAT BOOK
 + = UNKNOWN UTILITY
 + = PILE 8"-10"
 + = BOAT CLEAT
 P.B. = PLAT BOOK
 INSTR. = INSTRUMENT
 FND. = FOUND
 PG. = PAGE
 T.U.A.E. = TEMPORARY UPLAND ACCESS EASEMENT
 T.W. = TOP OF WALL
 B.W. = BOTTOM OF WALL

SPECIFIC PURPOSE SURVEY

OF A PARCEL OF SUBMERGED LAND
 LYING IN

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

MATANZAS PASS

DETAIL
 LEASE
 PARCEL 1B

R/W OF FEDERAL CHANNEL
 FROM DEPARTMENT OF THE ARMY
 EXAMINATION SURVEY 11 AND 12-FOOT
 PROJECT BY FIBURN & COOM, INC.
 DATED APRIL 1993
 WITH D.O. FILE NO. 57-36.585

MATCH LINE
 SEE SHEET 3

QUIT CLAIM DEED OF
 PORTION OF
 BUTLER ACT
 DISCLAIMER PARCEL
 INSTR# 2017000135104
 (AREA WEST OF RIPARIAN LINE)

LEASE
 PARCEL 1C
 5,721 SF. (0.131 ACRES ±)

SPECIAL NOTE:
 THIS AREA SUBJECT TO
 SETTLEMENT AGREEMENT
 RECORDED IN
 INSTR# 2017000136103

LEASE
 PARCEL 1D
 14,485 SF. (0.333 ACRES ±)

DETAIL
 POB LEASE
 PARCEL 1B

LEASE
 PARCEL 1B
 1,381 SF.
 (0.032 ACRES ±)

LEASE
 PARCEL 1A
 1,100 SF.
 (0.025 ACRES ±)

P.O.B.
 LEASE PARCEL 1C
 N:771770.35
 E:576371.67

EXISTING DOCKS UNDER
 CONSTRUCTION

O.R. 2250, PG. 2267
 (NOT-A-PART)

LINE TABLE

LINE	BEARING	DISTANCE
1	N77°44'02"E	35.60
2	S72°12'58"E	35.50
3	N77°44'02"E	23.30
4	N72°58'17"W	24.75
5	S19°29'00"W	6.35
6	S73°04'04"E	6.35
7	S70°33'18"W	1.77
8	S50°33'18"E	1.77
9	S16°42'15"W	1.57
10	S19°18'32"W	20.20
11	S70°40'28"E	42.70
12	S25°00'00"W	62.33
13	N68°26'24"W	1.75
14	N17°44'02"E	6.18
15	N72°15'58"W	30.03
16	N69°32'19"E	1.30
17	N68°30'55"W	1.18
18	S19°18'32"W	6.64
19	S57°13'47"W	13.85
20	S70°40'28"E	49.21
21	N17°40'44"E	31.10
22	N70°33'16"W	27.11
23	S72°15'58"E	32.15
24	S25°02'07"W	37.84

P.O.B.
 LEASE
 PARCEL 1B
 N:771740.48
 E:576015.20

SPC FLW 83/90
 SEE DETAIL

Attachment A
 Page 12 of 24 Pages
 SSLL NO. 360421085

SCALE 1"=30'

SUBMERGED LAND LEASE AREA
 OLD SEAPORT PLACE, INC.

BWLK CESINC

Engineers • Environmental Scientists • Surveyors

13041 McCREGOR BOULEVARD, FORT MYERS, FLORIDA 33919

PH (239) 401-1331

SR43091_SLL.DWG

DATE 07-28-17

PROJECT NO. 43091

DRAWN BY RLC

SCALE 1"=30'

SHEET 4 OF 13

FILE NO. (S-T-R)

24-46-23

LINE	BEARING	DISTANCE
128	S72°15'58"E	1.35
129	N17°44'02"E	10.04
131	N17°44'02"E	13.34
132	N70°33'16"W	14.08

FND NAIL &
 DISK LB 4919

LOT 1
 BLOCK A

P.O.C.
 NW CORNER
 BLOCK
 BUSINESS
 CENTER
 PB 8, PAGE 10

MATCH LINE SEE SHEET 5



Exhibit 6-3

David E. McKee, PE

Engineering Permitting Land Development
 5848 Kaylee Ann Drive Granite Falls, NC 28630
 Phone (239) 898-4008 Fax (239) 495-5008
 email: mckeeeng@gmail.com

PROJECT

Area Location Map
Olde Seaport of Fort Myers Beach
 441/445 & 645 Old San Carlos Blvd, FMB 33931

1. **Requested Motion:**

Meeting Date: June 5, 2023

First Reading and Public Hearing on proposed Ordinance 23-11 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SUBDIVISION II. DOWNTOWN ZONING DISTRICT, SECTION 34-674 BUILDING PLACEMENT; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on June 20, 2023 at 9:00 a.m.

Why the action is necessary:

Ordinances must be heard at two Town Council hearings for adoption.

What the action accomplishes:

Adoption of the ordinance will allow two family and single family homes to be built with a front setback between 0 and 25 feet from the street property line.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

The Downtown zoning district contains many single family and two family properties, however, the district dimensional regulations were created, primarily, for commercial developments with pedestrian activity in mind. The proposed code amendment allows flexibility for the setbacks of properties on secondary streets on the beach side of Estero Boulevard.

Attachments:

1. 23-11, Ordinance 23-11 re Building Placement in Downtown Zoning District(146183830.1)-C
2. Com vs Res Setbacks Staff Report TC
3. Exhibit A to 23-11 Sec 34-674 strikethrough underline-C

Financial Impact:

unknown

6. **Alternative Action**

Recommend any changes and schedule a second hearing.

7. **Management Recommendations:**

Schedule a second hearing for the ordinance.

8. **Recommended Approval:**

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

Created/Initiated - 5/23/2023
Approved - 5/24/2023
Approved - 5/25/2023
Final Approval - 5/25/2023

ORDINANCE NO. 23-11

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA
AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SUBDIVISION II.
DOWNTOWN ZONING DISTRICT, SECTION 34-674 BUILDING
PLACEMENT; 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 ("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, the Town recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Fort Myers Beach Land Development Code ("LDC"); and

WHEREAS, the Town Council desires to update the LDC to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 9, 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 34-674 of the LDC; and

WHEREAS, on June 5, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on June 20, 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 5, Section 34-674 Building Placement is hereby amended to read as found in attached Exhibit A – Amended Building Placement:

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 Councilmember ____ 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 20th day of June 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

This Ordinance was filed in the Office of the Town Clerk on this ____ day of June 2023.

Exhibits

Exhibit A – Amended Downtown Building Placement



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Sarah Propst, Community Development
Date: June 5, 2023
Re: Setbacks for Houses in Primarily Non-Residential Districts

BACKGROUND

The LPA had directed staff to provide some options for quick fixes to codes, to resolve unnecessary conflicts. One item that has arisen as a conflict, most recently, is reconstruction of homes in zoning districts with minimal front setbacks or build-to lines that are difficult to accommodate with a residence.

Residential single-family and two-family homes are permitted in the Downtown, Santini, Commercial Boulevard and Commercial Resort zoning districts. These district dimensional regulations were created, primarily, with commercial developments in mind. The Downtown, Santini and Commercial Boulevard districts all have build-to lines, which require that a structure is built between 0 and 10 feet from the adjacent rights of way. The Commercial Resort district allows a 10-foot front setback and requires a 20-foot side setback. Below is a table containing the required setbacks for the above referenced zoning districts as well as the standard residential district setbacks.

Table 34-3— Dimensional Regulations in Conventional Zoning Districts								
ZONING DISTRICT	Street Setback	Side Setback - waterfront lot	Side Setback- non-waterfront	Rear Setback	Water body Setback	FAR (#) or Building Coverage (%)	Height (feet)	Height (stories)
<i>RS & RC</i>	25 (8)	7.5 or 10 (9)	7.5 or 10 (9)	20	25	40%	30	3
<i>CR Commercial</i>	10	20	15	20	25	1.2	30	3
<i>D Downtown</i>	0-10*	0-5	0-5	25	25	1.0 to 1.8	30 or 40	3
<i>Santini</i>	0-10*	0	0	0	25	1.0	30	2 or 3
<i>CB Commercial Boulevard</i>	5-10* (from Estero), 10 (other streets)	5	5	20	25	1.00	40	3
Note (6): Single-family and two-family homes in the RM zoning district must maintain a 7.5-foot side setback for lots up to 75 feet and 10 feet for lots wider than 75 feet.								
Note (9): Each side setback shall be 7.5 feet for lots 75 feet or less wide and 10 feet for lots wider than 75 feet.								

PROPOSED SOLUTIONS

Staff proposed two options for the LPA to consider.

Option 1: Amend the code to implement RS and RC zoning setbacks for all single-family and two-family homes.



This option would ensure that no matter what zoning district a home is constructed in, it will have a standard front, side and rear setback. Currently Table 34-3 Dimensional Regulations in Conventional Zoning Districts includes a footnote that single family and two-family homes in the RM zoning district have the same side setback as the RS and RC zoning district.

Pros: This will allow homes to be designed in a standard way with a front yard and a driveway with room for a vehicle in front of the home. This is a standard design that is easy to accommodate. Having a very small setback would require that parking is either completely contained under the home or that the side yard is expanded to make room for a driveway. The standard RS and RC setbacks will work for most lots.

Cons: Some owners may prefer to have the less restrictive setbacks of the commercial zoning district and may have purchased the property with the intent of developing a home that is designed to meet the current code requirements. Also, if all other development in the commercial zoning district is built to the front build-to line, the single family and two family residences will create a noticeable gap in the street façade.

Option 2: Allow flexibility regarding which dimensional regulations are applied.

This option would allow the property owner to develop the home to either the zoning district standard or the RS/RC zoning district standards. In the instance where a property was purchased with the intent of designing to meet the build-to lines and other applicable setback requirements, the property owner can choose which set of regulations are applied. It would be important to require that all of the applicable code requirements are applied, there would not be an opportunity to “mix and match” the regulations which would be difficult to regulate and could lead to over building on certain sites.

Pros: This would allow the property owner to design the home as they choose, either to fit in with the fabric of that zoning district or to design to a more typical residential setback.

Cons: Residential homes could be constructed with a more urban design, without a large front yard and setback.

RECOMMENDATION

At the April 11, LPA hearing, the LPA recommended that residential structures in the downtown zoning district, on the second tier, beachside streets should have the option to apply residential setbacks. Attached you will find proposed ordinance language that accomplishes this recommendation.

Please provide input or changes to this proposed ordinance and schedule a second hearing.

Sec. 34-674. - Building placement.

- (a) *Build-to lines established.* Build-to lines (see § 34-662 of this chapter) vary according to the streets and street types designated on Figure 34-7.
- (1) Build-to lines for all streets are five feet to ten feet from front property lines, except:
 - a. Build-to lines are 0 feet for Old San Carlos Boulevard, all properties facing the Times Square and Bayfront pedestrian plazas, and Estero Boulevard west of the Sky Bridge.
 - b. Built-to lines are 0 to five feet for all of First, Second, Third, and Fifth, and the south side of Estero Boulevard from the Sky Bridge to Miramar Street.
 - c. Build to lines are 0-25 feet for single family and two-family residential construction on secondary streets on the beach side of Estero Blvd.
 - (2) The adjustments to build-to lines to maintain visibility that are required by § 34-662(b)(4) of this chapter do not apply:
 - a. To building fronts facing the Times Square or Bayfront pedestrian plazas; or
 - b. To building fronts along Old San Carlos Boulevard, where wide sidewalks and on-street parking lanes will allow the necessary visibility.
 - (3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ 34-991—34-1010 of this chapter) and are required along Old San Carlos Boulevard.
 - (4) Enclosed habitable space may also be allowed over a public right-of-way if located over an arcade or colonnade that shades a public sidewalk (see § 34-995(e)(6) of this chapter), provided that specific permission is granted by the Town of Fort Myers Beach.
- (b) *Setback lines established.* Setback lines (see § 34-662 of this chapter) are established as follows:
- (1) *For principal buildings:*
 - a. Minimum rear setbacks are 25 feet from rear property lines, except as follows:
 1. In Times Square, as defined on Figure 34-6, the minimum rear setback is ten feet.
 2. In areas where parking garages could be built, as defined on Figure 34-8, buildings shall be placed so as not to preclude future parking garages from being built on the interiors of these blocks. Along Old San Carlos Boulevard blocks with potential parking garages, this requirement means that principal buildings shall not extend further to the rear of lots than 50 feet back from the right-of-way for Old San Carlos Boulevard.
 - b. Minimum side setbacks are five feet from side property lines, except they may be 0 feet for properties fronting on Old San Carlos, Estero Boulevard, and in Times Square.
 - c. Minimum setbacks from waterbodies are set forth in § 34-638(d)(3) of this chapter.
 - d. Minimum setbacks along those portions of properties abutting the town-owned parking lot between Old Carlos Boulevard and the Sky Bridge that had been platted as "Center Street" in Plat Book 9, Page 9 shall be the same as if those properties abutted any other private property.
 - (2) For accessory structures, minimum setbacks are set forth in §§ 34-1171—34-1176.

1. **Requested Motion:**

Meeting Date: June 5, 2023

First Reading and Public Hearing on proposed Ordinance 23-12 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on June 20, 2023 at 9:00 a.m.

Why the action is necessary:

An ordinance requires two Town Council hearings.

What the action accomplishes:

This ordinance will allow lots less than 50 feet wide to have a setback of 6.5 feet. This is a change from 7.5 feet.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

The LPA asked staff to propose a decrease in side setbacks for lots less than 50 feet wide. Staff coordinated with the Fire Department and the Building Department to determine that a 6.5-foot setback would be an option that would not trigger additional building code or fire flow standards. The proposed ordinance before you proposes an amendment to Table 34-3 Dimensional Regulations in Conventional Zoning Districts to allow lots less than 50 feet wide to have a 6.5 foot side setback.

Attachments:

1. 23-12, Ordinance 23-12 re Setbacks for 50' Lots.(146189066.1)-C
2. Side Setback Memo TC1
3. Exhibit A Amended Setback Regulations

Financial Impact:

unknown

6. **Alternative Action**

Request changes and schedule a second hearing.

7. **Management Recommendations:**

Schedule ordinance for a second hearing.

8. **Recommended Approval:**

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

Created/Initiated - 5/24/2023
Approved - 5/24/2023
Approved - 5/25/2023
Final Approval - 5/26/2023

ORDINANCE NO. 23-12

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, 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 ("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, the Town recognizes that redevelopment of the Town, following Hurricane Ian requires evaluation and updates to the Fort Myers Beach Land Development Code ("LDC"); and

WHEREAS, the Town Council desires to update the LDC to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 9, 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., Division 4, Table 34-3 "Dimensional Regulations in Conventional Zoning Districts" of the LDC; and

WHEREAS, on June 5, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on June 20, 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 4, Table 34-3 Dimensional Regulations in Conventional Zoning Districts is hereby amended to read as found in attached Exhibit A –

Amended 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 Councilmember _____ 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 20th day of June 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

This Ordinance was filed in the Office of the Town Clerk on this ____ day of June 2023.

Exhibits

Exhibit A – Amended Setback Regulations



Town of Fort Myers Beach COMMUNITY DEVELOPMENT DEPARTMENT

To: Town Council
From: Sarah Propst, Community Development
Date: June 5, 2023
Re: Setbacks for lots less than 50 feet wide

BACKGROUND

The LPA asked that staff provide some options for quick fixes to codes, to resolve unnecessary conflicts. One item that was raised as an issue, at a previous LPA hearing, is reconstruction of homes on parallelogram lots. Along with the parallelogram lot ordinance, the LPA asked staff to recommend, to Council, a side setback decrease to 6.5 feet for lots less than 50 feet wide.

Originally the LPA had been interested in a 5-foot setback for lots less than 50 feet wide, however, input from the Fire Department and the Building Department about the code modification to 5 feet raised concerns. The Fire Department stated it was important to ensure that adequate fire flow existed in these neighborhoods to protect the neighborhood in the instance of a fire. The Building Department was concerned that the allowed three-foot overhang would result in projections less than 40 inches from the property line, that are required to be fire rated.

Due to these concerns, the LPA recommended an ordinance to amend the side setback requirement for lots less than 50 feet wide to be decreased to 6.5 feet.

REQUESTED FEEDBACK

The attached ordinance reduces the side setbacks for lots less than 50 feet wide to 6.5 feet. This ordinance change will not require an amendment to any other code sections. Please provide staff with any recommendation and schedule a second hearing

EXHIBITS

Exhibit A- Proposed Amendments to the Dimensional Requirements Table 34-3

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(8)	<u>6.5, 7.5 or 10</u> (9)	<u>6.5, 7.5 or 10</u> (9)	20	25	50	7,500	75	100	-	40%	(3), (4)	30	3
<i>RC Residential Conservation</i>	25(9)	<u>6.5, 7.5 or 10</u> (9)	<u>6.5, 7.5 or 10</u> (9)	20	25	50	4,000	45	80	-	40%	(3), (4), (5)	30	3
<i>RM Residential Multifamily</i>	25(8)	20 (6)	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) —													
<i>EC Environmentally Critical</i>	20	25	-	25	20	50	(7)	N/A	N/A	0.01	-	(3), (7)	25	2

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 6.5-foot side setback for lots less than 50 feet wide, 7.5-foot side setback for lots 50 feet wide up to 75 feet wide, and 10 feet for lots wider than 75 feet.

Note (7): See Section 34-652(e)(3).

Note (8): Maximum 65 feet of house may be built to the 25-foot front setback. Any house frontage exceeding 65 feet in length shall be subject to additional setbacks from the street property line. See Section 34-638(d)(5)a.

Note (9): Each side setback shall be 6.5 feet for lots less than 50 feet wide, 7.5 feet for lots 50 feet wide to 75 feet ~~or less~~ wide, and 10 feet for lots wider than 75 feet.