



Fort Myers Beach Town Council

**Bay Oaks Recreation Center
2731 Oak Street
Fort Myers Beach, FL 33931**

Agenda

Monday, January 22, 2024

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. PRESENTATION

- A. Matt Caldwell, Lee County Property Appraiser
Matt Caldwell, Lee County Property Appraiser

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

IX. APPROVAL OF MINUTES

- A. Draft Town Council minutes - January 8, 2024
B. Draft Town Council Special Mtg with FMB Condo Boards - January 11, 2024
C. Draft Town Council w/Local Planning Agency minutes - January 11, 2024

X. CONSENT AGENDA

- A. Estero Island Polling Precinct
An agreement with the Lee County Supervisor of Elections office and the Town of Fort Myers Beach to use the new Town Hall building as a polling location for 2024 elections.
- B. Special Magistrate Services
Authorize the Town Attorney to negotiate a contract, to be approved by the Town Council at the February 5, 2024 public meeting, with the Florida Department of Administrative Hearings (DOAH) and Monica Schmucker, Esquire, for special magistrate services.

- C. Special Event: Saturday Services at Bayside Park
Permission to rent Bayside Park on Saturday's from 4:30 pm to 5:30 pm for the month of February 2024
- D. LAP Grant Agreement
Approve the Town entering into the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502, Authorizing the Mayor to legally execute and bind the Town to the terms of this Agreement.
- E. ITB-24-02-EN; Estero Island Beach Sand Truck Haul Project
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS, FLORIDA, ACCEPTING EARTH TECH ENTERPRISES INC. AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER TO ITB-24-02-EN "ESTERO ISLAND BEACH SAND TRUCK HAUL PROJECT", APPROVING AN AGREEMENT BETWEEN THE TOWN AND EARTH TECH ENTERPRISES INC. FOR BEACH SAND WORK IN THE AMOUNT OF \$2,698,000.00; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT SUBJECT TO FINAL LEGAL SIGN-OFF, AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.
- F. Resolution 24-16; Support for Rebuild of FMB Pier
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ENCOURAGING AND PROVIDING SUPPORT TO THE LEE COUNTY BOARD OF COUNTY COMMISSION TO CONSIDER ENHANCEMENTS WHEN REBUILDING THE PIER LOCATED ON ESTERO ISLAND IN ORDER TO BUILD BACK A BETTER AND BOLDER FACILITY FOR THE ENJOYMENT OF THE PUBLIC AND ECONOMIC BENEFIT TO THE COMMUNITY; AND PROVIDING FOR AN EFFECTIVE DATE.

XI. ITEMS REMOVED FROM CONSENT AGENDA

XII. PUBLIC HEARINGS

- A. Ordinance 24-02; DCI Rezoning 20230160, 1301 Estero Blvd
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- B. Resolution 24-11; VAR20230233, 11 Palmview Boulevard
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230233, REQUESTING A

VARIANCE FROM LDC 34-638(D)(1)G. WHICH REQUIRES NEW AT-GRADE MECHANICAL EQUIPMENT TO NOT ENCROACH INTO A SIDE YARD SETBACK AND TO BE LOCATED ON THE SIDE OF THE PROPERTY WITH THE LARGER SETBACK, WHERE THERE ARE DIFFERING SIDE SETBACK WIDTHS, FOR THE PROPERTY LOCATED AT 11 PALMVIEW BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

C. Resolution 24-14; VAR20230299, 122 Falkirk St

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230299, A VARIANCE FROM LDC TABLE 34-3 TO DECREASE THE REQUIRED STREET SETBACK BY 11 FEET FROM THE REQUIRED 25 FEET, IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 122 FALKIRK STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

D. Resolution 24-12; SEZ20230278, 7400 Estero Blvd - Leonardo Arms

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230278 TO ALLOW RECONSTRUCTION OF A POOL DECK, WALKWAYS, AND FENCE, IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 7400 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

XIII. ADMINISTRATIVE AGENDA

XIV. FINAL PUBLIC COMMENT

XV. TOWN MANAGER'S ITEMS

XVI. TOWN ATTORNEY'S ITEMS

A. Resolution 23-182; Town Council Policies and Procedures

Approve recommended changes, inclusive of those from the January 8, 2024 Town Council meeting and approve a resolution entitled:
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.

XVII. COUNCILMEMBERS ITEMS AND REPORTS

XVIII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON FACEBOOK AND 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 accommodation, 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

Bay Oaks Recreational Center
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes Monday, January 8, 2024 9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King (virtually) and Council Member Woodson.

- A. Request from Council Member King to appear virtually
Vice Mayor Atterholt moved to permit Council Member King to appear virtually; seconded by Council Member Woodson. The motion carried unanimously.

II. INVOCATION

Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Vice Mayor Atterholt moved to approve the final agenda with C., E. and G. pulled for discussion; seconded by Council Member Woodson.
The motion carried unanimously.

V. PUBLIC COMMENT

Dale and Jay Bonnema, residents, commented on the daily noise from the bar and his loss of income. He asked whether they could rent RV spaces on the lots for the next seven months. He played a recording of the noise from Rude Shrimp. Denise Klint, resident, questioned whether the town had the legal status to require property owners to take care of their property. She described houses falling down and requested help from the town.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked former Council Member Veach for his service over the years and wished his family well.

Council Member Woodson thanked the anonymous donors and staff for the fireworks.

Vice Mayor Atterholt recognized former Council Member Veach for answering the call for public service. He thanked everyone affiliated with the race and those who donated money for the fireworks. He recognized the public who used the pedestrian overpass and encouraged more people to use it.

Mayor Allers thanked everyone for the fireworks and thanked Bill Veach for his service to the beach.

VII. PRESENTATIONS

No presentations.

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Steve Johnson, Chair of the Marine and Environmental Task Force (MERTF), commented on using herbicides on the beach, removing invasive species in the EC (Environmentally Critical) zone and softening the designation of the CWA by renaming it. He reviewed prior discussions about using herbicides. He stated that Imazapyr was approved and used in 2022 and was unsure why the issue came up. Mayor Allers suggested that MERTF research whether that was the best herbicide today. Removing invasive species in the EC zone was ongoing and he questioned why that issue had come up. He stated that the CWA was already called Mulholland Point in the town's ordinances and questioned changing the name. Council members supported adding all three items to MERTF's next agenda.

IX. APPROVAL OF MINUTES**A. Town Council - December 18, 2023**

Council Member King moved to approve the minutes; seconded by Mayor Allers.

The motion carried unanimously.

X. CONSENT AGENDA

Council Member Woodson moved to approve the final agenda; seconded by Vice Mayor Atterholt.

The motion carried unanimously.

A. Resolutions 24-01, 24-02, 24-03 and 24-04 Extending Local State of Emergency - Hurricane Ian

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER

ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Woodson moved to approve the resolution; seconded by Vice Mayor Atterholt.

The motion carried unanimously.

- B. Resolutions 24-05, 24-06, 24-07 and 24-08 Extending Local State of Emergency - Hurricane Idalia

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

Council Member Woodson moved to approve the resolution; seconded by Vice Mayor Atterholt.

The motion carried unanimously.

- C. Resolution 23-182; Town Council Policies and Procedures

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.

See XI.

- D. 24-10; Bayside Veterans Park Name Adoption

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE NAME CHANGE OF BAYSIDE PARK TO BAYSIDE VETERANS PARK; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Woodson moved to approve the resolution; seconded by Vice Mayor Atterholt.

The motion carried unanimously.

- E. ITB-24-01-EN; Estero Island Beach Nourishment and Hurricane Recovery Project

Reject all ITB-24-01-EN proposals for the Estero Island Beach Nourishment and Hurricane Recovery Project with cause, since all bids far exceed the estimated or budgeted amount as provided in the Invitation to Bid and Section 2-480(11) of the Town Code, and provide direction to staff to re-bid the project.

See XI.

F. Electric to Town Hall Trailers

Request to waive the procurement policy based on an emergency finding and authorize the Town Manager to sign an agreement in the amount of \$73,620.00 with Kirkwood Electric to provide electrical services to the new Town Hall facility which will eliminate an interruption of the delivery of municipal services to the Town.

Council Member Woodson moved to approve the resolution; seconded by Vice Mayor Atterholt.

The motion carried unanimously.

G. Special Event: Farmer's Market

Request for use of Time Square for a Farmer's Market on Saturdays

See XI.

XI. ITEMS REMOVED FROM CONSENT AGENDA

Regarding item C., Council Member King noted that links for the Horizon Council, Human Services Council and the Estero Bay Agency on Bay Management needed to be updated. He indicated that the residency requirements conflict with ordinances and need clarification. Town Attorney Vose stated that the ordinances prevailed until they could be changed. Vice Mayor Atterholt suggested that the state statutes be included rather than refer to them.

Vice Mayor Atterholt moved to table the resolution to the next meeting; seconded by Council Member King.

The motion carried unanimously.

Council Member King requested an explanation and timeline regarding Item E. Michael Poff from Coastal Engineering explained that the bids were high due to the conflict with the shorebird nesting season. He recommended that the bids be canceled and the work be scheduled outside of nesting season. Areas that were scoured would be filled before the nesting season and he noted there would be a three to four month delay with the dredging project. He stated they were working on a third truck hall for the north end before the hurricane season. Mr. Poff indicated that sand would be trucked into the south end during the hurricane season and renourishment would begin after September. He noted that the difference in price between trucks hauling sand and dredging would be about \$60.00 - \$70.00 per cubic yard, with dredging being less expensive. Environmental Projects Manager Chadd Chustz confirmed that the bids were about \$14 million over budget, but they should be lower the second time due to a flexible timeline to get the project done.

Council Member King moved to approve rebidding the project; seconded by Council Member Woodson.

The motion carried unanimously.

Mayor Allers pulled item G. for clarification on the lack of parking under the bridge for residents. Operations and Compliance Director Frankie Kropocek explained that the vendors paid for parking between 7:00 a.m. to 2:00 p.m. Mayor Allers questioned whether residents were being refunded. Director Kropocek replied that residents had not complained about the parking or requested refunds. Linda Miller from the Farmers' Markets commented that she did not have a projected start date for Santini Plaza. She added that residents had requested a Farmers' Market on Saturday in Times Square for years and parking did not seem to be an issue on Saturday mornings.

Mayor Allers moved to approve the request; seconded by Council Member Woodson.

The motion carried unanimously.

XII. PUBLIC HEARINGS

A. Ordinance 24-01; TPI CPD Amendment

First Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 18-04, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR 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 January 22, 2024 at 9:00 a.m.

Town Clerk Baker stated that all items were properly advertised. Mayor Allers revealed he had a conflict with A. and would provide Form 8B to the Town Clerk. Town Clerk Baker swore in those providing testimony. Mayor Allers read the title of the ordinance.

Vice Mayor Atterholt moved to approve Attorney Steve Hartsell from Pavese Law Firm as an expert witness; seconded by Council Member Woodson. The motion carried unanimously.

The property owner confirmed receipt of the agenda and material. Community Development Senior Planner Jason Smalley reviewed the background of the request as stated on the blue sheet and noted changes

were made after the packet material was printed. He said the changes included a 10:00 p.m. closing for the Beach Club and Aquatic Venue and amplified music allowed at the Aquatic Venue until 9:00 p.m. for private events. The LPA (Local Planning Agency) requested a definition of private events. Senior Planner Smalley noted no end time for private events in the applicant's latest request.

Attorney Hartsell utilized PowerPoint for his presentation, which was included in the packet. The ordinance in the packet referenced Ordinance 18-04 and should be changed to reference the amended Margaritaville CPD Ordinance 23-09 and page numbers in the MCP (Master Concept Plan) need to be changed. He stated that they reduced the hours for amplified music at the Beach Club to 10:00 p.m. and the Aquatic Venue to 9:00 p.m. Slides included a 3-D rendering of the parcels; Condition #7; Beach Club Area Map; Requested Amendments to Condition #12, Ordinance #23-09; and Requested Amendments to Condition #18.b. Attorney Hartsell clarified that the red border on Slide 6 was the entire Beach Club area. He continued the presentation by addressing LPA Recommendations, Condition #6 and #18.a, and the Conclusion.

Applicant Tom Torgerson clarified that some of the speakers were elevated and faced the Gulf of Mexico. He explained that the stage was behind building 4 to help block the sound from the band. He stated he was trying to obtain flexibility within constraints from the neighborhood and the town and noted that the requirement of closing one hour after sunset was ambiguous. Attorney Hartsell clarified that private events would end at 10:00 p.m. when the Beach Club closed.

No public comment.

Vice Mayor Atterholt moved to approve the ordinance and schedule it to a second hearing on February 5, 2024; seconded by Council Member Woodson.

The motion carried unanimously by roll call vote with Mayor Allers abstaining.

B. Resolution 23-186; VAR20230212, 6642 Estero Blvd.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230212 TO ALLOW AN ELEVATED EMERGENCY GENERATOR CLOSER TO THE ESTERO BOULEVARD STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING FOR THE PROPERTY LOCATED AT 6642 ESTERO BLVD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution.

Community Development Planner Sarah Propst reviewed the background of the request as stated on the blue sheet. She indicated that the LPA unanimously recommended approval at their meeting on December 19, 2023. Kara Stewart represented the applicant and explained that the emergency generator had to be located forward of the principal structure since the primary structure was located approximately 59 feet from Estero Blvd.

The location was chosen to minimize the impact on neighbors and landscape buffers would be installed on the side and in front of the generator. She noted they did not receive opposition from neighbors.
No public comment.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

C. Resolution 23-190; VAR20230162, 21391 Widgeon Terrace

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230162, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. The property owner confirmed receipt of the agenda and materials.

Planner Propst reviewed the background of the request as stated on the blue sheet. She noted the LPA unanimously recommended approval of the request at their meeting on December 19, 2023.

Applicant Todd Plaisted stated that the raised pool would be on the existing deck and patio to allow for seating. He indicated that he had been working on the pool since 2021 when they purchased the property. He described the property and noted the pool was located where it would fit. He said there was a tall hedge between the neighbor and the pool, which helped hide the elevation. He stated he would add screening and landscaping to help buffer the pool from the neighbor. He added that the pool was 60–70 feet from the neighbor's house.

Public comment:

Robert Himmelstein, resident and neighbor, distributed plans to the council and noted he was not in favor of the pool because it was too close to his home and two decks. He said he missed the LPA meeting because he was in New Jersey and received notification too late. He provided pictures showing they were close to his trash bin enclosure. He explained that the pictures proved the application was misleading. He noted that staff originally denied the application before the LPA recommended approval. He described the layout of his property and guest house and stated he would not compromise with the applicant. He requested denial because he had not been properly notified of the LPA meeting, there were deed restrictions on the property, there was no hedge going out to the bay and there was no garbage next to the proposed pool.

Kara Stewart represented Mr. Himmelstein and discussed view corridors, protecting property, changing codes over the past few years and elevated structures in proximity to water structures. She stated an enclosure had been added to the pool since the LPA meeting and indicated that there was room for the pool in the front of the property.

Denise Klint, resident, commented that meeting agendas were online and could be checked anytime. Not receiving a notification while living in another state was not an excuse. She stated that lines between properties were decimated because of Ian and she could see the pool next to her property.

Mr. Himmelstein explained that he tried to stay on top of things and was told he would be noticed if anything came about, but he was not noticed. He offered the applicants the use of his pool and suggested they install a hot tub. He requested that the council send it back to the LPA because the application was incorrect.

The landscaper hired by the applicant felt that sending it back to the LPA was a waste of time. He stated the survey was done by a professional and they would plant bamboo shoots to hide the structure. A landscaper explained how the structure could be blocked and offered to provide a site plan. Mr. Plaisted was shocked that the neighbor was worried about the view from the side garage. Applicant Kelly Moore noted that 11 or 12 of the 13 homes on Widgeon Terrace had pools. She stated that the room above the garage had been a rental and she never saw him or his family on that deck. She described the property and noted the main house had seven decks with views.

Judy Haataja, TriPower Vacation Rentals, commented that she did not rent the guest house. She felt that Mr. Himmelstein had to defend his rights without representation.

Planner Propst stated that the LPA postcard went out on December 8, 2023, and the Town Council postcard was sent on December 28, 2023.

Public comment closed.

Town Attorney Vose stated that notifications were a courtesy and not required. Planner Propst stated that the applicants requested a variance on the setbacks because they knew they did not meet the code and it was up to them to ensure compliance with all other codes. She noted that the process was normal. Town Attorney Vose confirmed that the council could send it back to the LPA. Mayor Allers supported sending it back to the LPA based on information from Planner Propst. Town Attorney Vose concurred.

Mayor Allers moved to send the resolution back to the LPA for their review at the February 13, 2024, meeting at 9:00 a.m. with location to be determined; seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

- D. Resolution 23-191; VAR20230264, 5350 Estero Blvd.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230264 TO DECREASE THE REQUIRED 15-FOOT SIDE YARD SETBACKS BY 8.5 FEET TO ALLOW 6.5-FOOT SIDE SETBACKS, FOR THE COMMERCIAL RESORT ZONED PROPERTY AT 5350 ESTERO BLVD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution.

Planner Propst reviewed the background of the request as stated on the blue sheet. The LPA unanimously recommended approval at their meeting on December 19, 2023. Staff received two letters of objection from adjacent property owners.

Ernie Jaime, Director of Construction for Homebound, represented the applicant. He noted the applicant wanted to build a single-family residence and the property had changed hands since Jan.

No public comment.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

XIII. ADMINISTRATIVE AGENDA

- A. Vacancy on Town Council

Acknowledge receipt of Council Member Veach's resignation on December 26, 2023, declare a vacancy on Town Council, and provide direction to the Town Manager and Town Attorney regarding next steps to fill the vacancy.

Vice Mayor Atterholt suggested that candidates fill out an application, affirm their eligibility, state why they think they should be appointed, address whether they plan to run for election for another term and provide a resume with references. Council Member King suggested that candidates be made aware of Form 6 requirements if selected.

Vice Mayor Atterholt moved approval of procedures discussed above to replace a vacancy on the town council, that they incorporate the procedure into the official procedures for future reference and that they acknowledge receipt of Council Member Veach's resignation; seconded by Mayor Allers. The motion carried unanimously.

XIV. FINAL PUBLIC COMMENT

Denise Klint suggested that details be added to the posting for the vacancy on the Town Council.

XV. TOWN MANAGER'S ITEMS

Town Manager Hyatt noted that Council Member Woodson was the representative for Resilient Lee since Mr. Veach resigned. He thanked Director Culture, Parks & Recreation Jeff Hauge and the staff for working hard to get the facility back open. Director Hauge described the Bay Oaks facility and fulfilling the interlocal agreement with the school. He hoped the weight room would be open next week and explained membership rates for residents and non-residents. He suggested that people visit the website for more details.

Town Manager Hyatt indicated the appropriation requests were submitted to the state and federal governments. He was focusing on evaluating open positions to get them filled. The biggest hangup to getting electricity to the trailers was with FP&L (Florida Power & Light). Furniture was ordered and the other trailers should be set up today.

Director Kropocek indicated that the duckbill project would start with Crescent and Third Street when the products arrived. He noted that once the project started it should take about three weeks to complete. Tier 1 projects were waiting for final approval from the FDEP (Florida Department of Environmental Protection) and should begin in the last part of January or early February. Streets addressed first would be those constantly underwater and below grade.

Town Manager Hyatt stated that they should receive confirmation of delivery and installation of the turtle-friendly streetlight project components this week. He will reach out to Captain Lalor regarding extra traffic coverage from the Sheriff's Department. Director Kropocek revealed that staff could attend training for certification to become a traffic person.

XVI. TOWN ATTORNEY'S ITEMS

Town Attorney Vose stated that the town adopted the International Property Maintenance Code to force property owners to maintain their properties. The town had to send a notice to property owners with a deadline to address the problem. If they did not respond, another notice would be sent informing property owners that the town would hire a contractor to handle the problem and put a lien on the property. She indicated that putting a fence around the property would not suffice. The letters will be sent out no later than February 1, 2024, with a response due no later than March 1, 2024.

XVII. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King thanked members for allowing him to participate virtually. Council Member Woodson noted she would fulfill the duties with Resilient Lee and Vice Mayor Atterholt volunteered to be the backup. She stated that Lee County was researching what rebuilding the pier would involve and requested an endorsement letter from the council supporting different design options. Town Attorney Vose received support to draft a resolution.

Vice Mayor Atterholt questioned whether the street sign project was ongoing and Town Manager Hyatt responded affirmatively.

Mayor Allers described the upcoming meeting with the condo owners. He noted that three Thursday M&P meetings conflicted with TDC (Tourist Development Council) meetings and would be changed to Wednesday. The new dates are May 8, August 7 and October 9, 2024. He commented that he was talking to Commissioner Sandelli about illuminating the Lenell Rd. crosswalk.

XVIII. ADJOURNMENT

Council Member King moved to adjourn; seconded by Vice Mayor Atterholt. The motion carried unanimously.

The meeting was adjourned at 1:21 p.m.



Fort Myers Beach Town Council

**Bay Oaks Recreational Center
2731 Oak Street
Fort Myers Beach, FL 33931**

Minutes

Thursday, January 11, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King (virtually) and Council Member Woodson.

- A. Request from Council Member King to appear virtually Mayor Allers moved to allow Council Member King to participate virtually; seconded by Vice Mayor Atterholt. The motion carried unanimously.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. PROGRESS UPDATES

Rick Mindemann from Santa Maria Condos commented that the milestone study had to be completed in 2024 along with the SIRS and the talk was that it might be extended into 2025. He asked whether that was the rule. He questioned the rule regarding the timeline for replacing the fire pump.

Steve Bruns from the Caper Beach Club complimented the town and fire department. He asked whether a resource portal could be set up, so people could see other condo associations' issues. He stated that some owners were back, the white box was done and they were in litigation with the insurance company. He noted they had substantial assessments. Most of the common areas were done and they hoped to open for rentals around April.

Rick Mindemann stated that the roof was completed and the elevators were fixed. The decks and the gazebo had to be replaced. He mentioned that more assessments might be in the future.

Jeff Moore from Marina Towers noted the flood knocked out the infrastructure and

the building was uninhabitable. He remarked that the traffic was worse than ever and contractors did not want to deal with that. He felt the federal government was having a problem concerning SBA loans and insurance companies were not paying up.

Bill Althoff, President of Shamrock Beach Condos, stated that they started an SBA (Small Business Administration) loan in November 2022 and it still was not done. He asked the town to help. Structural damage was repaired and they were in the process of fixing the plumbing, electric and replacing the roof. He wondered if the town could help to delay the implementation of SB4. He stated they would have huge assessments and hoped to get the money back. They needed direction on FEMA (Federal Emergency Management Agency) rules to calculate the 50% rule, the Lee County look-back rule and the FEMA 2010 workbook. He addressed the FEMA valuation snafu but noted they got through it. He asked that the town publish issues the permitting department was having to help prepare the contractors. The emergency berm created a moat around the property because they were five feet short of sand. He referred to Mexico Beach and asked that the town look into getting more sand from FEMA.

Dave Nusbaum, President of Island Winds Condos, stated they could not open because they were waiting for parts, permit approvals, authorizations from the fire department and cash. They were having trouble with FEMA because they kept moving the goalposts. He said they needed help with the legislative reserve funding rule and exhausted their reserves to get their building in order. He asked that the timetable be delayed by two years so they could rebuild. He asked for help and latitude from the fire department regarding building back to code. They lost their priority with FP&L (Florida Power & Light) and asked the town to help.

Mayor Allers responded that several entities were pushing for a moratorium on SB4. Mr. Nusbaum noted the elevators should be working in two weeks and would help the recovery and he hoped to be fully functional by the end of February or March.

Todd Kluener, a Board Member of Seaside Condos, stated their project was moving along great and they divided the project into insurance-covered and non-insurance-covered items. They received all their insurance funds. He needed clarity concerning the town's landscaping code, grilling huts and permitting issues. George Kessler from Ocean Harbor Condos indicated they had been waiting for a transformer power change from FP&L for 2 1/2 months. He stated they filed a complaint with the Public Service Commission two weeks ago and have not heard anything. He suggested that everyone file a formal complaint. He listed everything they could not do because there was no power. He thanked the town for doing an excellent job.

Bruce Harding from Bella Lago Condos noted they were in good shape and were finishing the roofs. He thanked the town for their help.

Lisa Wallace from the Privateer Condos stated their first floor was wiped out, but they hired an engineer immediately and did not have insurance problems. They were waiting for a few permits to start construction and had to use all their reserves. They hoped to open around September or November. She appreciated all the town's hard work.

Gary Fields, President of Pelican Watch Condos, stated they were suing their insurance carriers and closed on the SBA loan but had not received funds. He commented on the delays with permits and felt it was a staffing issue that needed attention. He thought their building would be functional in two to three months.

Jim Brubaker of Terra Mar Condos noted they were multi-owned, which was challenging. He discussed issues with multifamily high rises compared to single-family homes. He asked that the town be sensitive to those differences. He recommended periodic workshops for condos and revisions to the permit application for high-rises in VE zones.

Denise Klint from Sandarac A Condos stated they were doing well and almost everyone was back in except for the first floor. They have a new roof but no pool and the lobby and common areas need work. She suggested that one person in the permitting department be designated to deal with the condos. It was difficult to see their entrance at night because it was dark. She suggested that someone from the town schedule a monthly meeting with the condos.

Mike Close, President of Creciente Condos, noted their pool was destroyed and they intended to rebuild it as it was before. He proposed that the town council give a blanket exemption for a public hearing as long as the rebuild complied with what was there. He described the difference between how private residences were treated compared to condos according to the town's ordinances. He proposed changing the ordinance so they could supervise minor projects themselves and described extra work requirements due to the FEMA regulations. He stated they could not afford to install charging stations for electric vehicles. He suggested the town sell charging stations or lease them to the condos. He thanked the town for the forum.

Mike Alexander, Treasurer for Estero Beach Club, indicated one building was stripped down to the studs, but the other building was good. He noted that they were getting wind and flood insurance funds, but they were unsure how much they would get. He agreed with every complaint regarding FP&L and stated that they could not get them to install their equipment. He questioned what they had to do to get their occupancy without an elevator.

Jim Waltour from the Riviera Condos Board thanked the Fort Myers Beach Fire District. He described how the board became proactive regarding involvement with contractors and engineers. He commented that it would help to have a building official from the town walk the property with them in case they missed something that would prevent occupancy. He remarked that now the board communicated with contractors daily, items were being done.

Ed Smith, Treasurer of Harbor Point, thanked the council for listening to everyone. He explained the repairs made so far and thanked the fire department. He requested guidance on how to protect the property and people working there. He requested clarification regarding how long temporary generators were allowed. He asked that the town relax the code requiring permits for small items like hanging cabinets and trim work. He supported a two-year moratorium on the reserve funding. He stated the biggest issue now was the life safety requirements to move the electrical room to the first floor and FP&L was supposed to be there in a month and a half. He supported having more meetings.

Larry Conway from Woodward Point requested clarification regarding turtle-friendly lights for their parking lot. The cost was four times the cost of their other lights.

Dave Wellington represented the Bay Village Condos and said they were waiting for drywall, insulation, electrical and concrete permits. He was unsure whether the issues were with the contractor or the town.

Jim Cecil from Admiral's Bay noted that replacing three broken windows took almost a year. They were in litigation with the insurance company. He stated that they had another appraiser after Ian, but the town denied it because the town's name was not on the appraisal, so they had it redone with the town's name. He questioned why they were not told that up front and why some permits were so expensive. He complimented the fire department for working with them.

Zach Louzao, Studio AD architect, requested clarification regarding the code and categorizing repairs as level 3 alterations. He believed some condos could be categorized as renovations to reduce the scope of work and below the 50% rule. He provided a flowchart from the NFPA (National Fire Protection Association) illustrating how to categorize a project.

Tom McDonnell of Estero Island Yacht & Racquet Club indicated that all first-floor units were damaged. He asked whether individual unit owners would have to obtain a permit after the white box to finish their unit. He stated that FP&L had not replaced the streetlights after 89 days. They sued, settled with the wind carrier, and now have three new roofs. The flood carrier kept changing their requests, and getting answers was difficult. Contractors had to leave early due to the bad traffic and he did not think the new traffic light was helping. He thanked the town for hosting the meeting.

Birdie Murphy from Estero Beach Club East thanked everyone for the opportunity to meet. Their issues were insurance, difficulties with changes to permitting requirements, extending the reserve fund, and dark streets.

Robert Galvanoni from Carlos Point Beach Club endorsed a delay for the reserve issue. The contractor told them all the subcontractor's contracts had to be signed before he could submit the application to the town. He questioned whether they could get partial approval for a large contract and questioned delaying beach renourishment.

A. Fort Myers Beach Building Official

Building Official Joe Specht addressed categories of concern and noted he was in the process of correcting the permit process. He stated that since they had engineer reports for many buildings, they could be used as part of the milestone system started by the legislature. Egress was important and required before occupancy. He was comfortable with buildings without elevators as long as the fire department agreed. The existing building code was one of his favorite resources because it gave him leeway with how things had to be put back. He would help with hanging cabinets and trim without a permit, but electrical and plumbing had to have permits. He encouraged anyone with questions to contact him. He added that he would assist with owner/builder exemptions and noted it was a state requirement. Mr. Specht offered to walk around buildings to help identify any issues that might slow

them down. He added that he was streamlining the building valuation process.

Kevin VanBuren, President of Windward Point, stated that they needed a sign permit for a sign that had been there for 40 years because it was in the right-of-way. He noted it would cost thousands to run new electricity for a sign that was on a dead-end street. He stated that the town refused to look at it in person because it was on GSI.

Vice Mayor Atterholt encouraged people to contact their state legislators regarding the reserve fund issue and contact federal legislators to help with FEMA issues. Contact representatives from FP&L and Jimmy Patronis with the state insurance department about problems with those entities. Mayor Allers asked people to send contact information to him or the town manager regarding FP&L issues.

B. Fort Myers Beach Fire Control District

Fire Chief Scott Wirth addressed water pressure in condos and urged people to contact them if they had problems fixing their systems.

John Myanza, President of Santa Maria Condos, thanked the fire department for informing them of what they needed to do to get owners back in their units. Chief Wirth encouraged people to reach out to them with questions.

He indicated that they did not see an application regarding grilling huts. He revealed that he was also a general contractor and they were supposed to know what to do. Often, plans were kicked back because they did not have the proper engineering attached or completed.

Regarding life safety issues and temporary fire pumps, some condos were able to bypass the fire pump. He suggested that people call the fire department for possible solutions.

One gentleman asked why they had to rebuild their fire pump and generator system 14 feet above the ground. Fire Official Jennifer Campbell replied that elevating was to protect the fire pump.

V. ADJOURNMENT

Council Member Woodson moved to adjourn; seconded by Council Member King. The motion carried unanimously.

The meeting was adjourned at 11:01 a.m.



Fort Myers Beach Management & Planning Session

Bay Oaks Recreational Center
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes

Thursday, January 11, 2024

11:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Town Council members present: Mayor Allers, Vice Mayor Atterholt, Council Member King (virtually) and Council Member Woodson.

LPA members present: Chair Cereceda, LPA Member Boan, LPA Member Safford, LPA Member Sudduth (virtually) and LPA Member Vanasse.

LPA Member Vanasse moved to accept LPA Member Sudduth's participation virtually; seconded by LPA Member Boan.

The motion passed unanimously.

Excused absences for LPA members Eckmann and Plummer.

A. Request from Council Member King to appear virtually.

Vice Mayor Atterholt moved to accept Council Member King's participation virtually; seconded by Council Member Woodson.

The motion carried unanimously.

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Development Deviations

Development Agreement Options Discussion

Chair Cereceda explained that the LPA suggested that the provision be sunsetted because of SB250. LPA Member Vanasse noted that the development agreement options did not allow anyone to bifurcate public hearings, but the requirements would expedite the process and lower costs for the applicants. Chair Cereceda raised concerns regarding burdening staff. She explained that the LPA discussed ways to help smaller businesses

rebuild with the idea that their project could get approved and not be as cumbersome as a larger project. LPA Member Vanasse suggested that they clarify what they were seeking to do.

Mayor Allers stated that they were trying to create a system to potentially allow more intensity, density, height, less parking, etc., without going through the same process as a larger development. He felt that created an unfair advantage and should be available for everyone. He did not support attaching it to SB250 because it probably would not go away. He suggested that it apply to the property owner who owned the property before Ian and was not transferable before the property was developed. Mayor Allers indicated the town could also adjust the costs to help.

Community Development Planner Sarah Propst stated decisions could not be made based on ownership, but they could view it as an economic development process and build in clawback (take back) conditions. LPA Member Vanasse addressed the cost side and noted he could demonstrate the cost savings because it took less of his time as a consultant and was more of a site plan identifying certain parameters and standards. He stated it was a fraction of the cost of a CPD (Commercial Planned Development).

LPA Member Vanasse indicated that if they could assume that small hotels benefit the town, they could make a blanket assumption that any potential impacts from X number of units from that type of development would be okay. Staff would not have to analyze the impacts generated by the project. As far as being unfair to others, he noted the code was not fair or equal.

Mayor Allers stated he was concerned with the process and questioned whether they were empowering staff to make policy decisions. Chair Cereceda commented that applicants still had to go through the process regardless of whether staff recommended the project.

LPA Member Vanasse explained why he drafted three options for development agreements. He stated that the LDC (Land Development Code) intentionally created nonconformities to slow down or prevent development and redevelopment. Chair Cereceda agreed and added that was the thrust of incorporation.

Chair Cereceda stated that she still did not understand how the process saved applicants time or money. Mayor Allers agreed and asked how they ensured what they were trying to do didn't negate what started the point of them trying to do what they were trying to do. LPA Member Vanasse replied that legal mechanisms could be put in place, like terms and conditions. Town Attorney Stuparich explained that development agreements were generally used for unique projects that were mostly ready to go and were going to happen. She added there was a certain understanding and degree of certainty as to what would transpire.

LPA Member Vanasse indicated he was not happy when staff recommended the denial of variances, but the LPA and Town Council unanimously approved them. He stated they needed to fix the system because the rules for evaluating a deviation versus a variance were completely different. Mayor Allers questioned whether a cap could be placed on the number of variances

allowed to fall under the development agreement process. LPA Member Vanasse responded that the town was only doing it because of the hurricane and there would be a sunset. He stated that the hearing process still provided a path to deny the request. Mayor Allers still did not see how it would streamline anything for staff and it did not make sense to him. Planner Propst indicated it would complicate the staff's job and shorten the process by one hearing.

LPA Member Vanasse explained the costs involved with a CPD before the applicant even had an idea of whether the project could move forward. LPA Member Safford stated that he would have to spend \$20,000.00 on a traffic study for eight rooms, not to mention the time involved. He noted he was not trying to make his property more valuable; they just wanted to build back their small resort. He did not think that allowing increased density on his small project would prompt larger businesses to request the same.

Vice Mayor Atterholt indicated that applicants seemed to want certainty that their project could move forward before the applicants made a massive investment. He thought part of the purpose of the development agreement was to give applicants certainty based on full vetting to minimize costs until they got the certainty. LPA Member Vanasse agreed it eliminated uncertainty, risk and cost. He shared a recent experience with a development in Bonita Springs. Mr. John Dulmer, Community Development Director of Bonita Springs, explained how their process worked. He concluded by saying there was no such thing as good or bad policy, it was whether the outcome reflected what they wanted.

Council Member Woodson questioned whether certain variances were more acceptable than others.

LPA Member Vanasse reiterated his intent in drafting the options was not to streamline the average project that asked for more density. He reviewed how the options would apply to different types of projects.

Chair Cereceda responded to Council Member Woodson and felt that certain variances were more palpable to the public, like setbacks. She compared the 7-11 presentation to the Whale presentation and noted the 7-11 presentation was a clear roadmap to what their project was going to be. If the Whale had this process available to them, their presentation would have been clearer and would have been an easier path forward.

Vice Mayor Atterholt agreed and noted that Option 1 was a concession because they deemed the Mom & Pop businesses were a public benefit to the town. He felt they could put parameters on it to limit the amount of concessions. Mayor Allers discussed businesses taking advantage of the policy and basing decisions on economics.

LPA Member Vanasse suggested agreeing on whether they want to do it and staff could draft the numbers. LPA Member Sudduth agreed with the idea and felt it was achievable. Chair Cereceda questioned whether they wanted to limit it to pre-storm size, location and property owner. Council Member Woodson agreed and questioned the parameters for small projects.

Mayor Allers stated that every property would ask for double what they had because of the cost of building back. He added that it was not going to stop with smaller properties, no matter how they tried to limit the options. LPA Member Vanasse reiterated that every application was evaluated on its own merits and the council had the discretion to deny it. Council Member Woodson supported adding guardrails and questioned whether they should require more public benefits.

Chair Cereceda suggested adding a second LPA meeting in February to discuss additional guardrails and public benefits, identify cost and time and sunsetting. Council Member Woodson had to leave the meeting.

B. Parking requirement comparison

Parking requirements review and discussion

Chair Cereceda stated that parking was continuously brought up and it was a red flag that something needed to be done. She noted that they were cautious 30 years ago and commercial intrusion into residential zones was the primary concern. She believed changes needed to be made holistically, especially to the downtown core. Planner Propst stated there were guidelines for ADA parking and anything beyond that was up to the town.

She noted that they had to think about how people get around the community safely without cars. LPA Member Vanasse indicated that they could look at other communities, but their town was unique and had a lot of constraints to deal with. He questioned funding a parking study. He commented that Punta Gorda eliminated parking requirements and built a public parking garage.

Mayor Allers felt they needed to promote building a parking garage. (Recording stopped from 2:19 to 2:22 and started back with Vice Mayor Atterholt talking.) Town Manager Hyatt stated that he continued to look at all options. LPA Member Safford noted they needed to install signage to direct people to available parking and how to get off the island. Mayor Allers agreed and described Collier County parking signs displaying the parking spaces available in the lots.

Chair Cereceda explained that the hunt for parking was part of the charm years ago. She did not know how to fix parking, but it was a problem they needed to address. She felt the issues were where to park and what they would require from individual properties. She brought up infrastructure changes like trees to make the community walkable and safe.

Vice Mayor Atterholt suggested utilizing parking apps and signage before hiring a consultant. Mayor Allers felt they could do some things policy-wise regarding parking requirements for new developments. Chair Cereceda suggested that Planner Propst contact Mr. Spikowski since he wrote the code. LPA Member Vanasse suggested that they follow the ITE (Institute of Traffic Engineers) Manual, which was based on real-life examples. Mayor Allers revealed that the ITE was more restrictive for restaurants than the town's code.

LPA Member Safford supported eliminating parking in the downtown district. Mr. Ben Freeland, Moss Marina, stated that investors and lenders would not invest in a major hotel without adequate commercial parking. He suggested they think visionary rather than get hung up on the nuance. He stated they

needed to do something to get the small businesses back.

LPA Member Vanasse felt they needed to hire a consultant because the staff was busy. Vice Mayor Atterholt noted the scope would be important with a holistic look.

Matt Price, CEO of Seagate Group, thought they needed a development consultant for the downtown area to identify the vision. Without a vision, it would be hard for developers to determine what the town was looking for. He stated they needed to give them a box.

Mayor Allers disagreed and stated there was a box and a vision and people had to conform to the box with a path to expand on the box.

Town Manager Hyatt stated that they needed to decide on the three development consultants who already presented to the town.

Council Member King remarked that they could not plan for every contingency and he did not think everything was a precedent. LPA Member Sudduth agreed they could not plan for everything and they needed to work to figure it out.

IV. ADJOURNMENT

Vice Mayor Atterholt moved to adjourn; seconded by Mayor Allers. The motion carried unanimously.

The meeting was adjourned at 2:20 p.m.

1. **Requested Motion:**

Meeting Date: January 22, 2024

An agreement with the Lee County Supervisor of Elections office and the Town of Fort Myers Beach to use the new Town Hall building as a polling location for 2024 elections.

Why the action is necessary:

Requested by the Lee County Supervisor of Elections

What the action accomplishes:

Provides a polling location for Estero Island residents

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

Due to Hurricane Ian, all polling precincts on Estero Island were lost. The Lee County Supervisor of Elections, Tommy Doyle, contacted the Town Manager regarding the use of Town Hall as a polling location for Estero Island residents during the 2024 election season.

Elections will be held on:

TUESDAY, MARCH 19, 2024 PRESIDENTIAL PREFERENCE PRIMARY ELECTION

TUESDAY, AUGUST 20, 2024 PRIMARY ELECTION

TUESDAY, NOVEMBER 5, 2024 GENERAL ELECTION

Attachments:

1. 2024FMBTHFagmt309-321

Financial Impact:

N/A

6. **Alternative Action**

Do not approve

7. **Management Recommendations:**

Allow usage of Town Hall for the purposes of a polling location during 2024

8. **Recommended Approval:**

Amy Baker, Town Clerk

Nancy Stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 1/12/2024

Approved - 1/16/2024

Approved - 1/16/2024

Final Approval - 1/16/2024



AGREEMENT FOR POLLING PLACE
SUPERVISOR OF ELECTIONS - LEE COUNTY
LEE COUNTY ELECTIONS CENTER, 13180 S. Cleveland Ave., Ft. Myers, Florida 33907

PCT #: 309/321

THIS AGREEMENT, dated January 10, 2024, by and between Tommy Doyle, Supervisor of Elections, Lee County, Florida and the Owner of the polling place facility at this location:

FORT MYERS BEACH TOWN HALL FACILITY
2731 OAK ST, FORT MYERS BEACH, FL 33931

Room or building to be used for voting: MAIN AREA

Owner's Name (*only* if different from Facility Name) for certificate of insurance:

THE OWNER AGREES:

To provide a polling place set aside for the sole purpose of holding the following Elections:

TUESDAY, MARCH 19, 2024 PRESIDENTIAL PREFERENCE PRIMARY ELECTION

TUESDAY, AUGUST 20, 2024 PRIMARY ELECTION

TUESDAY, NOVEMBER 5, 2024 GENERAL ELECTION

To provide **parking spaces** for poll workers and voters on Election Day.

To provide from 5:30 a.m. until all closing procedures required by the Election Board are completed:

- **A.D.A. accessibility** ● **Air conditioning and heat** ● **Tables and chairs** for election use
- Kitchen facilities available to poll workers: ☐ None ☐ Limited to _____ ☐ Full kitchen

To provide **access** to the polling place on **Election Day** by **one** of the following means:

- ☐ Owner will open polling place at 5:30 a.m. - **OR** - ☐ Will provide precinct clerk with a key prior to Election Day.

To provide **access** to premises **for delivery and pick up of voting equipment** before and after each election:

- ☐ Owner will open - **OR** - ☐ The Elections Center may retain a key to be used for election use only.

INSURANCE STATEMENT: Lee County will be liable for money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the County while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be held to be liable in accordance with the general laws of the State of Florida, subject to the limitations as set out in Section 768.28, Florida Statutes, as it may be revised or amended from time to time. The Owner shall be responsible for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of the Owner, alone or in connection with a third party, or any of its employees, agents, invitees, guests or representatives.

THE SUPERVISOR OF ELECTIONS AGREES:

To pay Owner \$0 for use of the above-described site for each election it is used.

Make checks payable to:

For Owner:

Name

Signature

Mailing Address

Type or Print Name

City, State, ZIP Code

Title

Phone Number

Facility phone number: 765-0202

DAYTIME CONTACT PERSONS (Please list two):

Name _____

Phone Number _____

Name _____

Phone Number _____

EMERGENCY CONTACT PERSON & PHONE NUMBER:

NAME: _____

PHONE NUMBER: _____

Days / Hours facility is open: _____

SUPERVISOR OF ELECTIONS CONTACT: JERRY DAVIS, Phone: 239-533-6908, email: jdavis@lee.vote

1. **Requested Motion:**

Meeting Date: January 22, 2024

Authorize the Town Attorney to negotiate a contract, to be approved by the Town Council at the February 5, 2024 public meeting, with the Florida Department of Administrative Hearings (DOAH) and Monica Schmucker, Esquire, for special magistrate services.

Why the action is necessary:

To expedite and manage an anticipated increase in code enforcement cases for code violations (ex: litter and unsafe structures)

What the action accomplishes:

Ensures adequate resources are available to efficiently handle resolution of pending code violations and cases

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Consistent with direction from Council regarding the need to increase code enforcement efforts to eliminate litter and unsafe structures in the Town

4. **Submitter of Information:**

Gretchen R.H. Vose, Town Attorney, Nancy Stuparich, Town Attorney

5. **Background:**

The Town was severely damaged by Hurricane Ian in September 2022 and recovery efforts remain ongoing. However, in view of the time that has passed since the storm and the increasing return of residents and the public, the Town will be increasing its code enforcement efforts to address code violations and the removal of unsafe structures. For this reason, we are exploring additional resources that may be needed to expedite hearings associated with these matters. Moreover, the current special magistrate has indicated that she may no longer be available to provide special magistrate services in the future.

Local attorney Monica Schmucker has expressed an interest and availability in performing special Magistrate services.

The Florida Department of Administrative Hearings (DOAH) has hearing officers available to provide local governments with assistance in conducting hearings.

A local government can have more than one special magistrate available to handle cases in the event of a conflict of interest or scheduling conflict.

DOAH charges a rate of \$200/hour which is non-negotiable. Ms. Schmucker's rate is unknown at this time.

Attachments:

1. Schmucker Monica Resume 2024Jan
2. DOAH Contract Template revised 10-2-23
3. FY22 TFMB Special Magistrate Agreement EXECUTED

Financial Impact:

The current special magistrate charges \$250 per hour for these services. In 2023 (post Ian), the town paid \$850 for special magistrate services, with one invoice yet to be received. The

prior year, the Town paid approximately \$1800 for special magistrate services.

6. Alternative Action

Take no action and continue with one special magistrate and continue with the current special magistrate, if available.

7. Management Recommendations:

8. Recommended Approval:

Amy Baker, Town Clerk
Nancy Stuparich, Town Attorney
Joe Onzick, Finance Director
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/12/2024
Approved - 1/16/2024
Approved - 1/16/2024
Approved - 1/16/2024
Final Approval - 1/16/2024

Monica Schmucker, Esquire

875 Oak Street • Fort Myers Beach, Florida 33931 • monica@snllegal.com • (574) 261-5375

EDUCATION

University of Notre Dame Law School, Notre Dame, Indiana

2009 – 2012

Juris Doctor

- Cum Laude
- CALI's Excellence for the Future Award and Notre Dame's Dean's Award: Labor and Employment Law
- ABA Section of Labor and Employment Law & Bloomberg BNA Award for Excellence in the Study of Labor and Employment Law
- Dean's List
- Notre Dame Journal of International, Comparative, and Human Rights Law, Founding Member, Editor
- Summer in London, International Law Programme; 2010
- International Law Society, Treasurer; 2010-2011
- Hispanic Law Students Association
- Student Bar Association, Social Committee

Florida International University, Miami, Florida

2000 – 2002

Bachelor of Arts, International Relations

- Minor in English
- Certificate in Latin American and Caribbean Studies

Miami-Dade College, Miami, Florida

1997 – 1999

Associate of Arts, Pre-Bachelor of Arts

- Distinguished member of Phi Theta Kappa: International Honor Society, Assistant Vice President of Service
- Study Abroad, Florence, Italy; 1998
- Received a full Honors Scholarship and graduated with Distinguished Honors

BAR ADMISSION

Florida (2016), Middle District of Florida; **Inactive:** Indiana (2012), Northern District of Indiana, Southern District of Indiana

OTHER CERTIFICATIONS AND PROFESSIONAL QUALIFICATIONS

Florida Supreme Court Certified Circuit Court Mediator; Florida Qualified Arbitrator; Title Insurance Agent

EXPERIENCE

Schmucker & Lavy Legal, PLLC, Fort Fort Myers, Florida

2023-present

Partner (Mediations, Arbitrations, Real Estate Transactions, and Litigation)

- Conduct mediations and arbitrations
- Assist with real estate transactions and document preparation
- Handle Hurricane Ian insurance claims for homeowners and business owners, including litigation where warranted

Henderson, Franklin, Starnes & Holt, P.A., Fort Myers, Florida

2020-2023

Stockholder; Attorney at Law (Litigation)

- Litigated and defended clients against negligence claims and lawsuits
- Represented homeowners and business owners, assisting them with their Hurricane Ian insurance claims
- Managed large caseloads in a fast-paced, medium-size general practice law firm, handling cases mostly involving insurance defense of bodily injury claims, focusing on premises liability, vehicle negligence, and first party property
- Developed strategy and performed all necessary tasks throughout all stages in litigation
- Engaged in client development, including presenting seminars and continuing education courses
- Supervised associate attorneys in handling their caseloads through all stages of litigation, strategy development, and reporting
- Conducted mediations and arbitrations

Cole, Scott & Kissane, PA, Bonita Springs and Fort Myers, Florida

2016-2020

Partner; Associate Attorney (Defense Litigation)

- Litigated and defended clients against negligence claims and lawsuits
- Managed large caseloads in a fast-paced, large litigation firm, mostly involving insurance defense of bodily injury claims, focusing on premises liability, vehicle negligence, wrongful death, and general liability
- Developed strategy and performed all necessary tasks throughout all stages in litigation
- Met and exceeded monthly projections of billable hours while maintaining high quality standards for work produced, providing efficient and particularized service for each specific case, and achieving sincere client satisfaction
- Engaged in client development, including presenting seminars and continuing education courses
- Trained and supervised associate attorneys in handling their entire large caseloads throughout all stages of litigation, strategy development, reporting, and billing

Metzger Rosta, LLP, Noblesville, Indiana

2014-2016

Associate Attorney (Defense Litigation)

- Handled large caseloads in a fast-paced, small litigation firm, mostly involving insurance defense, dram shop and premises liability, vehicle negligence, and subrogation, and including some family law, employment law, and general practice litigation
- Drafted and filed pleadings and motions, conducted discovery and depositions, attended court hearings and mediations, conducted bench trials, and performed all other litigation tasks necessary

Harrison College, Paralegal Studies Department and Criminal Justice Department, Indianapolis, Indiana

2014-2016

Instructor

- Instructed online paralegal courses and on-the-ground, evening criminal justice courses

Monica Schmucker, Esquire

Office of the Indiana Attorney General, Licensing Enforcement and Homeowner Protection Unit, Indianapolis, Indiana 2012-2014 *Deputy Attorney General*

- Addressed consumer complaints pertaining to mortgage servicing and origination, provided mediation for consumers facing issues related to mortgage servicing, and assisted with loss mitigation options for consumers facing foreclosure
- Investigated allegations of violations of law against mortgage servicers and originators and brought forth appropriate litigation enforcing such laws
- Brought administrative actions against real estate licensees who violated laws and non-licensees practicing without a license
- Filed civil suits to enforce laws against foreclosure consultants or persons involved in other real estate-related scams
- Supervised several case analysts and investigators who assisted in the investigation of consumer complaints

LaPorte Superior Court 1, Michigan City, Indiana 2012 *Judicial Law Clerk for Judge Kathleen Lang*

- Observed the various cases and hearings before the court
- Researched legal issues and wrote legal memoranda advising the Judge of results of research

University of Notre Dame Law School, Notre Dame, Indiana 2012 *Research Assistant to Professor G. Robert Blakey*

- Co-wrote law review article about state of mind requirements in statutory interpretation
- Researched the history of organized crime and what led to the drafting of RICO
- Wrote footnotes for G. Robert Blakey's article about RICO's Evolution, Scope, and Rationale

Notre Dame Clinical Law Center (Legal Aid Clinic), Notre Dame, Indiana Spring 2012 *Certified Legal Intern*

- Represented clients and made decisions regarding litigation and other legal matters involved in assigned cases
- Drafted and filed legal documents with the court, including complaints, motions, orders, and notices
- Attended hearings and conferences, being solely responsible for arguments at such hearings
- Negotiated settlements, interviewed clients, and conducted depositions

Wooden & McLaughlin, LLP, Indianapolis, Indiana Summer 2011 *Summer Associate*

- Assisted attorneys with legal research and wrote legal memoranda with results of research in a variety of practice areas, including employment law, vicarious liability, mortgage recovery, asbestos, securities regulations, and environmental regulations regarding wetland mitigation systems
- Participated in commercial real estate closings, depositions, and settlement conferences, and assisted in damages calculations

University of Notre Dame Law School, Notre Dame, Indiana Spring, Summer 2010 *Research Assistant to Professor Stephen Smith*

- Researched Sex Offender Statutes in Indiana, their many amendments, and *ex post facto* prohibition in both the Indiana and United States Constitution
- Researched how federal courts read *mens rea* requirements into statutes
- Wrote legal memoranda regarding results of research

Miami Dade County Public Schools, Campbell Drive Middle School, Miami, Florida 2004 – 2009 *Literacy (Language Arts, Reading, English) Teacher*

- Created and implemented lesson plans to promote literacy in struggling readers and achieve learning gains
- Worked in a *School Improvement Zone* school, requiring additional school hours, days, and professional development hours
- Worked with Special Education students in a regular classroom setting as an inclusion teacher

Grade-Level Team Leader

- Planned, actualized, and oversaw all grade-level activities, including fundraisers, fieldtrips, T-shirt design and sales, and such
- Devised and executed disciplinary measures for all students in the grade level
- Acted as a liaison between administrators and teachers in the grade level
- Conducted weekly team meetings to communicate team and school issues with teachers
- Created themed units, held collaborative planning sessions for all grade-level teachers, and organized teacher workshops

Drama Teacher/ Drama Club Sponsor

- Exposed economically disadvantaged students to fine arts, stirred interest, and encouraged participation
- Acted as director; producer; stage manager; sound engineer; and set, prop, and costume designer for student performances
- Planned fieldtrips to view live productions in local theatres

Miami Dade College, Kendall Campus, Miami, Florida 2004 – 2009 *Adult Education: Instructor of English for Speakers of Other Languages*

- Taught English to non-English speaking professional adults, including five different levels of grammar, reading, writing, conversation, workplace skills, and civics
- Developed and presented curriculum for the vocational English program
- Prepared students to pass a mandatory standardized state exam each semester

LANGUAGES

English, Spanish, basic study of Italian and Portuguese

ASSOCIATIONS

Lee County Bar Association; Lee County Association for Women Lawyers; Calusa Inn of Court; Fort Myers Beach Woman's Club *Past President /Social Committee Chair*; Friends of Lover's Key; Fort Myers Beach Nuisance Abatement Board, *Chair*; Fort Myers Beach Elementary PTO; Ad-Hoc Committee Member for the Rebuild of Beach School

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

This CONTRACT is between the _____, (hereinafter the “_____”), and the State of Florida, Division of Administrative Hearings (DOAH).

WHEREAS, Section 120.65, Florida Statutes, authorizes DOAH to provide Administrative Law Judges (ALJs) on a contract basis to any governmental entity;

WHEREAS, the _____ desires to use the services of DOAH’s ALJs to conduct hearings for any administrative matters for which ALJs may adjudicate administrative disputes; and

NOW, THEREFORE, the parties, for valuable consideration and the mutual promises between them, agree as follows:

1. Scope of Services. The foregoing Recitals are hereby incorporated herein as if fully restated. DOAH agrees to make ALJs available to the _____. The ALJs will be full-time judges employed by the State of Florida, Division of Administrative Hearings, and are experts in the adjudication of administrative disputes.
2. Compensation. The fiscal year 2003-2004 General Appropriation Act, Chapter 2003-397, Laws of Florida, requires DOAH to renegotiate its contracts for ALJ services annually so that the hourly rate charged is based on a total – cost recovery methodology. The rate has been determined to be \$200.00 per hour beginning October 1, 2023. DOAH will notify the _____ of the amended hourly rate on or about the first day of September of each year. That rate will become effective on the first day of October of that same year. The _____ agrees to compensate DOAH for each hour actually worked, and subsequently, at the hourly rate determined in accordance with the Florida Legislature’s directive. This rate will apply for ALJ services in preparing for hearings, traveling to hearings, conducting hearings, and preparing Recommended Orders.
3. Expenses. The _____ agrees to pay the actual travel expenses of the

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

assigned ALJ in the amount provided pursuant to Chapter 112, Florida Statutes. DOAH will submit invoices monthly and the _____ agrees to remit payment monthly in accordance with Chapter 218, Part VII, Florida Statutes. DOAH agrees to provide the _____ an itemized statement of the charges and costs in the invoice.

4. Contract Management. Megan Silver, Executive Director & Administrative Law Judge, and Patricia Kenyon, Operations Manager, will provide contract management services under this Contract for DOAH.
5. Term. This contract is for a term of one (1) year and will automatically renew for succeeding yearly periods one year from the date last signed. This contract may be amended from time to time by mutual agreement of the parties, and may be terminated by either party for the convenience of that party upon thirty (30) days' written notice.
6. Request for Services. To initiate a proceeding, the _____ shall send a letter to the Chief Judge, Division of Administrative Hearings, requesting the assignment of an ALJ and shall include with such request a copy of the relevant agency action letter, claim asserted and/or request for hearing, as well as any code provisions or other local procedure that governs the type of hearing requested. DOAH shall assign an ALJ promptly after receipt of the letter.
7. Effective Date. This Contract will become effective on the date the last signature is made.
8. Notices. All notices required or permitted by this Contract shall be in writing, and shall be deemed to have been duly given if mailed first-class, certified postage prepaid, addressed as follows:

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

To *The Entity*

To: DOAH

State of Florida, Division of Administrative Hearings

Attn: Patricia Kenyon, Operations Manager

1230 Apalachee Parkway

Tallahassee, FL 32399

850-488-9675

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

WHEREUPON, the parties have executed this Contract as follows:

<Insert Your Entity Signature Block>

<Insert Authorized Signature Name/Title>

Date

STATE OF FLORIDA, DIVISION
OF ADMINISTRATIVE HEARINGS

Megan S. Silver
Executive Director & Administrative Law Judge

Date

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

INDEPENDENT CONTRACTOR AGREEMENT TO PERFORM SPECIAL MAGISTRATE SERVICES

This Independent Contractor Agreement (the "Agreement") is effective October 1, 2021, between the Town of Fort Myers Beach, Florida herein referred to as the Town, and Myrnabelle Roche, Esq., herein referred to as Contractor.

RECITALS

1. On October 24, 2018, the Town Council has determined that the Contractor is duly qualified to, and has expertise to perform Special Magistrate services for Code Enforcement.
2. Contractor and the Town agree that it is to their mutual advantage to have Contractor to the Town as it pertains to the Town hearing code compliance enforcement cases and issuing findings of fact as delineated in Town ordinances and resolutions.

AGREEMENT

- A. **DESCRIPTION OF WORK:** The Contractor agrees to provide the Town with consulting services pertaining to Special Magistrate services. Contractor agrees to advise the Town on an "as needed" basis. Contractor's services shall be provided at such place and time and in a manner as mutually agreed upon by Contractor and the Town. Contractor will perform its services to the highest professional standards customarily accepted within the Contractor's industry or field. In the Contractor's performance of its services hereunder, the Contractor is not required to maintain any specified daily or weekly schedule, and is not required to meet any quotas. However, Contractor must ensure that he is available to provide consulting services to the Town promptly. Contractor is not required or invited to attend any meetings or functions for the Town's employees. Contractor may be invited to attend periodic meetings held to provide informational updates regarding code compliance. However, attendance at these meetings is not mandatory.

The services provided for by the Agreement shall be performed by Myrnabelle Roche, Esq.(Contractor). Contractor shall not have discretion to hire others at Contractor's expense to assist in completing services contemplated by this Agreement without the Town's written consent.

- B. **LICENSES AND CERTIFICATIONS:** Contractor ensures that he/she shall, at all times during the term of this Agreement, maintain any and all approvals, licenses, and/or certifications required to provide consulting services and shall furnish copies of such documents to the Town. The Contractor shall immediately notify the Town if any approvals, licenses, or certifications are restricted, revoked or limited in any way during the term of this Agreement. Contractor further agrees that at all times it will comply with any or all applicable laws, rules, regulations and/or ordinances when performing the services and duties contemplated under this Agreement.

C. **PAYMENT:** Contractor shall charge the Town (through the Town's billing process) for services performed pursuant to this Agreement. Contractor agrees to use independent discretion in providing consulting services to the Town. Contractor further expressly agrees that they will charge the Town \$190 per hour, with a 2-hour minimum, rounded up to the nearest quarter hour for their services for the duration of this Agreement:

- Maximum fee for case preparation per case \$95.00 (one half hour of hourly rate)
- Maximum fee for conducting case hearing, including continuances and any mitigation hearing per case \$190.00, with a 2-hour minimum
- Maximum fee to issue findings of facts per case \$95.00 (one half hour of hourly rate)
- External post hearing activities in defense of findings of facts \$47.50 (one quarter hour of hourly rate) per 15 minutes
- No additional fees or costs shall be permitted

Contractor shall submit invoices for services rendered to the Town as necessary. Upon receipt of a proper invoice, the Town will process payments according to the following schedule:

- Payment shall be issued pursuant to Chapter 218 of the Florida Statutes.
- Payments will reflect services, on a case-by-case basis, invoiced for the previous month.
- Discrepancies shall be reported in writing within 30 days of payment issuance date, or deemed to be waived by the parties to this agreement.

D. **USE OF EQUIPMENT:** Contractor shall be solely responsible for providing any other supplies or materials needed to perform the services set forth in this Agreement. The Town will not reimburse Contractor for any expenses that Contractor incurs pursuant to this Agreement. The Town will provide the venue and recording device(s) for the hearing.

E. **RELATIONSHIP OF PARTIES:** This Agreement creates an independent contractor-Town relationship. The Town will not supervise the work of the Contractor. The Town is interested only in the results achieved. Contractor is solely responsible for the manner and method by which it provides the services contemplated under this Agreement, and exercises exclusive discretion in this regard. Contractor is also solely responsible for the conduct and control of its employees, representatives or agents, and the work performed by those individuals. During the term of this Agreement, Contractor will report to the Town Manager or his designee, who will act as the liaison between Contractor and the Town. Contractor is not an agent of the Town for any purpose. Contractor is not entitled to any benefits that the Town provides its employees, specifically including, but not limited to, sick leave, vacation, workers' compensation or any other insurance coverage. Contractor shall be solely responsible for withholding and paying any or all Federal, State, and local taxes, Social Security payments, and any other applicable deductions, taxes, or payments, including, but not limited to, unemployment and other payroll taxes. This is not an exclusive agreement. Contractor is free to contract with other parties for similar services.

- F. **LIABILITY:** Contractor assumes all risk connected with the work performed pursuant to this Agreement. Contractor shall be fully and solely responsible for providing, at its own cost and expense, any or all equipment that is required in the performance of its duties hereunder. Contractor also accepts all responsibility for the condition of tools and equipment used in the performance of this Agreement provided by Contractor. Contractor does hereby absolutely release, waive, discharge, covenant not to sue, and agree to indemnify, defend and hold harmless the Town and its members, council, owners, officers, directors, employees, and agents, and subsidiary and affiliated companies or organizations, and their respective predecessors, successors, and assigns, from all liability to Contractor or its employees, representatives or agents, for any and all losses, expenses or damages, and any claim for damages on account of death, personal injuries or property damage sustained by Contractor or its employees, representatives or agents, or any claims by third parties arising out of the action or failure to act of Contractor or its employees, representatives or agents, while rendering services under this Agreement.
- G. **DURATION:** Either party may terminate this Agreement for any reason with 30 days written notice. The Town may terminate this Agreement immediately if Contractor breaches its obligations under this Agreement or engages in conduct which is immoral, illegal or which the Town deems to adversely affect the reputation of the Town. If not earlier terminated, the Agreement shall remain in force commencing on October 1, 2021, through September 30, 2022.
- H. **NO AUTHORITY TO BIND:** Contractor shall have no authority to contract for or legally bind the Town with respect to any matter, including but not limited to the subject matter of the Agreement.
- I. **CHOICE OF LAW AND JURY TRIAL WAIVER:** This Agreement and all related matters shall be governed by, construed, and enforced in accordance with the laws of the State of Florida. Contractor and the Town agree to waive any right to a trial by jury in any litigation over this Agreement or any supplement thereto, including any litigation arising out of Contractor's independent contractor status.
- J. **SURVIVAL:** All representations and other relevant provisions of this Agreement shall survive and thereby continue in full force and effect, notwithstanding any termination or expiration of this Agreement under paragraph G or otherwise.
- K. **ENTIRE AGREEMENT:** This Agreement constitutes the entire understanding and agreement of the parties, and shall not be altered, modified, or amended unless such alteration, modification, or amendment is set forth in writing and signed by the parties.
- L. **ATTORNEY'S FEES:** In the event that any of the parties institutes any action or proceeding against the other party (including such affiliates) relating to this Agreement, the prevailing party shall be entitled to reimbursement for all costs and expenses incurred in connection therewith, including payment of all reasonable attorney's fees and costs through all appellate levels.

TOWN:

By: _____

Roger T. Hernstadt, Town Manager

CONTRACTOR:

Contractor _____

MYRON B. FOSTER, JR. FOR
MAYOR LAW SA

Date Signed: _____

9/17/21

Date Signed: _____

9/14/21

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____

John R. Herin Jr., Town Attorney

1. **Requested Motion:**

Meeting Date: January 22, 2024

Permission to rent Bayside Park on Saturday's from 4:30 pm to 5:30 pm for the month of February 2024

Why the action is necessary:

ORD.20-17

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

ORD.20-17

4. **Submitter of Information:**

Frankie Kropacek, Operations & Compliance Director

5. **Background:**

The Faith Center has been utilizing the Mound House for services but would like to try Bayside Park, to see if they can attract more attendees. Dependent upon all approvals and insurance being received.

Attachments:

1. SE_240111_Saturday Services Bayside Park

Financial Impact:

No change to existing impact

6. **Alternative Action**

Deny request

7. **Management Recommendations:**

As directed by Town Council

8. **Recommended Approval:**

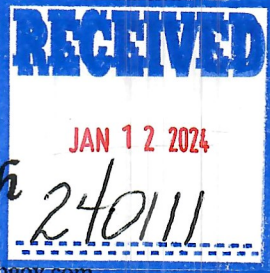
Patty Prevost, Code Supervisor/STR Coordinator
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/12/2024
Approved - 1/12/2024
Approved - 1/16/2024
Approved - 1/16/2024
Final Approval - 1/16/2024



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 Fax: (239) 765-0909 Email: Specialevents@fmbgov.com



Name of event	SATURDAY Service -		
Attach separate sheet of paper with detailed description of event			
Date(s) and times of event	4:30-5:30 Feb 3, 10 th , 17 th 24 th		
Address of event	Bayside Park		
Expected # of participants/attendees	25		
Sponsoring Organization	The Faith Center		
	17650 S. Tamiami Trail, Ste 212		
Organization address	Fort Myers, FL 33908		
Contact Person/Phone#	(cell) Pam 239-822-1839		
E-mail	pam@thefaithcenter.com		
Amplified Music	Y ☐	N ☒	500 Ft Notifications ☐ Copy of Letter ☐
Renting Town Property	Y ☒	N ☐	Renting Parking Spaces Y ☐ N ☐
How many Spaces?	How many hours		
Extension of Premises?	Y ☐	N ☒	ABT Form ☐ How many days? ☐ (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			
Printed Name			
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.			

* We have been meeting since
Sept 23 @ THE MOUND HOUSE.

September 27, 2021



FORT MYERS BEACH FIRE DEPARTMENT
100 VOORHIS STREET · FORT MYERS BEACH, FLORIDA 33931
MAILING ADDRESS: POST OFFICE BOX 2880 · FORT MYERS BEACH, FLORIDA 33932

Special Events Application and Guidebook

Event Type:

☒ Small Outdoor/Indoor Event	☐ Large Outdoor/Indoor Event	☐ Firework Display
Date of Application: 1/10/24		Date of Event: SATURDAYS Feb 3, 10, 17 & 24th
Location: Bayside Park		
Event Start Date/Time: SATS IN Feb 4:30		Event End Date/Time: Saturdays 5:30
Setup Date:	Setup Time: 4pm	Inspection Time: 6pm
Event Sponsor: The Faith Center		
Sponsor Contact: Pam Antonucci	Sponsor Phone #: 239-278-3638	Sponsor Email: pam@thefaithcenter.com
Anticipated Number of Attendees: 25	Anticipated Number of Event Workers: 4-5	
Will there be carnival or mechanical rides: NO	Number of Stages: EXISTING STAGE	
Total Number of Vendors: NONE	Total Number of Hot Food Vendors: NONE	
Number of Tents larger than 20 x 20: NO	Number of 10 x 10 Tents: NONE	

Every vendor with a booth will receive a fire inspection and is responsible for paying an inspection fee. Please list the contact information for the responsible party below.

Please Note: If the event sponsor elects not to pay the vendor's inspection fee, a list of vendors with full contact information must be provided to the Fort Myers Beach Fire Department. This information will include contact name, number, and e-mail. All inspection fees will be due at time of service. All fees must be paid prior to releasing any permit.

Event applications submitted less than thirty (30) days prior to the event will be subject to additional fees. An expedited review may be requested and will be based upon availability, additional fees will apply.

Applications shall include the following:

- A legible site plan to include proposed layout of the event; fire hydrant locations; fire/emergency access; and distances to any structures.
- A life safety evaluation may be required based on the size of the event in accordance with the fire code.
- All vendors should review FMBFD guidelines, on our website at www.FMBFire.org
- Failure to comply with requirements of the FMBFD may result in additional fees and/or shutdown of the vendor(s).

Pamela Antonucci		Administrative Use Only	
Submitting Party Name (Print)		Date Received:	
Pamela Antonucci		Received By:	
Submitting Party Name (Sign)		Fees Due:	Paid:
Date: 1/11/24		Forwarded for Review:	☐

Applicant to Complete:

Company managing trash removal: _____

No. of dumpsters: _____ **Type of dumpsters:** _____

Who is responsible for clean-up and payment: The Faith Center
members

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

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: _____

Approval: _____ **Date:** _____

FMB Environment Science: Tel (239)765-0202 Fax (239)765-0909

FMB Environmental Sciences remarks: _____

Approval: _____ **Date:** _____

September 27, 2021

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: _____

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: _____

Turtle Time approval: _____ **Date:** _____

September 27, 2021

FORT MYERS BEACH FIRE DEPT

17891 San Carlos Blvd – 3rd Floor, Fort Myers Beach, FL 33931

Tel (239) 590-4210

Fax (239) 463-6761

Fire Guards: (how many?) _____

Fee: _____

Flammable Vegetation: _____

First Aid Equipment: _____

Fire Extinguishing Equipment: _____

Special Arrangements: _____

Print Name

Approval Signature

Date

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

LEE COUNTY SHERIFF'S DEPT

15650 Pine Ridge Road, Fort Myers, FL 33908

Tel (239)477-1830 Fax (239)432-0268

Parking: _____

Deputies (how many?) _____

Traffic Control: _____

Fees: _____

Special Arrangements: _____

Print Name

Approval Signature

Date

September 27, 2021

1. **Requested Motion:**

Meeting Date: January 22, 2024

Approve the Town entering into the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502, Authorizing the Mayor to legally execute and bind the Town to the terms of this Agreement.

Why the action is necessary:

Hurricane Ian devastated Fort Myers Beach, eroding over 220,000 cubic yards of sand from the Beach.

What the action accomplishes:

The FDEM Grant will fund the design, engineering, monitoring, purchase, delivery and placement of beach compatible sand to renourish the Beach. The beach recovery work consists of filling in scour holes and filling in beach public access areas that got eroded out.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

This is a one-time grant Agreement, subject to the availability of legislatively appropriated funds.

As documented by the Hurricane Ian and Nicole Grant Recovery Program, \$350 million dollars were appropriated to help local governments mitigate local and county revenue losses and operating deficits; make infrastructure repairs and replacements including road and sewer and water facilities; conduct beach nourishment; and complete debris removal. Funding can be requested by local governments, independent special districts, and school boards, including charter schools.

The Town of Fort Myers Beach sustained significant damage to their beaches due to major Hurricane Ian. The Town of Fort Myers Beach is awarded \$8,000,000 for their Beach Renourishment Project **excluding Cat-G project areas**. The Town will place and grade beach compatible sand along the central and south segments of Estero Island which was lost due to major Hurricane Ian.

The category G area is the North Segment from Bowditch Point south to Crescent Park.

Attachments:

1. D1502 Town of Fort Myers Beach Agreement

Financial Impact:

Eligible costs include all eligible costs under State Department of Environmental Protection Agreement Number 23LE4 excluding Cat-G project areas. Eligible costs include engineering reports, permitting, inspections, required environmental studies, design and construction costs for beach management, the creation of sand dunes, filling scours, and dredging along Estero Island.

There is no project cost share required from the Town.

6. **Alternative Action**

Do not approve the Town entering into the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502.

7. **Management Recommendations:**

Approve the Town entering into the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502

8. **Recommended Approval:**

Chadd Chustz, Environmental Services
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/16/2024
Approved - 1/16/2024
Approved - 1/17/2024
Approved - 1/17/2024
Final Approval - 1/17/2024

STATE-FUNDED LAP GRANT AGREEMENT

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and **Town of Fort Myers Beach**, Florida (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

- A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and
- B. The Division has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and
- C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Recipient agree to the following:

(1) LAWS, RULES, REGULATIONS, AND POLICIES

- a. As required by section 215.971(1), Florida Statutes, this Agreement includes:
 - i. A provision specifying a scope of work that clearly establishes the tasks that the Recipient is required to perform.
 - ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.
 - iii. A provision specifying the financial consequences that apply if the Recipient fails to perform the minimum level of service required by the agreement.
 - iv. A provision specifying that the Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.
 - v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.
 - vi. A provision specifying that any funds paid in excess of the amount to which the Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.
- b. In addition to the foregoing, the Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(2) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Recipient performance; and,
- ii. Review and document all deliverables for which the Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Berenice Hernandez Avila
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399
Telephone: 850-815-4206
Email: Berenice.Hernandez@em.myflorida.com

c. The name and address of the representative of the Recipient responsible for the administration of this Agreement is:

Cheri Russ
2525 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: cheri.russ@fmbgov.com

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(3) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(4) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(5) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(6) SCOPE OF WORK

The Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(7) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end on **March 31, 2026** unless terminated earlier in accordance with the provisions of Paragraph (16) TERMINATION. In accordance with section 215.971(1)(d), Florida Statutes, the Recipient may expend funds authorized by this Agreement “only for allowable costs resulting from obligations incurred during” the period of agreement.

(8) **FUNDING**

a. This is a one-time grant Agreement, subject to the availability of legislatively appropriated funds.

b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either chapter 216, Florida Statutes, or the Florida Constitution.

c. The Division will grant funds to the Recipient only for allowable costs that will be incurred by the Recipient in the successful completion of each deliverable or for loss of revenue.

d. The Division will review any request for grant funding by comparing the documentation provided by the Recipient against a performance measure, outlined in Attachment A, which clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

e. The Division's Grant Manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the period of agreement and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Recipient.

f. For the purposes of this Agreement, the term “improper payment” means or includes:

- i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
- ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

g. All funds shall be placed in an interest-bearing account and the interest shall be returned to the Division quarterly until the completion of all deliverables. The interest shall be returned to the Division's General Revenue Fund.

(9) RECORDS

a. As a condition of receiving state financial assistance, and as required by sections 20.055(6)(c) and 215.97(5)(b), Florida Statutes, the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Recipient's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "Recipient" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.

b. The Recipient shall maintain all records related to this Agreement for the period of time specified in the appropriate retention schedule published by the Florida Department of State. Information regarding retention schedules can be obtained at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

c. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) all meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Recipient based upon the funds provided under this Agreement, the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

d. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to

perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

e. The Recipient shall maintain all records for the Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

IF THE RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(10) AUDITS

a. In accounting for the receipt and expenditure of funds under this Agreement, the Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.49, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

b. When conducting an audit of the Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

c. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Recipient of such non-compliance.

d. The Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed

under chapter 473.” The independent auditor shall state that the audit complied with the applicable provisions noted above. The audits must be received by the Division no later than nine (9) months from the end of the Recipient’s fiscal year.

e. The Recipient shall send copies of reporting packages required under this paragraph directly to each of the following:

i. The Division of Emergency Management

DEMSingle_Audit@em.myflorida.com

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

ii. The Auditor General

Room 401, Claude Pepper Building

111 West Madison Street

Tallahassee, Florida 32399-1450

(11) REPORTS

a. The Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Recipient and all Sub-Recipients and subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than thirty (30) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31.

c. The close-out report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever occurs first.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, the Division may withhold further payments or FEMA Public Assistance funds until they are completed or may take other action as stated in Paragraph (15) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Recipient shall provide additional program updates or information that may be required by the Division.

f. The Recipient shall obtain engineering inspection reports for any new construction or installation. The Recipient shall furnish the reports to the Division within fifteen (15) days of receipt of the completed report.

(12) MONITORING

a. The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.

b. In addition to reviews of audits conducted in accordance with paragraph (10) AUDITS above, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, or other procedures. The Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by the Division to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Recipient throughout the period of agreement to ensure timely completion of all tasks.

(13) LIABILITY

a. Unless Recipient is a state agency or subdivision, as defined in section 768.28, Florida Statutes, the Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performed under this Agreement. For purposes of this Agreement, Recipient agrees that it is not an employee or agent of the Division but is an independent contractor.

b. Any Recipient which is a state agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of this agreement.

(14) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall, if the Division elects, terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (15) REMEDIES. However, the Division may make

payments or partial payments, if applicable, after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment:

a. If any warranty or representation made by the Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. If material adverse changes occur in the financial condition of the Recipient at any time during the period of agreement, and the Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division.

c. If any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information;

d. If the Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(15) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days written notice to the Recipient and upon the Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

a. Terminate this Agreement, provided that the Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (2) CONTACT herein;

b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;

c. Withhold or suspend payment of all or any part of a request for payment;

d. Require that the Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

e. Exercise any corrective or remedial actions, to include but not be limited to:

i. request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

ii. issue a written warning to advise that more serious measures may be taken if the situation is not corrected,

iii. advise the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

iv. require the Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;

f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Recipient.

(16) TERMINATION.

a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under chapter 119, Florida Statutes, as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Recipient with thirty (30) calendar days prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of this Agreement.

d. In the event this Agreement is terminated, the Recipient will not incur new obligations for the terminated portion of this Agreement after the Recipient has received the notification of termination. The Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Recipient shall not be relieved of liability to the Division because of any breach of this Agreement by the Recipient. The Division may, to the extent authorized by law, withhold payments to the Recipient for the purpose of set-off until the exact amount of damages due the Division from the Recipient is determined.

(17) SUBCONTRACTS

If the Recipient subcontracts any of the work required under this Agreement, a copy of the unsigned subcontract must be forwarded to the Division for review and approval before it is executed by the Recipient. The Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Recipient shall document in the quarterly report the subcontractor's progress in performing its work under this Agreement.

For each subcontract, the Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in section 288.703, Florida Statutes.

(18) ATTACHMENTS

a. All attachments to this Agreement are incorporated as if set out fully.

b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

c. This Agreement has the following attachments:

Exhibit 1 - Funding Sources

Attachment A – Proposed Budget and Scope of Work

Attachment B – Program Statutes and Regulations

Attachment C – Statement of Assurances

Attachment D – Warranties and Representations

Attachment E – Certification Regarding Debarment

Attachment F – Foreign Country of Concern Affidavit

(19) PAYMENTS

a. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Recipient's quarterly reporting as referenced in paragraph (11) REPORTS of this Agreement.

b. If the Recipient is a county or municipality that is a rural community or rural area of opportunity as those terms are defined in section 288.0656(2), Florida Statutes, the Division may issue payment of submitted invoices for verified and eligible performance that has been completed in accordance with the terms and conditions set forth in this Agreement to the extent that federal or state law, rule, or other regulation allows such payments. The Recipient may elect in writing to exercise this provision as long as the Recipient is a county or municipality which is a rural community or rural area of opportunity, as defined in section 288.0656(2), Florida Statutes, and demonstrates financial hardship. A county or municipality located within a financially constrained county, as defined in section 288.67(1), Florida Statutes, is deemed to have demonstrated a financial hardship for the purposes of this provision.

c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under paragraph 8 of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Recipient shall submit its closeout report within thirty (30) days of completion of the last deliverable.

(20) REPAYMENTS

All refunds, repayments, or interest due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management," and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(21) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials is incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty (30) days written notice to the Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

e. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

f. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a

contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

g. Any Recipient which is not a local government or state agency, and which receives funds under this Agreement from the state government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (21)(g)(ii) of this certification; and

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

If the Recipient is unable to certify to any of the statements in this certification, then the Recipient shall attach an explanation to this Agreement.

In addition, the Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" (Attachment E) for each intended subcontractor that Recipient plans to fund under this Agreement. The form must be received by the Division before the Recipient enters into a contract with any subcontractor.

h. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Florida Statutes, or the Florida Constitution.

i. All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

j. Use of grant funds for travel is not authorized.

k. The Division reserves the right to unilaterally cancel this Agreement if the Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Recipient created or received under this Agreement.

l. If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

m. The State of Florida will not intentionally award publicly funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

n. The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

o. All expenditures of state financial assistance shall be in compliance with the laws, rules and regulations applicable to expenditures of State funds, including but not limited to, the Reference Guide for State Expenditures.

p. This Agreement may be charged only with allowable costs resulting from obligations that will be incurred during the period of agreement.

q. Any balances of unobligated cash that have been advanced or paid that are not authorized to be retained for direct program costs in a subsequent period must be refunded to the State.

r. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least five (5) years from the date of purchase or the completion of the improvements or as further required by law.

s. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

t. The Recipient shall attest in Attachment F of this agreement, it is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern pursuant to Section 287.138, Florida Statutes.

(22) LOBBYING PROHIBITION

a. Section 216.347, Florida Statutes, prohibits “any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.”

b. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(23) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA. ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE RECIPIENT TO THE STATE OF FLORIDA.

a. If the Recipient has a pre-existing patent or copyright, the Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless this Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.

c. Within thirty (30) days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement that he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property that is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (b), have the right to all patents and copyrights that accrue during performance of this Agreement.

d. If the Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Recipient shall become the sole property of the Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked

work products, developed solely by the Recipient, under this Agreement, for Florida government purposes.

(24) LEGAL AUTHORIZATION.

The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

(25) ASSURANCES.

The Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RECIPIENT: Town of Fort Myers Beach, Florida

By: _____

Name and Title: _____

Date: _____

FID# _____

STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

By: _____

Name and Title: **Kevin Guthrie, Director, or Ian Guidicelli, Response Bureau Chief, as Authorized Representative.**

Date: _____

EXHIBIT – 1

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO S SB 2500 (2023), ITEM 2676A:

State Project -

State awarding agency **Florida Division of Emergency Management**

Amount of State Funding: **\$350,000,000**

2676A LUMP SUM
HURRICANE RECOVERY GRANT PROGRAM
FROM GENERAL REVENUE FUND 350,000,000

Funds in Specific Appropriation 2676A are provided for hurricane repair and recovery related to projects within counties designated in the Federal Emergency Management Agency disaster declarations for Hurricanes Ian and Nicole. The Executive Office of the Governor, Division of Emergency Management is authorized to request budget amendments up to \$350,000,000 requesting release of funds pursuant to chapter 216, Florida Statutes, to provide resources to fund gaps in: mitigation of local and county revenue losses and operating deficits; infrastructure repair and replacement, including road, sewer, and water facilities; beach renourishment; and debris removal. The division is authorized to approve requests for resources by local governments, independent special districts, and school boards, including charter schools. A local government may submit a request for resources to administer infrastructure repair or beach renourishment grants within the jurisdiction of the local government, provided that the grant program requires matching funds by grantees of at least 50 percent of project costs. Requests for the release of funds shall include certification that includes, but is not limited to:

1. That funding requested by the local government, independent special district, and school board, including a charter school, is necessary to maintain services or infrastructure essential to support health, safety, and welfare functions, and to reimburse the local government, independent special district, school board, or charter school for unanticipated expenses related to responding to Hurricane Ian or Nicole or for the loss of revenues related to the impact of Hurricane Ian or Nicole.

2. That insufficient state funds, federal funds, private funds, or insurance proceeds are available and that should sufficient funds subsequently become available to meet the need of the original budget amendment, the local government or entity has agreed to reimburse the state in the amount of such funds subsequently received.

The division shall coordinate with other state agencies and the local government or entity to ensure there is no duplication of benefits between these funds and other funding sources such as insurance proceeds and any other federal or state programs, including Public Assistance requests to the Federal Emergency Management Agency and Community Development Block Grant Disaster Recovery grants. Requests approved by the division for funding that are for projects ineligible for any other funding sources, whether federal or state programs, may be provided as grants. Requests approved by the division for funding that are for projects that are eligible for other funding sources shall be provided as loans which shall be repaid up to the amount of funds subsequently received. Any funds reimbursed to the state shall be deposited in the General Revenue Fund.

ATTACHMENT A

Proposed Budget and Scope of Work

I. PROPOSED BUDGET

Project	Anticipated Expenditure Amount
Beach Renourishment	\$8,000,000.00
Legislative Appropriation Funds	\$8,000,000.00
Total Expenditures	\$8,000,000.00

II. BACKGROUND

As documented by the Hurricane Ian and Nicole Grant Recovery Program, \$350 million dollars were appropriated to help local governments mitigate local and county revenue losses and operating deficits; make infrastructure repairs and replacements including road and sewer and water facilities; conduct beach nourishment; and complete debris removal. Funding can be requested by local governments, independent special districts, and school boards, including charter schools.

The Town of Fort Myers Beach sustained significant damage to their beaches due to major Hurricane Ian. The Town of Fort Myers Beach is awarded \$8,000,000 for their Beach Renourishment Project excluding Cat-G project areas. They will place and grade beach compatible sand along the central and south segments of Estero Island which was lost due to major Hurricane Ian.

Below is the project that will be funded under this funding agreement:

Beach Renourishment:

The Town of Fort Myers Beach seeks to contract with a qualified contractor to purchase, transport, place, and grade beach compatible sand along segments of Estero Island, Fort Myers Beach, FL. The Town of Fort Myers Beach will contract professional services for the design, engineering, monitoring, environmental and willing costs associated with the beach renourishment. Funds will be used to dredge sand to place on beach for beach restoration for damage caused by major Hurricane Ian. Additionally, a dune will be built along the central and south segments of Estero Island where the FEMA Cat-B project Emergency Berm was created from 182S-210. The Town also experienced additional sand loss due to major Hurricane Ian along Estero Island, the mitigation work consists of filling in scour holes and filling in beach public access areas that got eroded out. Cat-G project areas will not be funded under this agreement.

III. SCOPE OF WORK

- A. Funds have been allocated to the Recipient for the Beach Renourishment Project on Estero Island, Florida. Funds shall be utilized in accordance with all local, state, and federal regulations.
- B. Eligible costs include all eligible costs under State Department of Environmental Protection Agreement Number 23LE4 excluding Cat-G project areas. Eligible costs include engineering reports, permitting, inspections, required environmental studies, design and construction costs for beach management, the creation of sand dunes, filling scours, and dredging along Estero Island.
- C. The project's measurable outcome is Estero Island Beach Restoration to satisfy Florida Department of Environmental Protection Agreement Number 23LE4 excluding Cat-G project areas.
- D. The Recipient shall provide an initial timeline. Table SW-1, "Initial Timeline and Estimated Allocation Schedule" or other similar instrument as approved by the Division may be used.

IV. TASK PRODUCTS

- A. Per Scope-of-Work Item III.D, Recipient shall prepare an initial timeline with key milestone activities/tasks schedule, including estimated start and end dates for each activity. Table SW-1 may be used to meet this deliverable.
- B. The Recipient shall provide the Division with copies of before photographs to document site conditions, site work progress, and completed site work.
- C. The Recipient shall provide the Division with the procurement documents, if the Recipient went out to bid for the projects listed and receipts for all purchases.
- D. The Recipient shall provide the Division with copies of pertinent site work regulatory reviews and permits for all projects under this agreement.
- E. The Recipient shall provide the Division with copies of all task products submitted to the Florida Department of Environmental Protection Agreement Number 23LE4.
- F. The Recipient shall provide the Division with copies of bid-ready construction documents and specifications for review and comment by the Division as applicable for all projects under this agreement. The site work documents shall be signed by the applicable registered or licensed design professional(s) of record.

- G. The Recipient shall provide the Division with copies of as-built documents for review by the Division as applicable for all projects under this agreement. The site work documents shall be signed by the applicable registered or licensed design professional(s) of record.
- H. The Recipient shall provide a completion report. The completion report shall demonstrate that the project meets the requirements for the projects.

V. FINANCIAL CONSEQUENCES

If Recipient fails to comply with any term of the grant, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1. Temporarily withhold cash payments pending correction of the deficiency by the recipient;
- 2. Disallow all or part of the cost of the activity or action not in compliance;
- 3. Withhold further funding; or,
- 4. Take other remedies that may be legally available.

VI. SCHEDULE OF WORK

- A. No later than 30 days after the agreement's execution date, the Recipient shall provide the Division with Task Product IV.A for review and approval. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial or reduction of funds at the sole discretion of the Division.
- B. By April 30, 2024, and at least on a quarterly basis thereafter, Recipient shall report on progress in relation to the initial timeline and submit an invoice for work accomplished in accordance with the Division approved cost allocation table referenced in Task Product IV.A.
- C. By mutually agreed upon date(s), the Recipient shall provide the Division with Task Products IV.B through F for review and approval. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial or reduction of funds at the sole discretion of the Division.
- D. By March 31, 2026, the Recipient shall provide a copy of the certificate of occupancy or completion or other appropriate written acceptance of completed work, or certification letter from the civil engineer showing that work meets specification of design, close-out documentation and final payment invoice.

Table SW-1. Initial Timeline and Estimated Allocation Schedule**Project Name(s):**
Beach Renourishment

PROJECT PHASE	Start Date	End Date	LAP Funds (FY 2023-2024)
Board Contract Approval			
Architectural & Engineering Services Firm Selection			
Site Survey and Soil Testing			
Spatial Needs Assessment			
Preliminary Design, 100% complete			
Permits			
Regulatory Review			
Bid Document(s) Development & Award			
Notice to Proceed/Mobilization			
Construction Project Management & Special Inspections			
Construction 25% Complete			
Construction 50% Complete			
Construction 100% Complete			
Sub-Totals		\$8,000,000	
TOTAL Estimated Project Cost			

A/E - Architectural and Engineering; DEM – Division of Emergency Management; FY - Fiscal Year

Attachment B
Program Statutes and Regulations

Section 215.422, Florida Statutes	Payments, warrants, and invoices; processing time limits; dispute limitation; agency or judicial branch compliance
Section 215.97, Florida Statutes	Florida Single Audit Act
Section 215.971, Florida Statutes	Agreements funded with federal and state assistance
Section 216.347, Florida Statutes	Disbursement of grant and aids appropriations for lobbying prohibited
Section 216.3475, Florida Statutes	Maximum rate of payment for services funded under General Appropriations Act or awarded on a noncompetitive basis
Section 287.056, Florida Statutes	Purchases from purchasing agreement and state term contract
Section 287.057, Florida Statutes	Procurement of commodities or contractual services
CFO MEMORANDUM NO. 04 (2005-06)	Compliance Requirements for Agreements
Section 553.844, Florida Statutes	Requirements for Roofs and Opening Protection
SB 2500 (2023), ITEM 2676A	Requirements for Hurricane Recovery Grant Program

Attachment C
Statement of Assurances

To the extent the following provisions apply to this Agreement, the Recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work be performed in connection with the program assisted under this Agreement. The Recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Recipient. Any cost incurred after a notice of suspension or termination is received by the Recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed workweek.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Recipient, this assurance shall obligate the Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or

structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
- (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/government/grant/sfha_conditions.shtm

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (1) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-l, et seq.) by:

- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and
- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the "Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)" which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(£), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800.16 (l)(1), the Federal Emergency Management Agency (FEMA) may require the Recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards), the Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines) (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the Standards, the Recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the Guidelines and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties". The Recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Recipient to implement the treatment plan. If either the Council or the SHPO object, Recipient shall not proceed with the project until the objection is resolved.

- (6) The Recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect

a known historic property in an unanticipated manner. The Recipient acknowledges that FEMA may require the Recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may be eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Recipient further acknowledges that FEMA may require the Recipient to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Recipient also acknowledges that FEMA will require, and the Recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHP A, the Recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead-based paint in construction of rehabilitation or residential structures;
- (q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C. 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;
- (t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;
- (u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626
- (v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;
- (x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;
- (y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;

- (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
- (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;
- (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
- (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
 - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
 - (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
 - (5) Provide supervision over contractors or employees employed by the Recipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - (6) Leave the demolished site clean, level and free of debris.

- (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
- (8) Obtain all required permits.
- (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
- (10) Comply with 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 (Public Law 94-163).
- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

Attachment D
Warranties and Representations

Financial Management

Recipient's financial management system must include the following:

- (1) Accurate, current and complete disclosure of the financial results of this project or program
- (2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- (3) Effective control over and accountability for all funds, property and other assets. Recipient shall safeguard all assets and assure that they are used solely for authorized purposes.
- (4) Comparison of expenditures with budget amounts for each Request For Payment. Whenever appropriate, financial information should be related to performance and unit cost data.
- (5) Written procedures to determine whether costs are allowed and reasonable under the provisions of the applicable OMB cost principles and the terms and conditions of this Agreement.
- (6) Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions shall be done in a manner to provide open and free competition. The Recipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure excellent contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected when it is in the Recipient's interest to do so.

Codes of Conduct.

The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by public grant funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct shall provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the Recipient.

Business Hours

The Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from _____

Licensing and Permitting

All subcontractors or employees hired by the Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Recipient.

Attachment E

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Subcontractor Covered Transactions

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

SUBCONTRACTOR:

By: _____
Signature

Recipient's Name

Name and Title

DEM Contract Number

Street Address

Project Number

City, State, Zip

Date

ATTACHMENT F
FOREIGN COUNTRY OF CONCERN AFFIDAVIT –
PERSONAL IDENTIFYING INFORMATION CONTRACT

Section 287.138, Florida Statutes, prohibits a Florida “Governmental entity”¹ from entering into or extending contracts with any other entity whereby such a contract, or extension thereof, could grant the other entity access to an individual’s personal identifying information if that entity is associated with a “Foreign Country of Concern.”² Specifically, section 287.138(2), Florida Statutes, prohibits such contracts with any entity that is owned by the government of a Foreign Country of Concern, any entity in which the government of a Foreign Country of Concern has a “controlling interest,”³ and any entity organized under the laws of or which has its principal place of business in a Foreign Country of Concern.

As the person authorized to sign on behalf of Recipient, I hereby attest that the company identified below in the section entitled “Recipient” is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern.

I understand that pursuant to section 287.138, Florida Statutes, I am submitting this affidavit under penalty of perjury.

Recipient Name: _____

Recipient FEIN: _____

Recipient’s Authorized Representative Name and Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

Email Address: _____

Certified By: _____

AUTHORIZED SIGNATURE

Print Name and Title: _____

Date: _____

¹ As defined in Section 287.138 (1)(d), Florida Statutes.

² As defined in Section 287.138 (1)(c), Florida Statutes.

³ As defined in Section 287.138 (1)(a), Florida Statutes.

1. **Requested Motion:**

Meeting Date: January 22, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS, FLORIDA, ACCEPTING EARTH TECH ENTERPRISES INC. AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER TO ITB-24-02-EN "ESTERO ISLAND BEACH SAND TRUCK HAUL PROJECT", APPROVING AN AGREEMENT BETWEEN THE TOWN AND EARTH TECH ENTERPRISES INC. FOR BEACH SAND WORK IN THE AMOUNT OF \$2,698,000.00; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT SUBJECT TO FINAL LEGAL SIGN-OFF, AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Hurricane Ian devastated Fort Myers Beach eroding over 220,000 Cubic Yards of sand from the beach. The Estero Island Beach Sand Truck Haul Project will replace sand lost due to Hurricane Ian

What the action accomplishes:

Authorizes Beach Sand Work to replace sand eroded from the Beach by Hurricane Ian.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Services

5. **Background:**

In 2022, Hurricane Ian devastated Fort Myers Beach and eroded approximately 220,000 cubic yards of sand from the beaches of Estero Island. The Town applied to FEMA for Category B public assistance to build a berm on the "natural beach" from Margaritaville Resort (R-182) to Island's End Condo (R-210). This project is complete, adding approximately 101,500 cubic yards of sand to the beach in the berm template. In addition, the Town applied for Category G public assistance to replace the 56,845 CY of sand eroded from the North Segment.

The FEMA Category B and G projects replace approximately 157,000 cubic yards of sand eroded by Hurricane Ian. The Estero Island Beach Sand Truck Haul Project will go towards recovering the remainder of the beach sand.

Attachments:

1. 24-17, Estero Island Beach Sand Truck Haul Project
2. 23303 EI Truck Haul Bid Rec20240111
3. Estero Island Truck Haul Contract Plans 20231027
4. FMB Construction Contract

Financial Impact:

Project be 100% funded by Florida Department of Emergency Management Grant.

6. **Alternative Action**

Do not accept the Earth Tech Enterprises Bid and re-bid the project.

7. **Management Recommendations:**

Accept the Earth Tech Enterprises Bid, Approve the Agreement between the Town and Earth

Tech Enterprises for Beach Work, Authorize the Town Manager to Execute the Agreement, Expend Budgeted Funds, and Provide for an Effective Date subject to final legal approval of Construction Contract.

8. **Recommended Approval:**

Chadd Chustz, Environmental Services
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/16/2024
Approved - 1/17/2024
Approved - 1/17/2024
Approved - 1/17/2024
Final Approval - 1/17/2024

RESOLUTION NUMBER 24-17

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS, FLORIDA, ACCEPTING EARTH TECH ENTERPRISES INC. AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER TO ITB-24-02-EN "ESTERO ISLAND BEACH SAND TRUCK HAUL PROJECT;" APPROVING AN AGREEMENT BETWEEN THE TOWN AND EARTH TECH ENTERPRISES INC. FOR BEACH SAND WORK; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT, AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING 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 of Fort Myers Beach is seeking to maintain and restore the beach; and

WHEREAS, the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502 will fund the Town of Fort Myers Beach to contract with a qualified contractor to purchase, transport, place, and grade beach compatible sand along segments of Estero Island, Fort Myers Beach, FL, dredge sand to place on beach for beach restoration for damage caused by major Hurricane Ian, and construct a dune to be built along the central and south segments of Estero Island where the FEMA Cat-B project Emergency Berm was created from R-182S to R-210, and to fill in scour holes and filling in beach public access areas that got eroded out;

WHEREAS, the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502 will fund the Town of Fort Myers Beach to contract professional services for the design, engineering, monitoring, environmental and willing costs associated with the beach renourishment;

WHEREAS, the lowest bid amount of \$2,698,000.00 is eligible for reimbursement funding from the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502; and

WHEREAS, pursuant to a competitive procurement process in compliance with State Law and Town Code – ITB-24-02-EN "Estero Island Beach Sand Truck Haul Project," The Town and the responsive firm will enter into a construction contract agreement for Beach Sand Truck Haul Work ("Agreement"), a copy of which is attached as Exhibit "A"; and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested agreement between Earth Tech Enterprises Inc. and the Town.

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

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

Section 2. The Town Council hereby approves the agreement between the Town and Earth Tech Enterprises for Beach Sand Work. A copy of the agreement is attached hereto as Attachment "A".

Section 3. The Town Manager is hereby authorized to execute the agreement attached hereto as Attachment "A", and expend budgeted funds on behalf of the Town.

Section 4. This resolution shall take effect immediately upon adoption.

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

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

ADOPTED this 22nd day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2024.



Coastal and Marine Engineering
Environmental and Geological Services
Land and Marine Survey and Mapping
Website: www.coastalengineering.com

January 11, 2024

Mr. Chadd Chustz
Environmental Project Manager
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL. 33931

**Re: Estero Island Beach Sand Truck Haul Project
Bid Review Summary, # ITB-24-02-EN
CEC File No. 23.303**

Dear Chadd:

Pursuant to the Town's request and within our contracted scope, CEC reviewed the apparent low bid. This bid was submitted by Earth Tech Enterprises, Inc. and our review was to determine if they meet the requirements for the above referenced Project based on the criteria within the Bid Documents. As such, CEC reviewed the submitted bid forms and attachments which included the Contractor Qualification Questionnaire, references, and resumes.

Earth Tech Enterprises has successfully completed multiple beach nourishment projects via truck haul for municipal clients including 2023 Collier County Emergency Berm, 2020-2021 Collier County Beach Renourishment, 2020 Lynn Hall Beach Park Sand Renourishment, and 2019 Park Shore Beach Renourishment; as well as multiple hurricane recovery and coastal structure projects that included beach nourishment components.

Our recommendation for the contract award is to Earth Tech Enterprises.

We appreciate the opportunity to be of service. If you have any questions, please do not hesitate to call me at (239) 643-2324, extension 126 or via email at mpoff@cecifl.com.

Respectfully submitted,
COASTAL ENGINEERING CONSULTANTS, INC.

A handwritten signature in blue ink that reads "Michael T. Poff".

Michael T. Poff, P.E.
President

ESTERO ISLAND TRUCK HAUL CONTRACT PLANS

PREPARED FOR:
TOWN OF FORT MYERS BEACH

SHEET INDEX

1. COVER SHEET
2. SHEET INDEX
3. BEACH ACCESS 20 COCONUT DR
4. BEACH ACCESS 21 HERCULES DR
5. BEACH ACCESS 22 CONNECTICUT ST
6. BEACH ACCESS 24 POMPANO ST
7. BEACH ACCESS 27 MANGO ST
8. BEACH ACCESS 30 PALM AVE
9. BEACH ACCESS 32 AVENUE E
10. BEACH ACCESS 33 ALVA DR
11. BEACH ACCESS 34 AVENUE C
12. EMERGENCY BERM AND SCOUR FILL PLAN VIEW AND CROSS SECTIONS
13. EMERGENCY BERM AND SCOUR FILL CROSS SECTIONS
14. EMERGENCY BERM AND SCOUR FILL CROSS SECTIONS



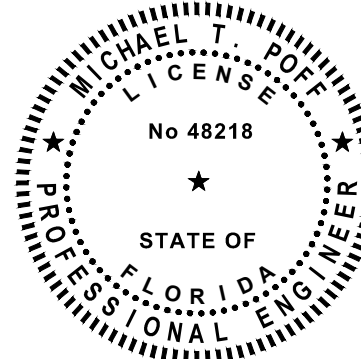
NOTES

1. BEACH ACCESS SURVEY COMPLETED BY COASTAL ENGINEERING CONSULTANTS (CEC), INC. 7/25/2023. EMERGENCY BERM CONSTRUCTION SURVEY COMPLETED BY MACGILLIVRAY & COMPANY, 8/24/2023.
2. AERIAL PHOTOGRAPHY OBTAINED FROM THE LEE COUNTY GIS WEBSITE, DATED 2023.
3. BEACH ACCESS RIGHT-OF-WAY LINES WERE OBTAINED FROM GIS FILES NAMED "FMB_BeachAccess", PROVIDED BY THE TOWN OF FORT MYERS BEACH ON 11/30/2015.
4. EROSION CONTROL LINE (ECL) RECORDED IN THE PLAT BOOK 70, PAGE 25, LEE COUNTY, FLORIDA.
5. PLANE COORDINATES ARE BASED ON THE TRANSVERSE MERCATOR PROJECTION FOR THE WEST ZONE OF FLORIDA AND REFERENCED TO THE NORTH AMERICAN DATUM OF 1983 (NAD 83).
6. ELEVATIONS SHOWN HEREON ARE IN FEET AND TENTHS AND REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88), BENCHMARKS USED:

ACOE ESTERO 101 2015 JAX DIST, PID NO. BBDV83
NORTHING: 764,427.976'
EASTING: 681,535.064'
ELEVATION: 4.73' NAVD 1988

FDEP 1283-A25-2
NORTHING: 770,456.326'
EASTING: 670,763.371'
ELEVATION: 3.37' NAVD 1988

USGS Z246 1965, PID NO. AD1355
NORTHING: 752,530.14'
EASTING: 696,072.78'
ELEVATION: 15.41' NAVD 1988
7. MEAN HIGH WATER ELEVATION OF +0.3 FEET NAVD88 IS BASED ON INFORMATION FROM THE FDEP AND TIDE STATION ID NUMBER 8727366.
8. INFORMATION SHOWN HEREON REFLECTS CONDITIONS AS THEY EXISTED ON THE SURVEY DATES SHOWN AND CAN ONLY BE CONSIDERED INDICATIVE OF CONDITIONS AT THAT TIME.



COASTAL ENGINEERING CONSULTANTS INC.
Serving Coastal Communities Since 1977
28421 BONITA CROSSINGS BLVD
BONITA SPRINGS, FLORIDA 34135

COASTAL & MARINE ENGINEERING
ENVIRONMENTAL & GEOLOGICAL SERVICES
SURVEY AND MAPPING
ENGINEERING: CA 2464
SURVEYING: LB 2464

PHONE: (239)643-2324
FAX: (239)643-1143
www.coastaleng.com
E-Mail: info@cecil.com

CLIENT: TOWN OF FORT MYERS BEACH

TITLE:

BEACH ACCESS
COVER SHEET

DATE: 10/20/2023

DRAWN: SDB

CHECKED: MTP

SEC. TWP. RING.

ACAD NO. 22303-Access Fill.dwg

REF. NO. 22.303

SCALE: AS NOTED

F.B.

PG.

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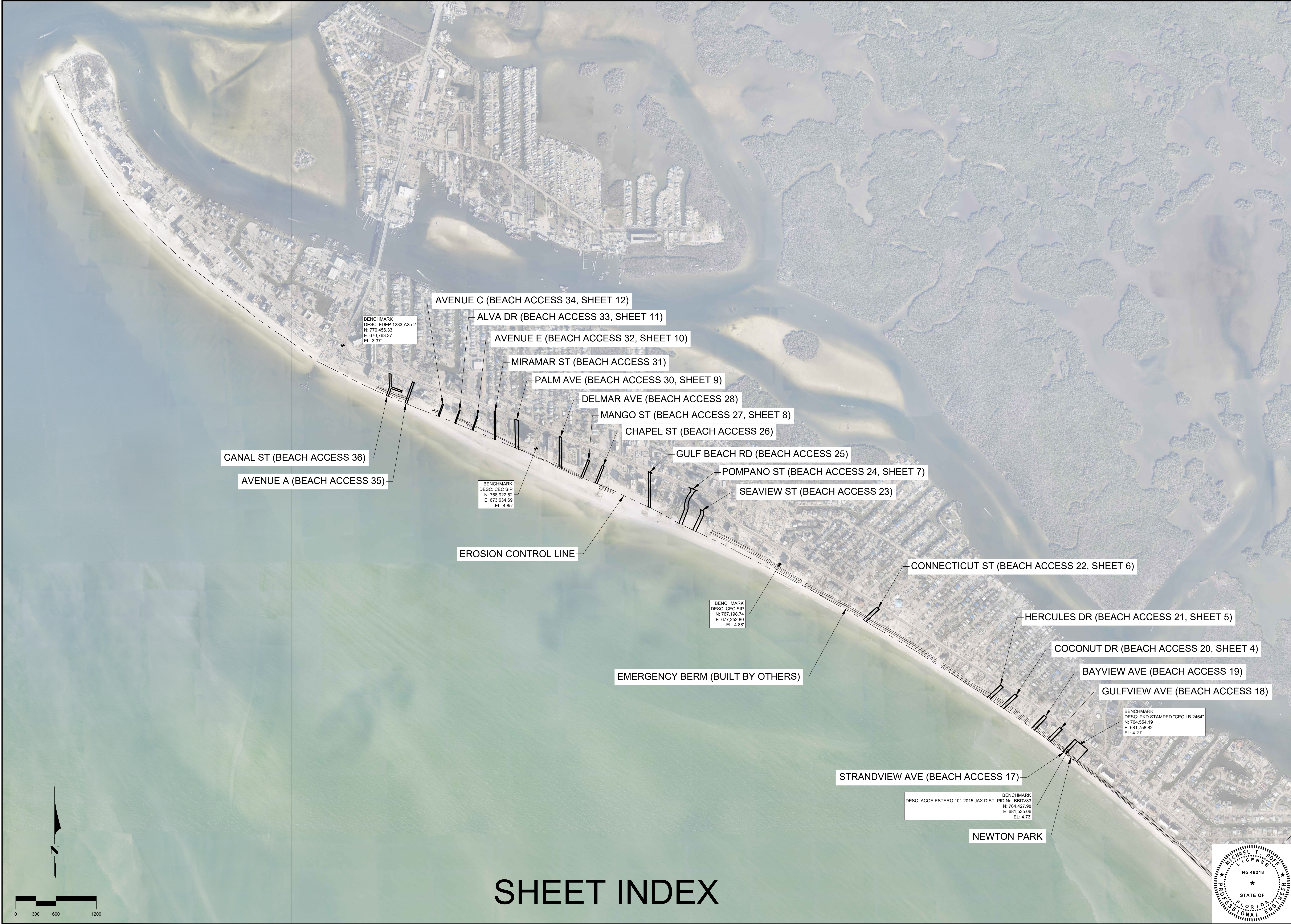
DATE

BY

REVISION DESCRIPTION

SHEET 1

FILE NO.: 22303-EX-1



SHEET INDEX

 COASTAL ENGINEERING CONSULTANTS INC. Serving Coastal Communities Since 1977 28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135		COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEY AND MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464		CLIENT: TOWN OF FORT MYERS BEACH		DATE: 10/20/2023		SCALE: AS NOTED		DRAWN: SDB		F.B.		CHECKED: MTP		PG.		TWP.		RNG.		ACAD NO. 22303-Access Fill.dwg		REF. NO. 22.303		NO.		DATE		BY		REVISION DESCRIPTION	
		TITLE: BEACH ACCESS SHEET INDEX		PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@cecill.com																													

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COASTAL ENGINEERING CONSULTANTS INC. No 48218 STATE OF FLORIDA PROFESSIONAL ENGINEER



COASTAL & MARINE ENGINEERING

ENVIRONMENTAL & GEOLOGICAL SERVICES

SURVEYING & MAPPING

ENGINEERING: CA 2464

SURVEYING: LB 2464

CLIENT:

TOWN OF FORT MYERS BEACH

TITLE:

BEACH ACCESS
SHEET INDEX

DATE:

10/20/2023

SCALE:

AS NOTED

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CHECKED:

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SEC:

TWP.

ACAD NO.

22303-Access Fill.dwg

REF. NO.

22.303

NO.

22.303

DATE

BY

REVISION DESCRIPTION

COASTAL
ENGINEERING
CONSULTANTS
INC.

Serving Coastal Communities Since 1977

28421 BONITA CROSSINGS BLVD

BONITA SPRINGS, FLORIDA 34135

PHONE: (239)643-2324

FAX: (239)643-1143

www.coastalengineering.com

E-Mail: info@cecill.com

SHEET 3

FILE NO.: 22303-EX-3

THIS DOCUMENT AND THE CONCEPTS AND DESIGN PRESENTED HEREIN ARE AN INSTRUMENT OF SERVICE OF
COASTAL ENGINEERING CONSULTANTS, INC. (CEC) AND ARE NOT TO BE USED FOR ANY OTHER PROJECT OR
PURPOSE WITHOUT THE WRITTEN AUTHORIZATION AND SIGNATURE OF CEC. CEC'S SUBSIDIARIES SHALL BE WITHIN THE LIMITS OF CEC'S
SUBSIDIARIES.

BENCHMARK

DESC: USGS 2246 1965, PID No. AD1355

N: 752,530.14

E: 696,072.78

EL: 15.41'

BENCHMARK

DESC: BOOB2

N: 753,698.79

E: 690,191.24

EL: 5.03'

BENCHMARK

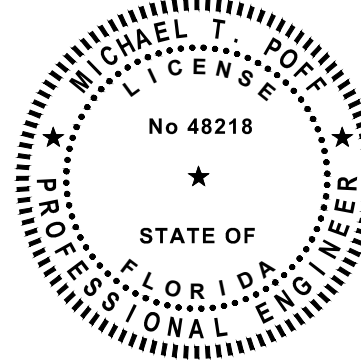
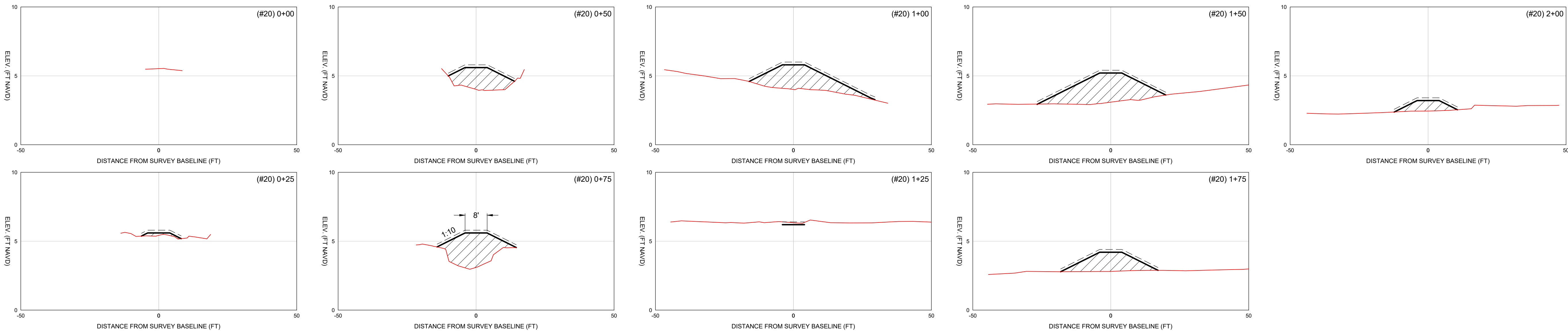
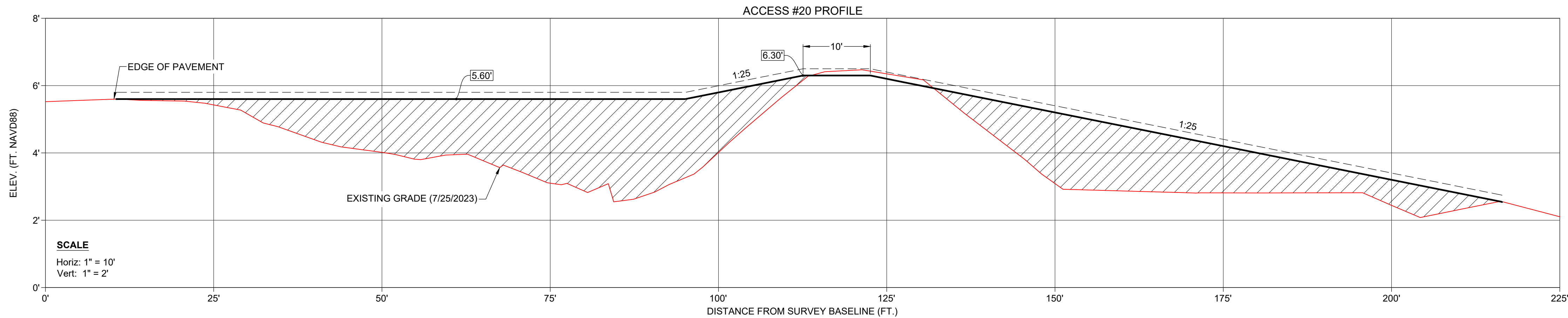
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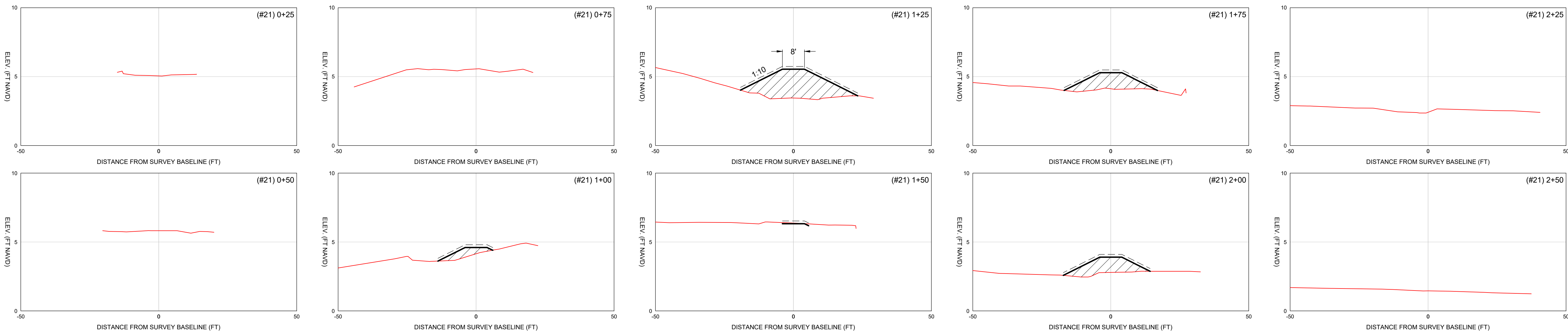
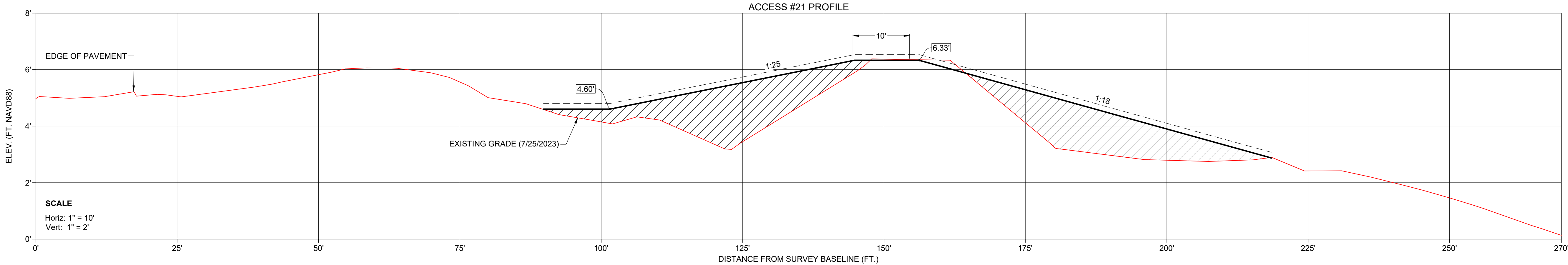
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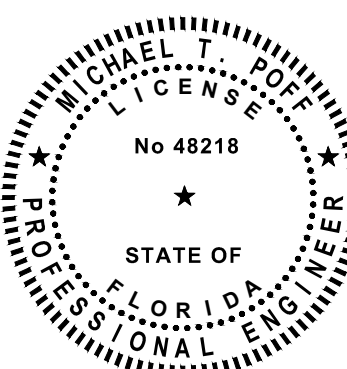


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ENVIRONMENTAL & GEOLOGICAL SERVICES		ACAD NO.	22303-Access Fill.dwg		
SURVEY AND MAPPING		REF. NO.	22.303	NO.	
ENGINEERING: CA 2464		BY		DATE	
SURVEYING: LB 2464		REVISION DESCRIPTION			
PHONE: (239) 643-2324					
FAX: (239) 643-1143					
www.coastal-engineering.com					
E-Mail: info@cecil.com					
Serving Coastal Communities Since 1977					
28421 BONITA CROSSINGS BLVD.					
BONITA SPRINGS, FLORIDA 34135					
SHEET 4					
FILE NO.: 22303-EX-4					

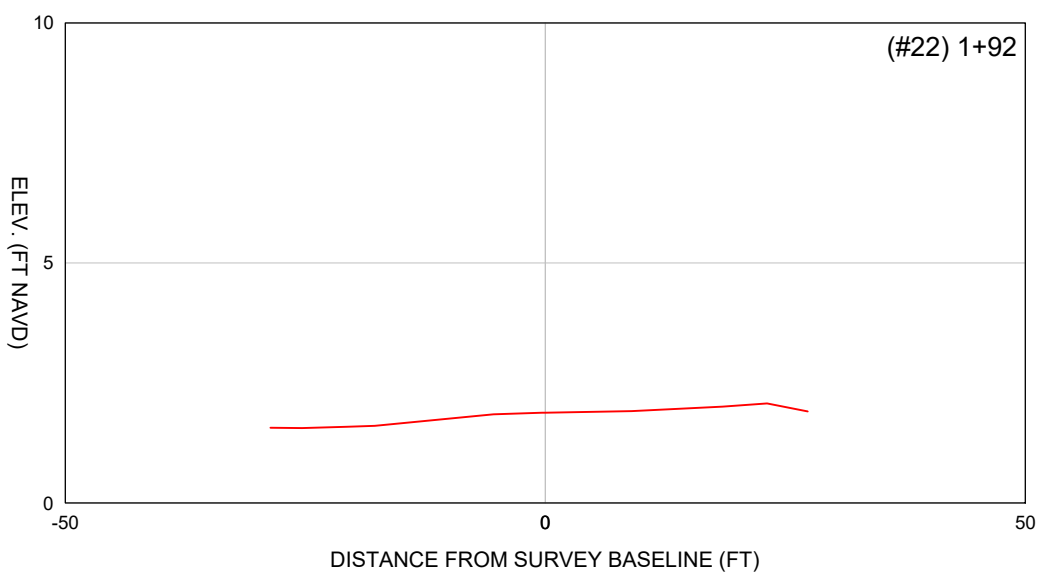
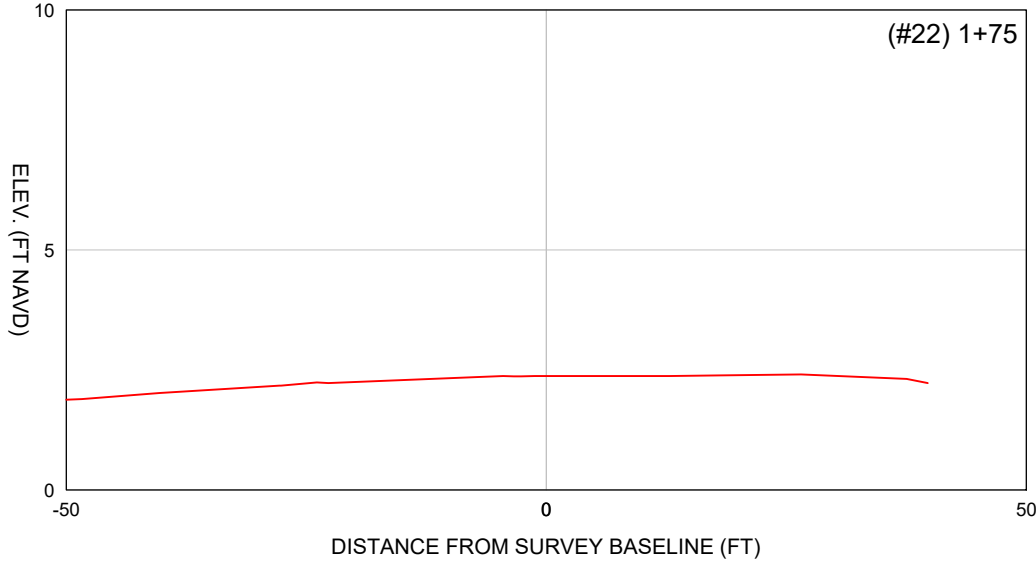
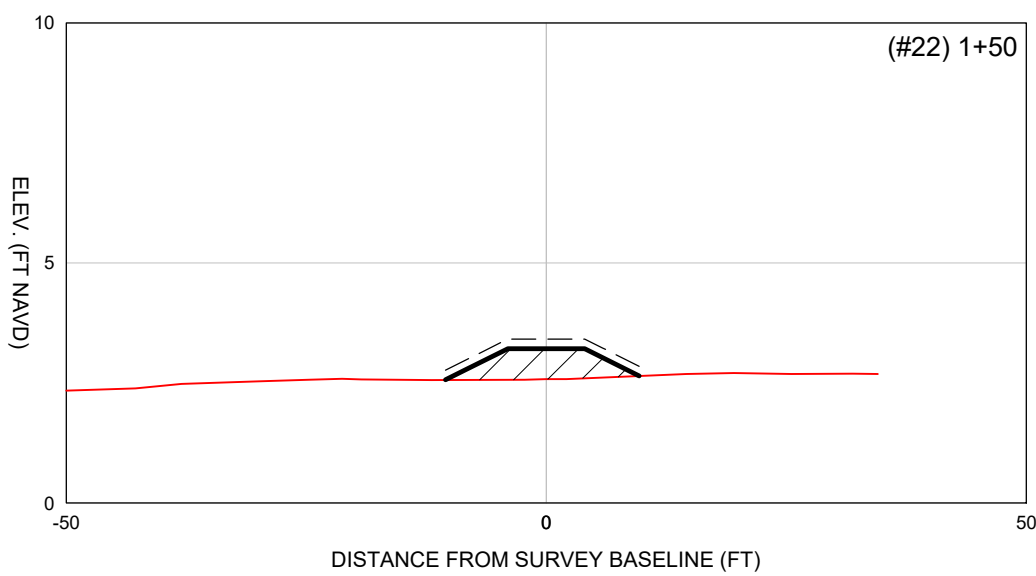
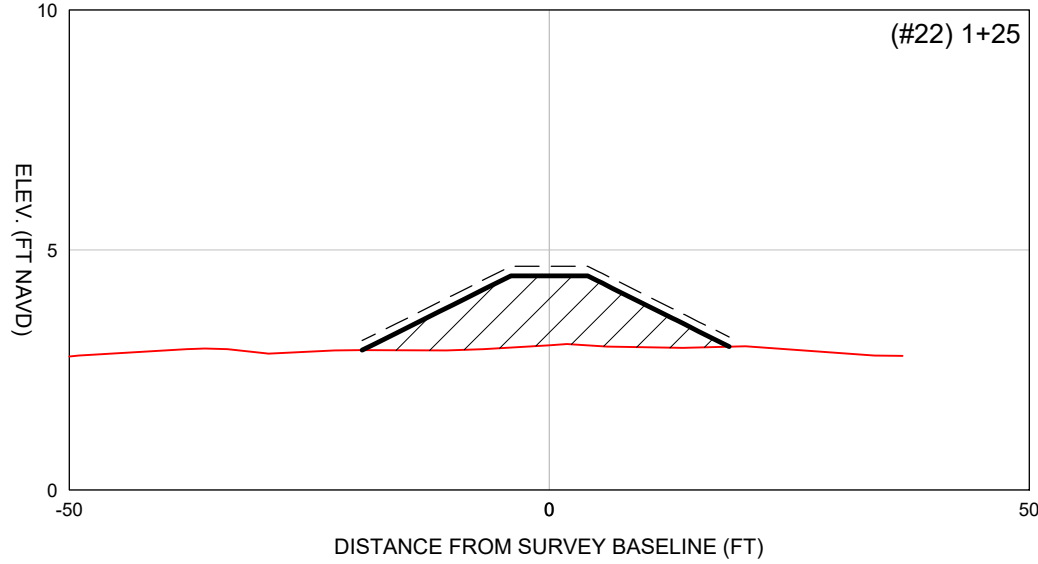
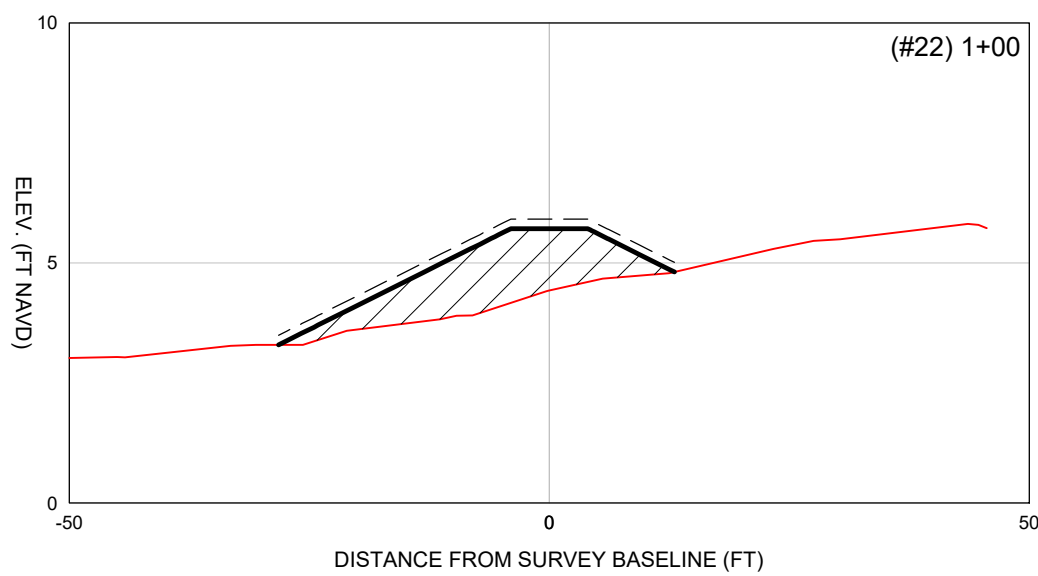
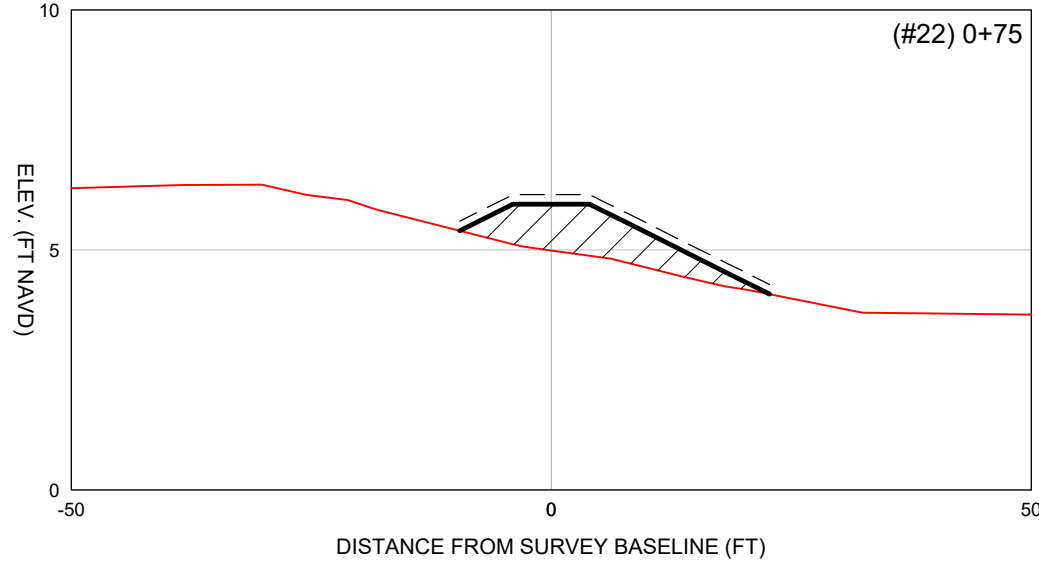
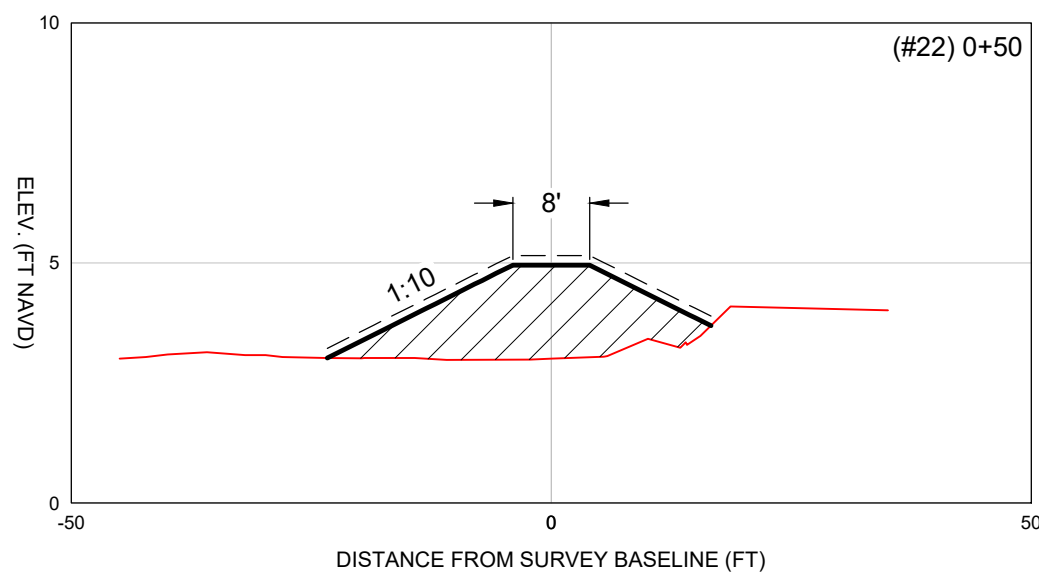
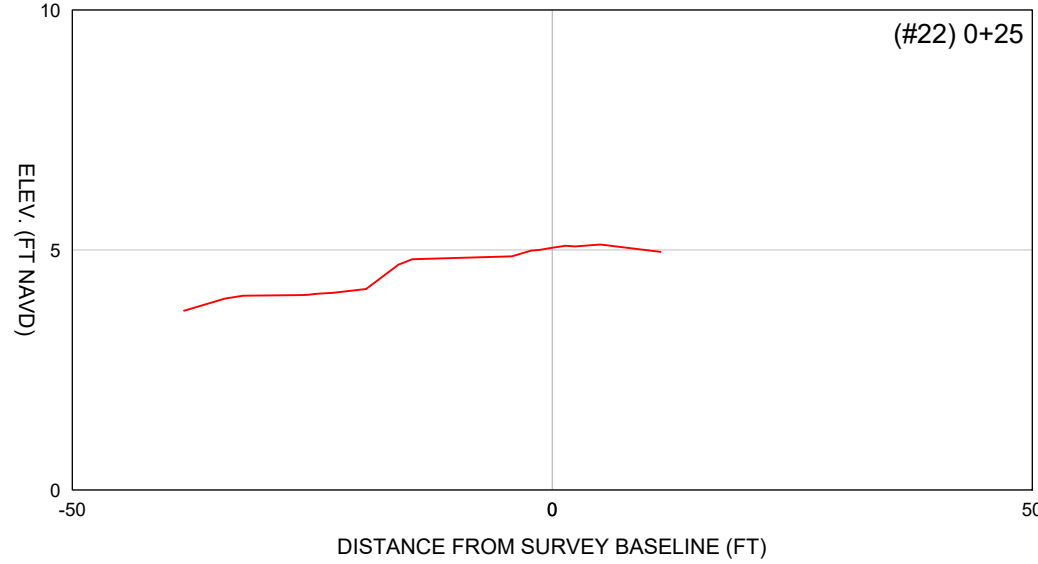
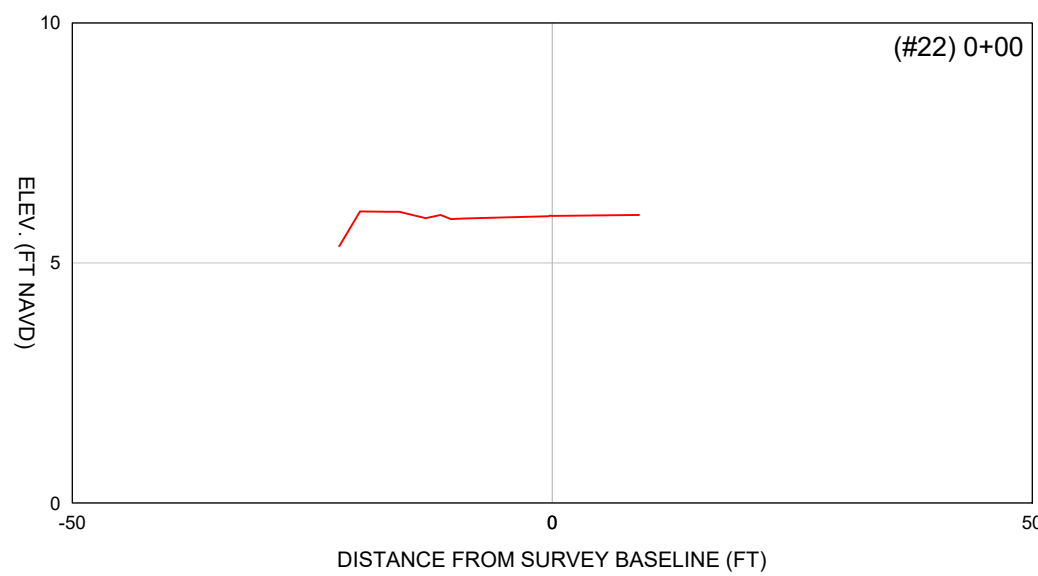
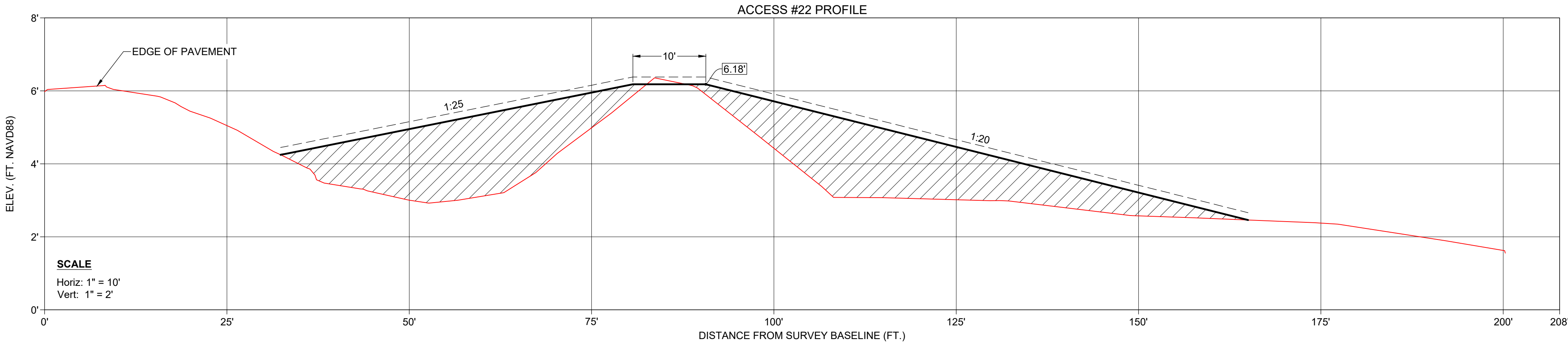
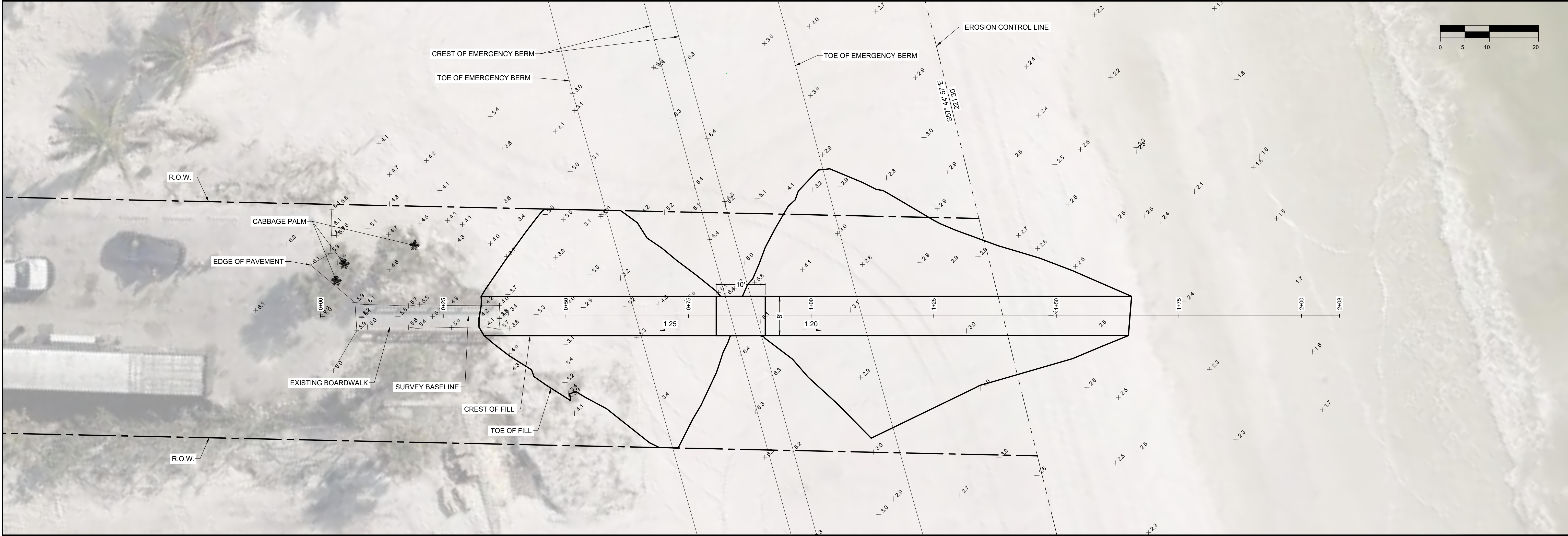


LEGEND
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= PROPOSED FILL AREA
- - = 0.2' TOLERANCE

SCALE
H: 1" = 20'
V: 1" = 4'



TOWN OF FORT MYERS BEACH		DATE:	10/20/2023	SCALE:	AS NOTED	CLIENT:		COASTAL & MARINE ENGINEERING		ENVIRONMENTAL & GEOLOGICAL SERVICES		SURVEYING: LB 2464		PHONE: (239) 643-2324		FAX: (239) 643-1143		www.coastal-engineering.com		E-Mail: info@cecil.com	
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		REVISION DESCRIPTION																			



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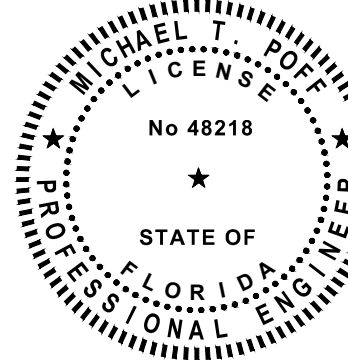
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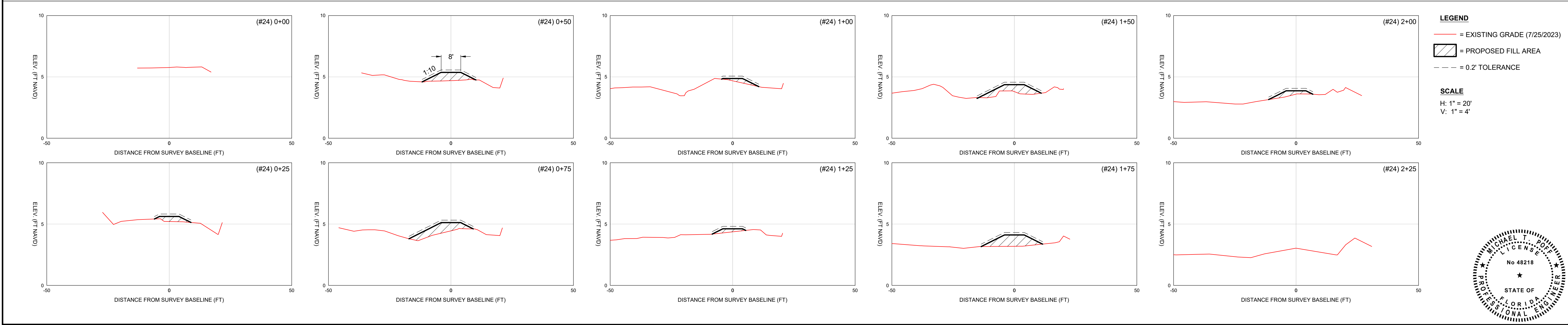
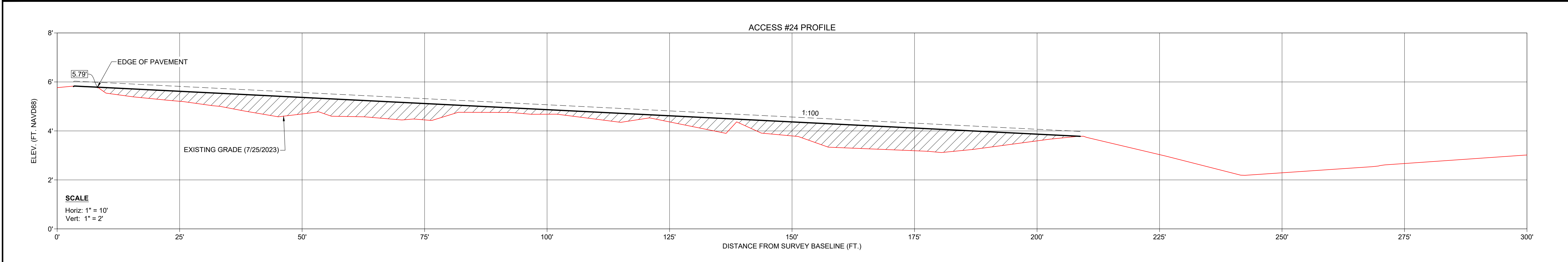
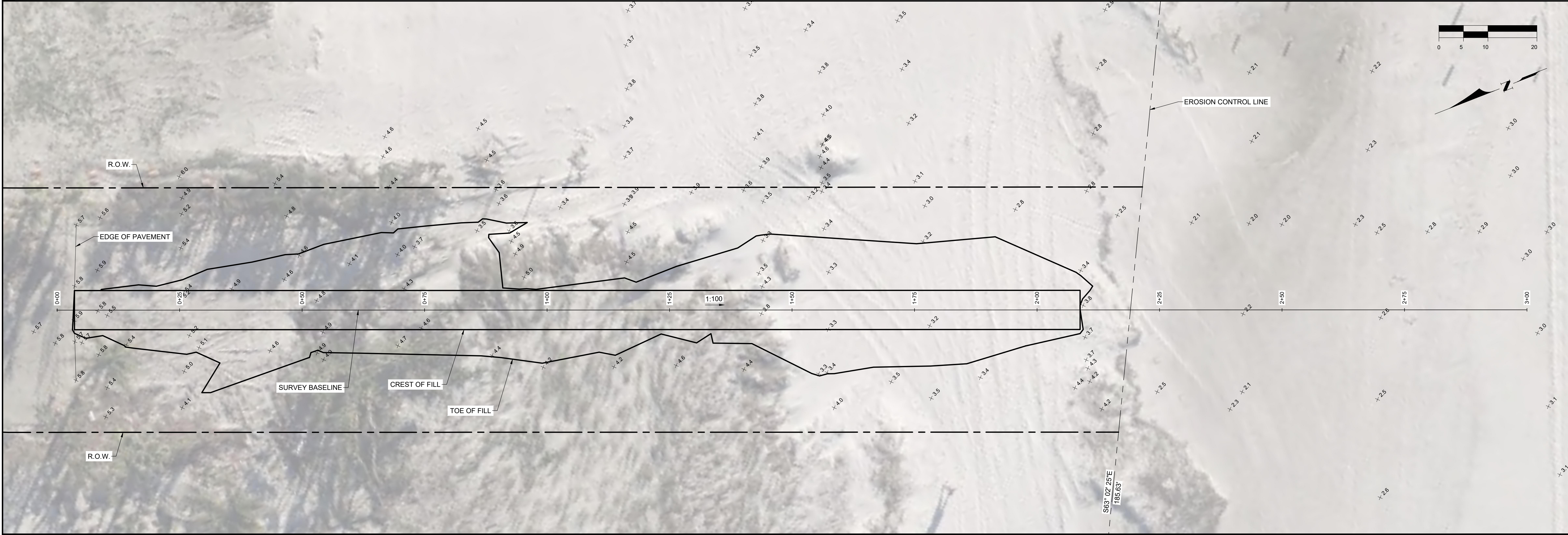
SCALE

H: 1" = 20'

V: 1" = 4'



		COASTAL ENGINEERING CONSULTANTS INC.		Serving Coastal Communities Since 1977		28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135		FILE NO.: 22303-EX-6		SHEET 6																									
COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEY AND MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464										CLIENT: TOWN OF FORT MYERS BEACH		TITLE: BEACH ACCESS 22 CONNECTICUT ST		DATE: 10/20/2023		SCALE: AS NOTED		DRAWN: SDB F.B.		CHECKED: MTP PG.		SEC. TWP. RNG.		ACAD NO. 22303-Access Fill.dwg		REF. NO. 22.303		NO.		DATE		BY		REVISION DESCRIPTION	
PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@cecil.com										THIS DOCUMENT AND THE CONCEPTS AND SERVICES HEREIN ARE THE PROPERTY OF SERVICE, INC. AND ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF SERVICE, INC. ALL RIGHTS ARE RESERVED. NO PART OF THIS DOCUMENT MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF SERVICE, INC. ALL RIGHTS ARE RESERVED. NO PART OF THIS DOCUMENT MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF SERVICE, INC. ALL RIGHTS ARE RESERVED.																									



DATE: 10/20/2023

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CHECKED: MTP PG.

SEC. TWP. RNG.

ACAD NO. 22303-Access Fill.dwg

REF. NO. 22.303

NO.

DATE

BY

REVISION DESCRIPTION

TOWN OF FORT MYERS BEACH

BEACH ACCESS 24

POMPANO ST

CLIENT: COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEY AND MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464

TITLE:

PHONE: (239)643-2324
FAX: (239)643-1143
www.coastal-engineering.com
E-Mail: info@cecil.com

COASTAL ENGINEERING CONSULTANTS INC.

Serving Coastal Communities Since 1977

28421 BONITA CROSSINGS BLVD.
BONITA SPRINGS, FLORIDA 34135

Michael T. Cecil

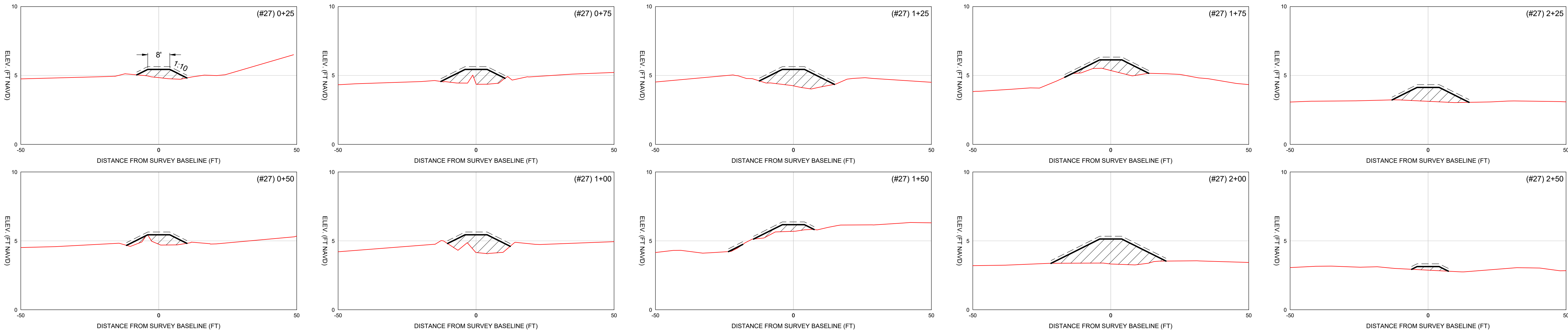
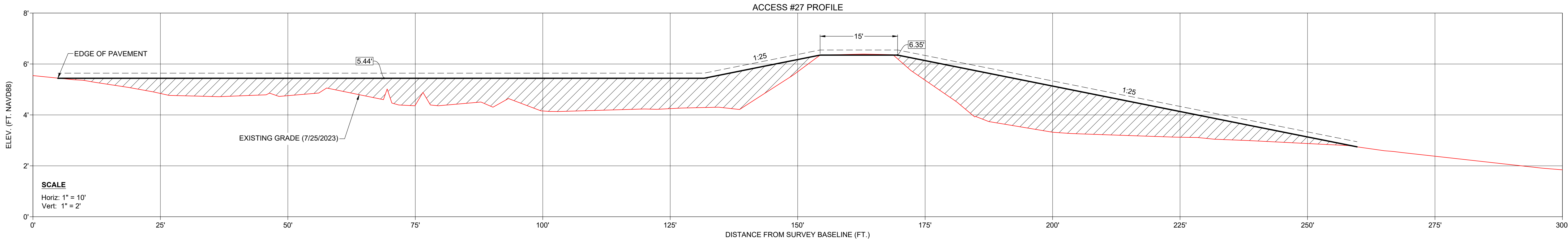
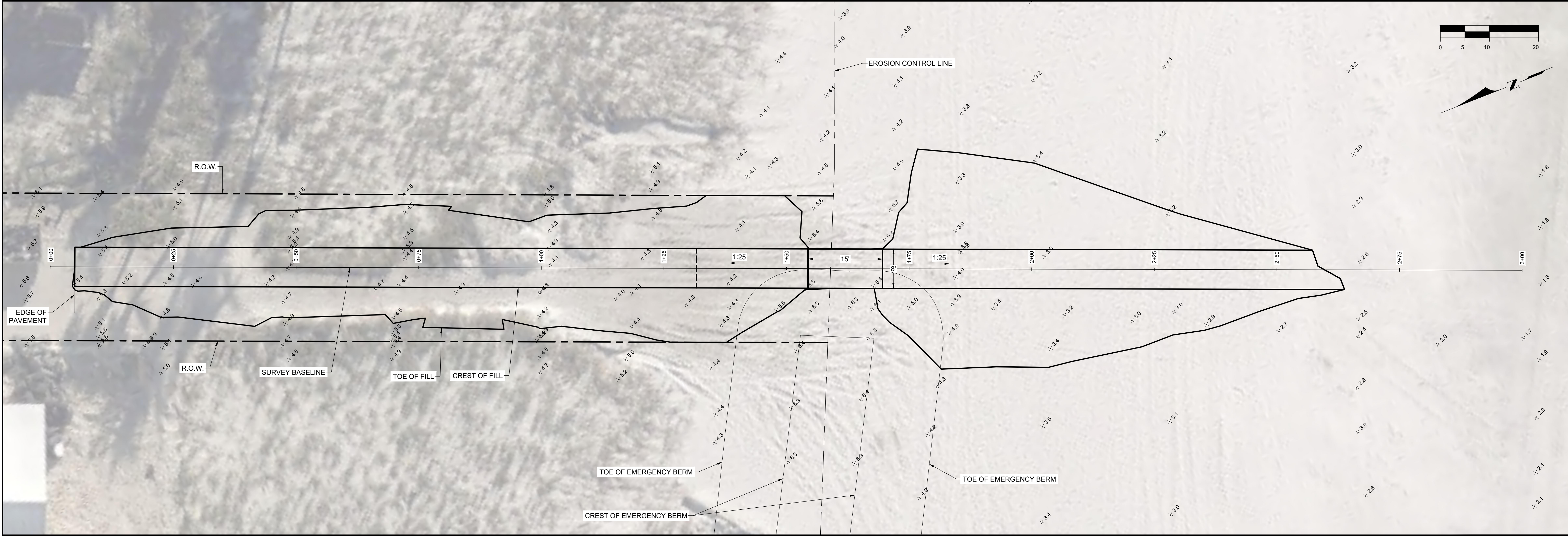
No 48218

STATE OF FLORIDA

PROFESSIONAL ENGINEER

SHEET 7

FILE NO.: 22303-EX-7



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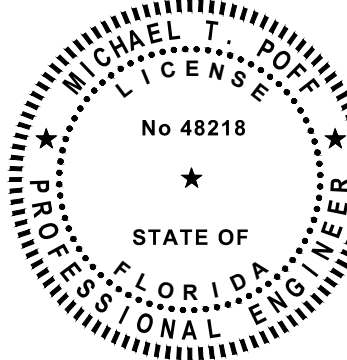
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--- = 0.2' TOLERANCE

SCALE

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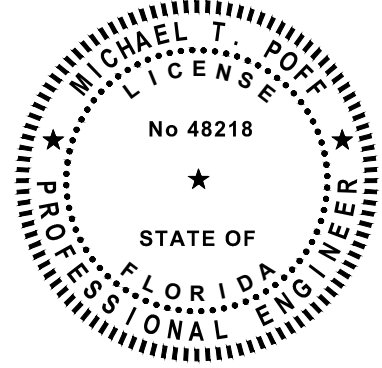
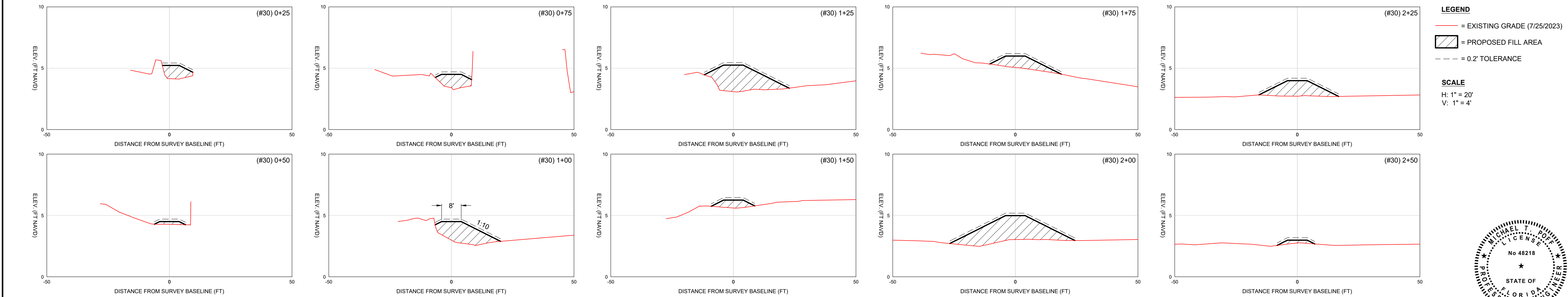
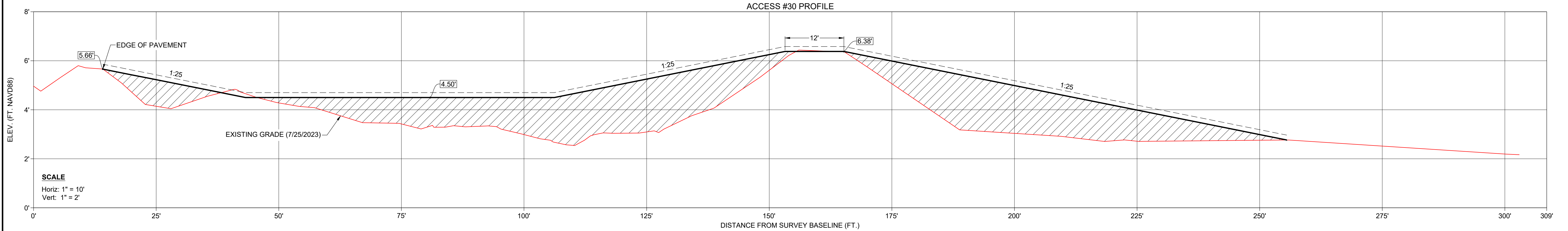
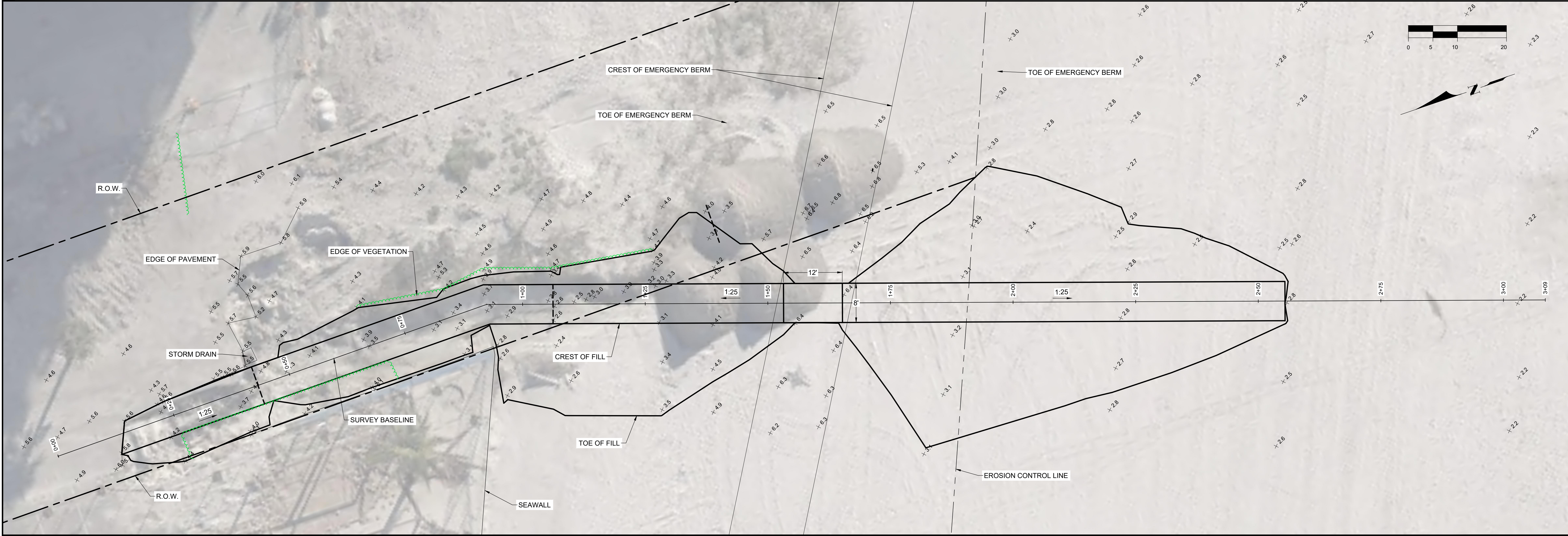
V: 1" = 4'



		COASTAL ENGINEERING CONSULTANTS INC.		Serving Coastal Communities Since 1977		28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135	
COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEY AND MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464		CLIENT: TOWN OF FORT MYERS BEACH		PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@cecfl.com			
TITLE: BEACH ACCESS 27 MANGO ST		DATE: 10/20/2023		SCALE: AS NOTED		THIS DOCUMENT AND THE CONCEPTS AND DESIGNS PRESENTED HEREIN, AS AN INSTRUMENT OF SERVICE, IS THE PROPERTY OF COASTAL & MARINE ENGINEERING, ENVIRONMENTAL & GEOLOGICAL SERVICES, INC. (CME). IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF CME. CME SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREIN.	
DRAWN: SDB		F.B.					
CHECKED: MTP		P.G.					
SEC. TWP.		RNG.					
ACAD NO. 22303-Access Fill.dwg							
REF. NO. 22 303						REVISION DESCRIPTION	
						BY	
						DATE	

SHEET 8

FILE NO.: 22303-EX-8



COASTAL & MARINE ENGINEERING
ENVIRONMENTAL & GEOLOGICAL SERVICES
SURVEYING & MAPPING
ENGINEERING: CA 2464
SURVEYING: LB 2464

CLIENT:

TOWN OF FORT MYERS BEACH

TITLE:

BEACH ACCESS 30
PALM AVE

DATE:

10/20/2023

SCALE:

AS NOTED

DRAWN:

SDB F.B.

CHECKED:

MTP PG.

SEC.

TWP.

RNG.

ACAD NO.

22303-Access Fill.dwg

REF. NO.

22.303

NO.

22.303

DATE

BY

REVISION DESCRIPTION

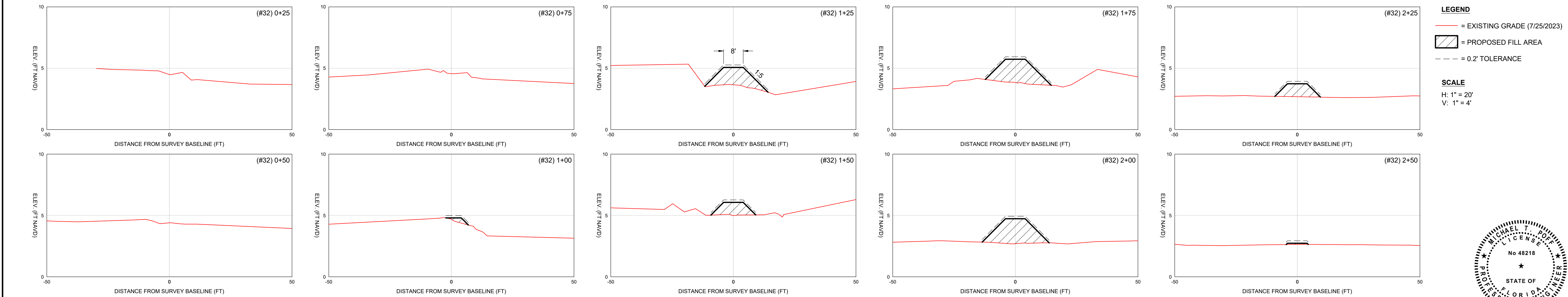
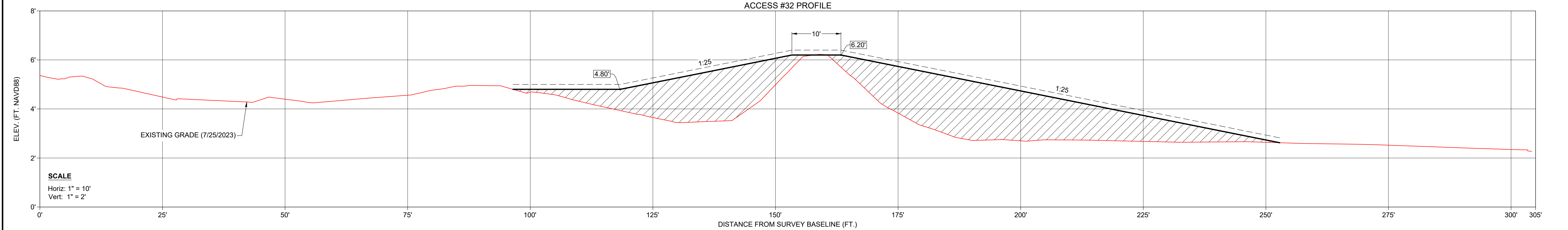
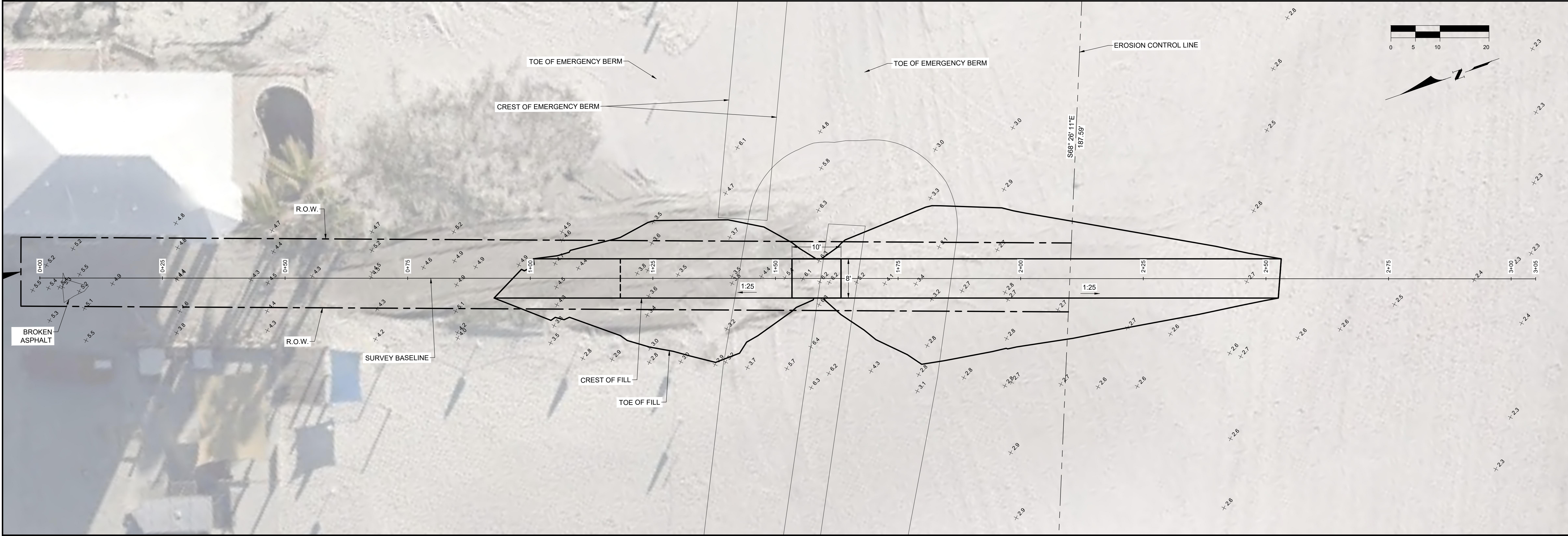
PHONE: (239)643-2324
FAX: (239)643-1143
www.coastalengineering.com
E-Mail: info@cecill.com

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BONITA SPRINGS, FLORIDA 34135

SHEET 9

FILE NO.: 22303-EX-9



COASTAL & MARINE ENGINEERING
ENVIRONMENTAL & GEOLOGICAL SERVICES
SURVEY AND MAPPING
ENGINEERING: CA 2464
SURVEYING: LB 2464

CLIENT:
TOWN OF FORT MYERS BEACH

DATE: 10/20/2023

DRAWN: SDB F.B.

CHECKED: MTP PG.

SEC. TWP. RNG.

ACAD NO. 22303-Access Fill.dwg

REF. NO. 22.303

NO. 48218
MICHAEL T. JOHNSON
PROFESSIONAL ENGINEER
STATE OF FLORIDA

PHONE: (239) 643-2324
FAX: (239) 643-1143
www.coastal-engineering.com
E-Mail: mtc@cecil.com

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BONITA SPRINGS, FLORIDA 34135

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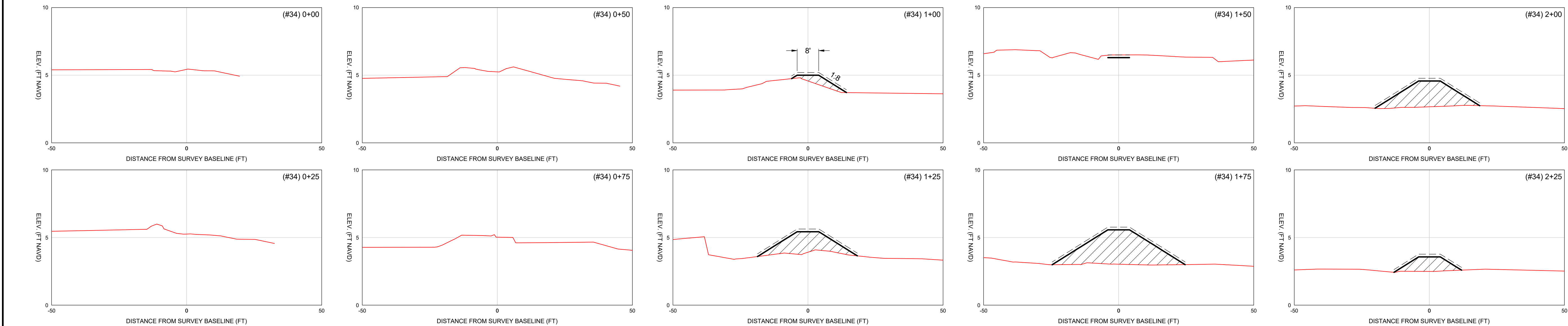
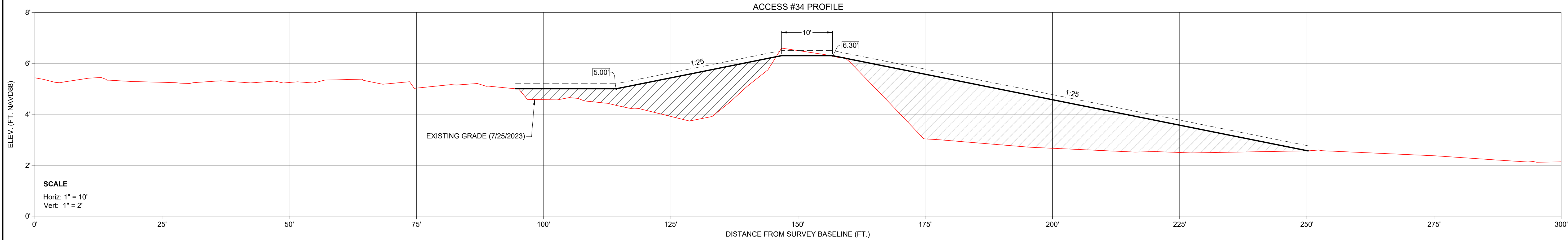
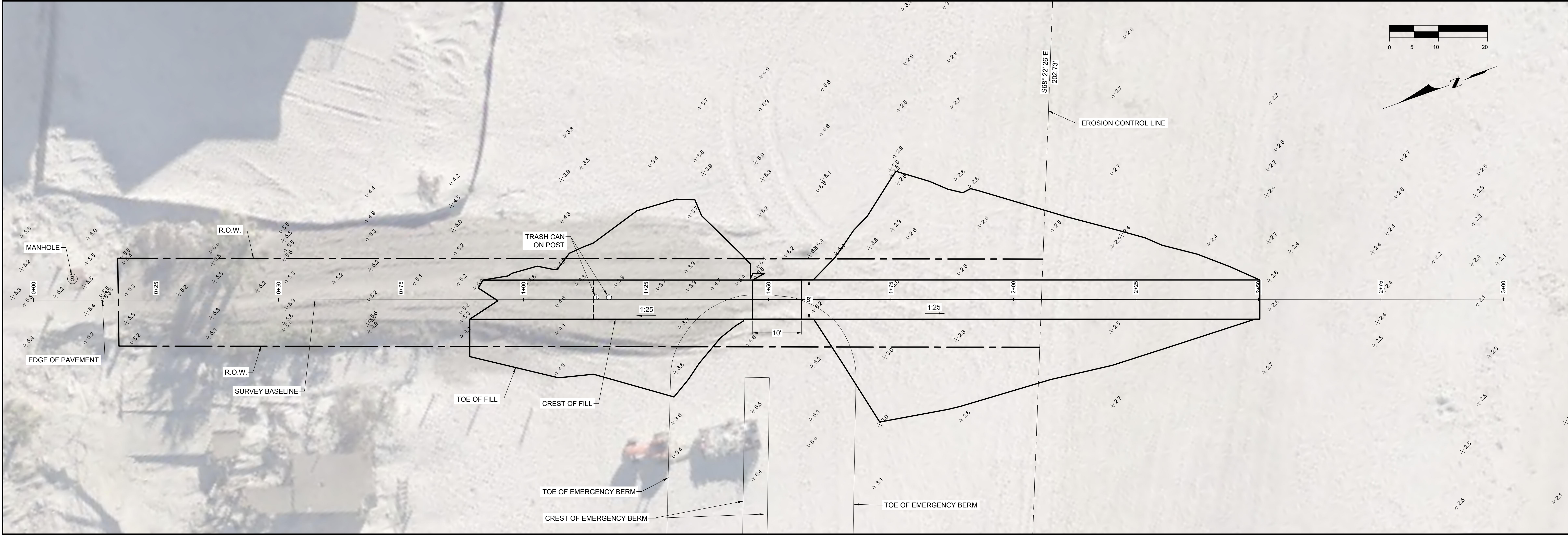
BEACH ACCESS 32
AVENUE E

DATE BY NO. REVISION DESCRIPTION

SHEET 10

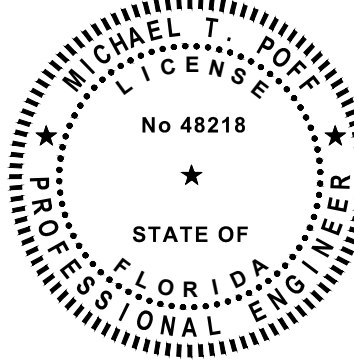
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Page 94 of 407

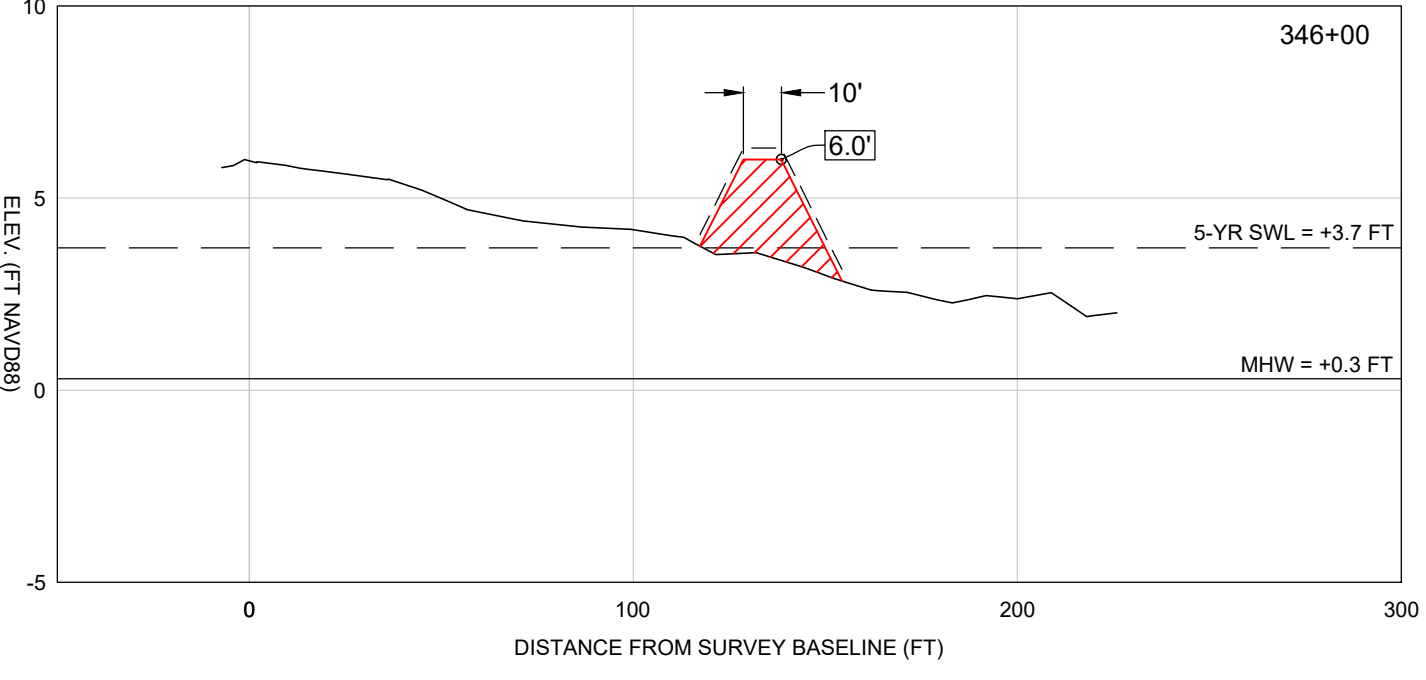
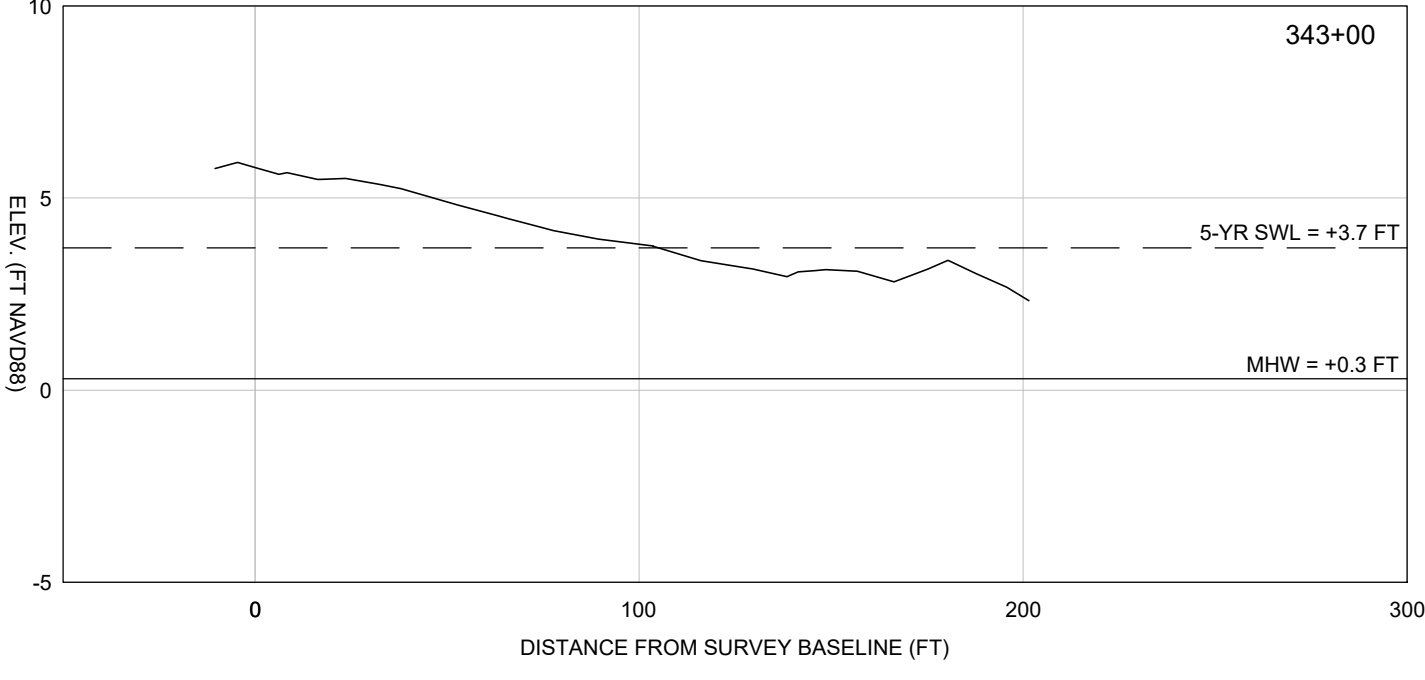
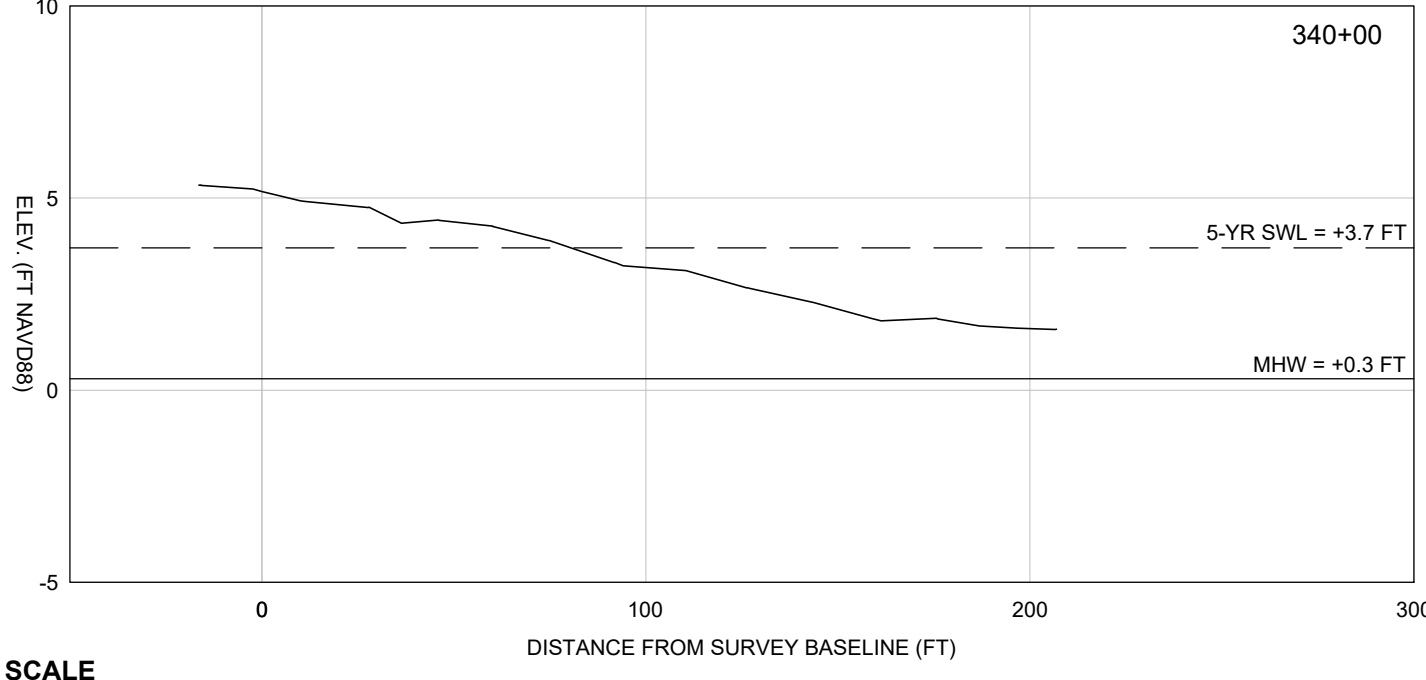
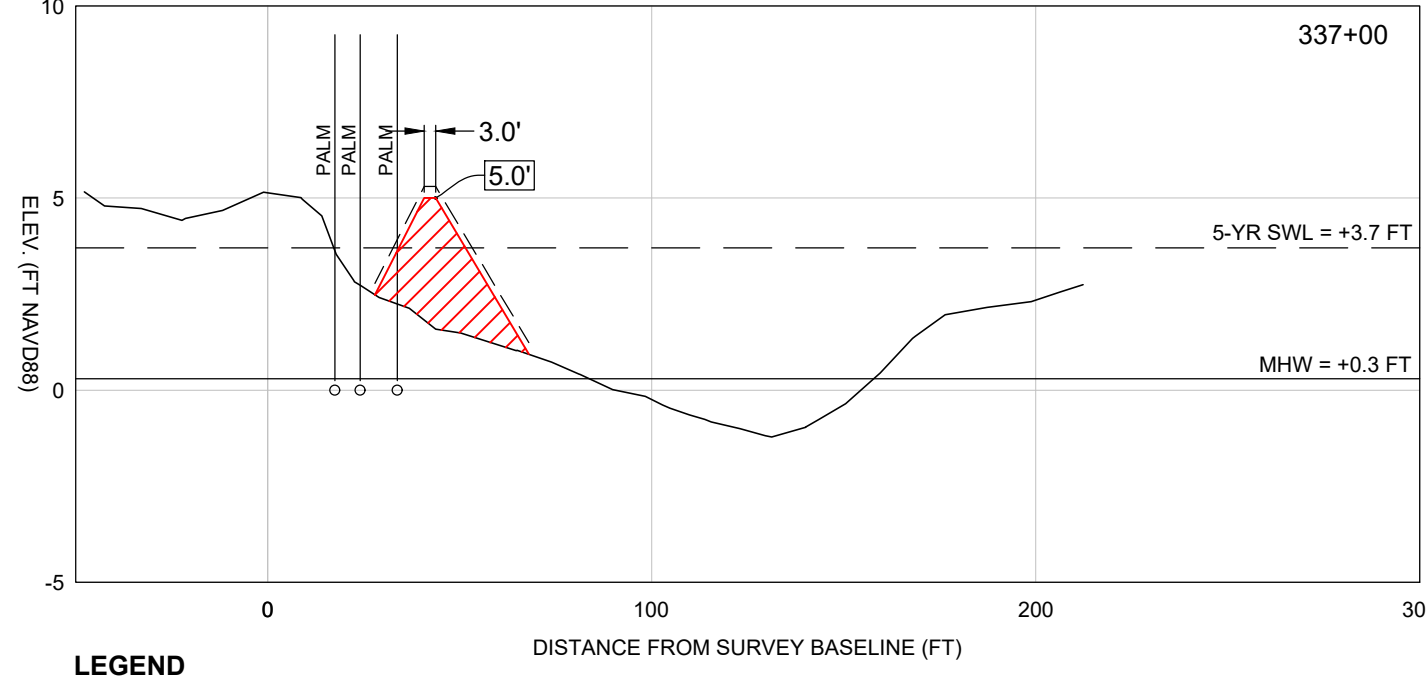
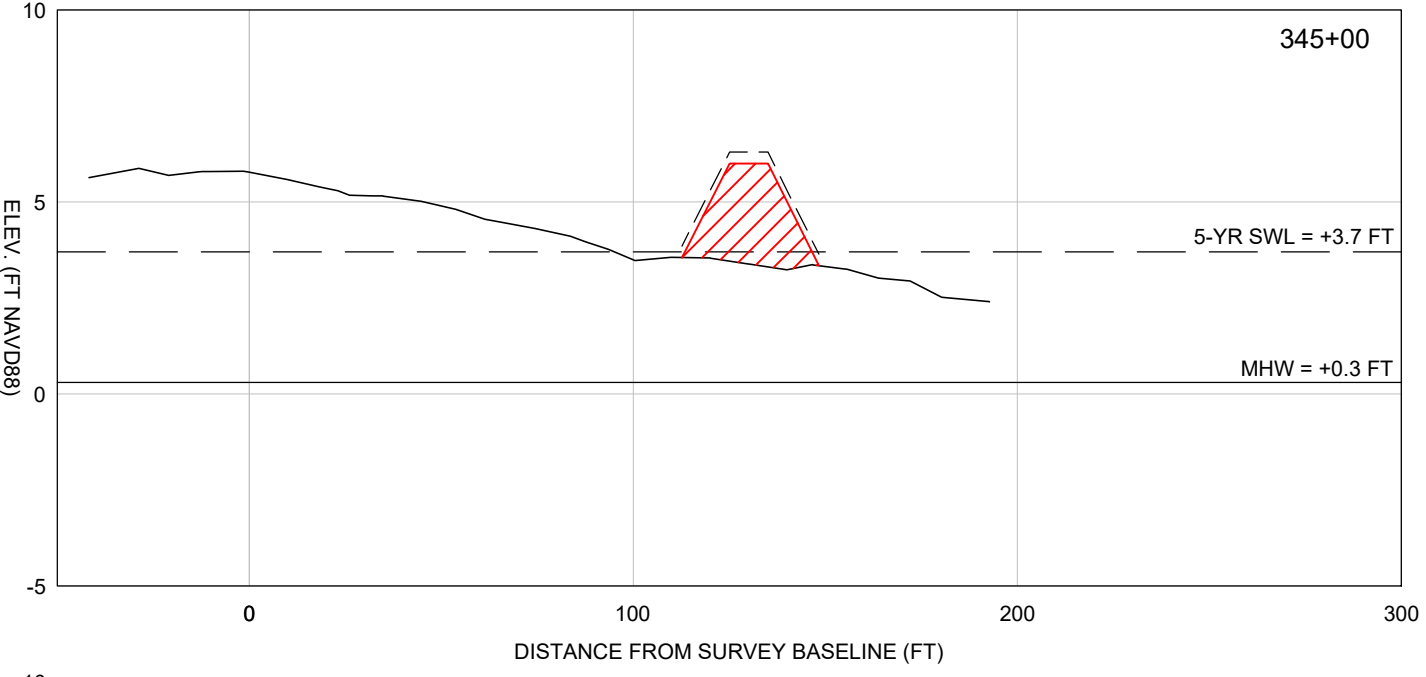
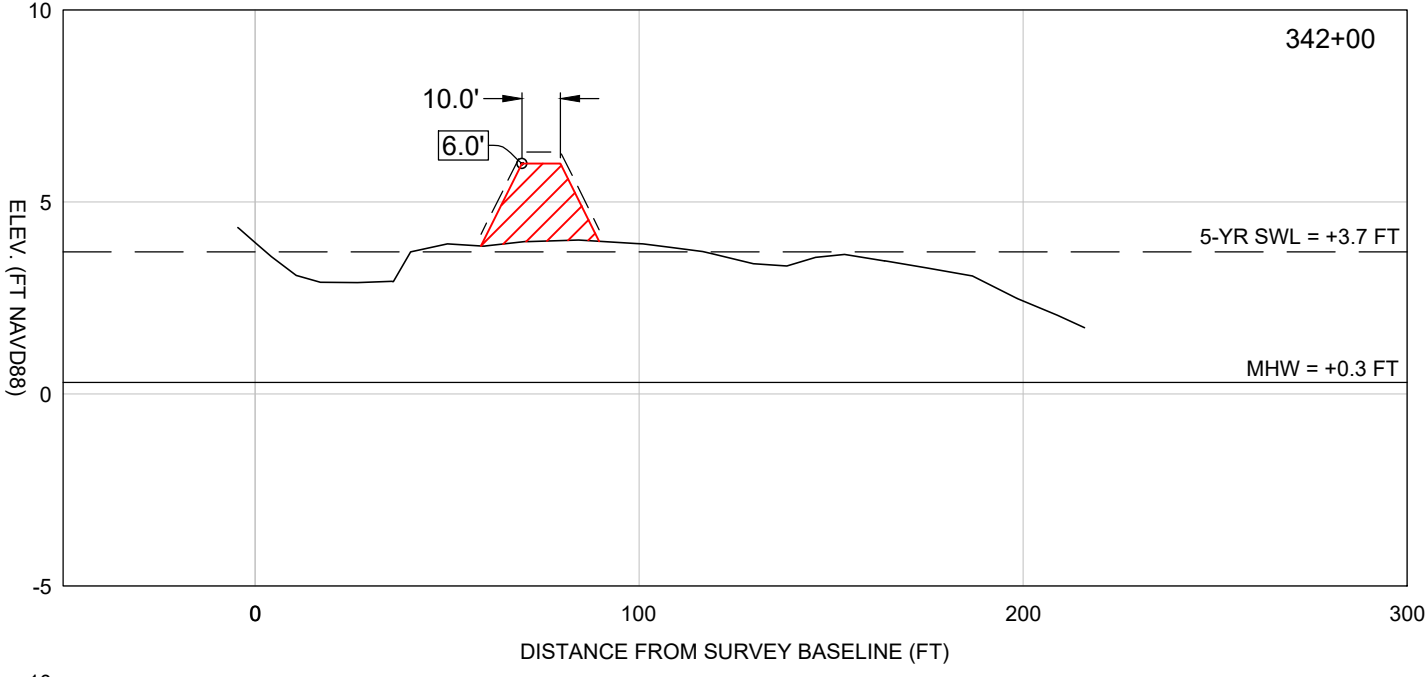
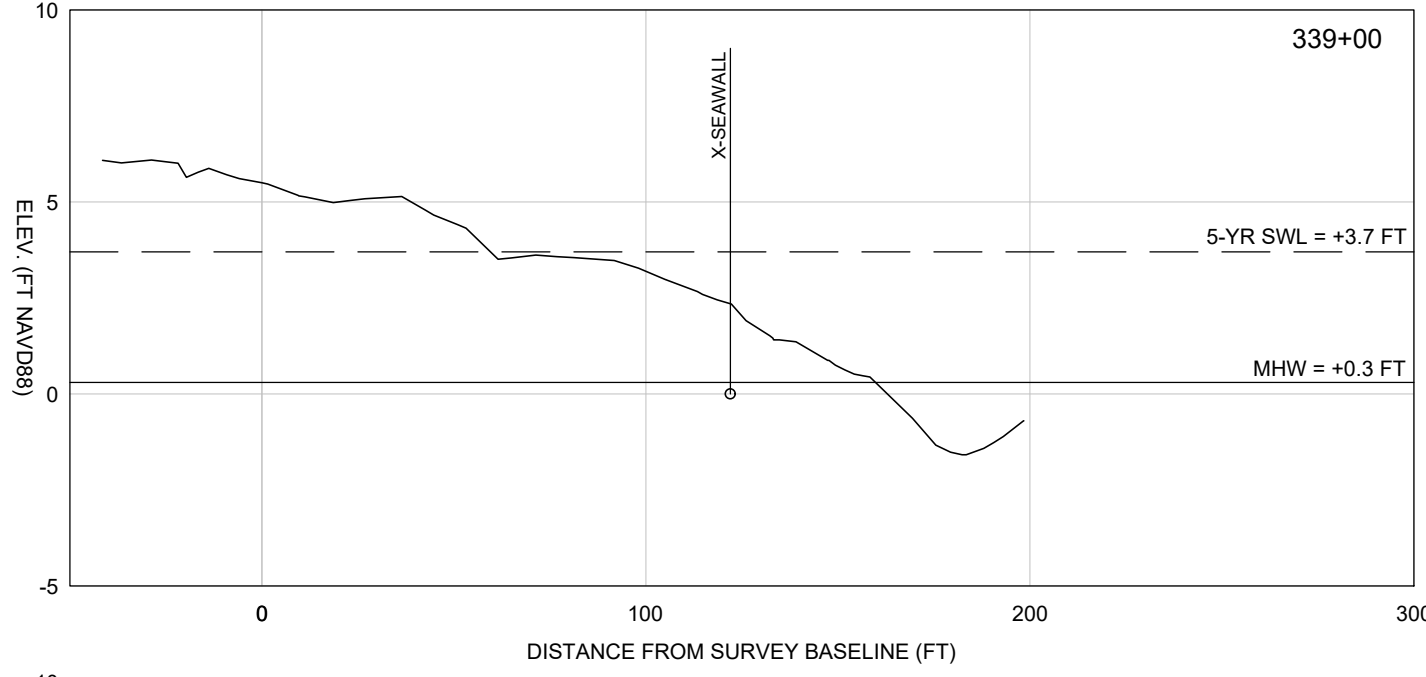
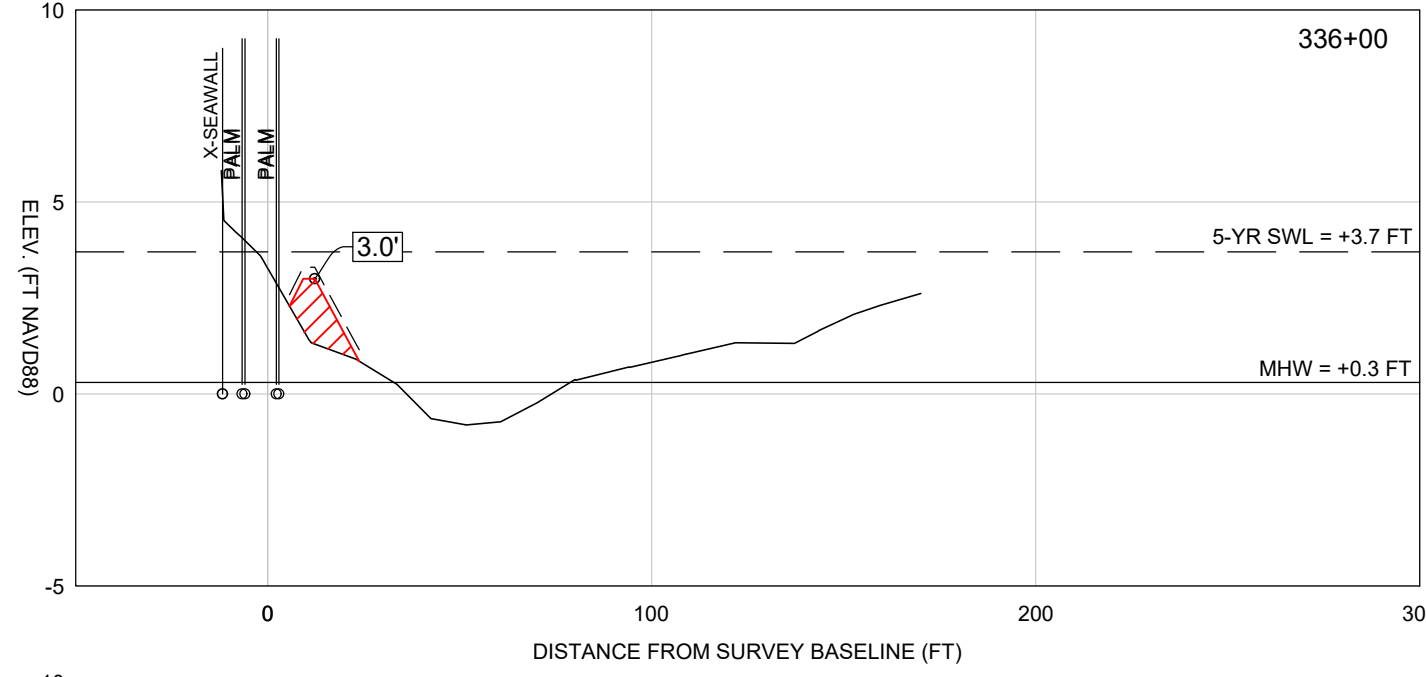
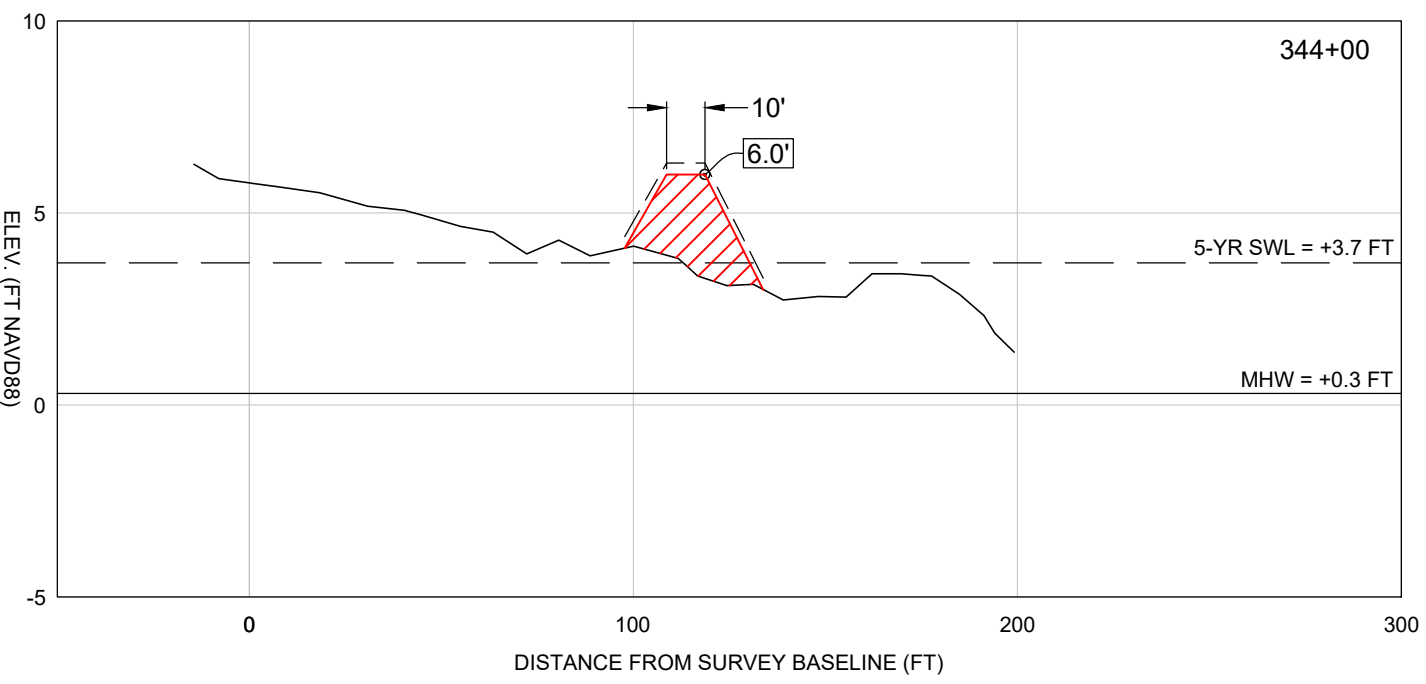
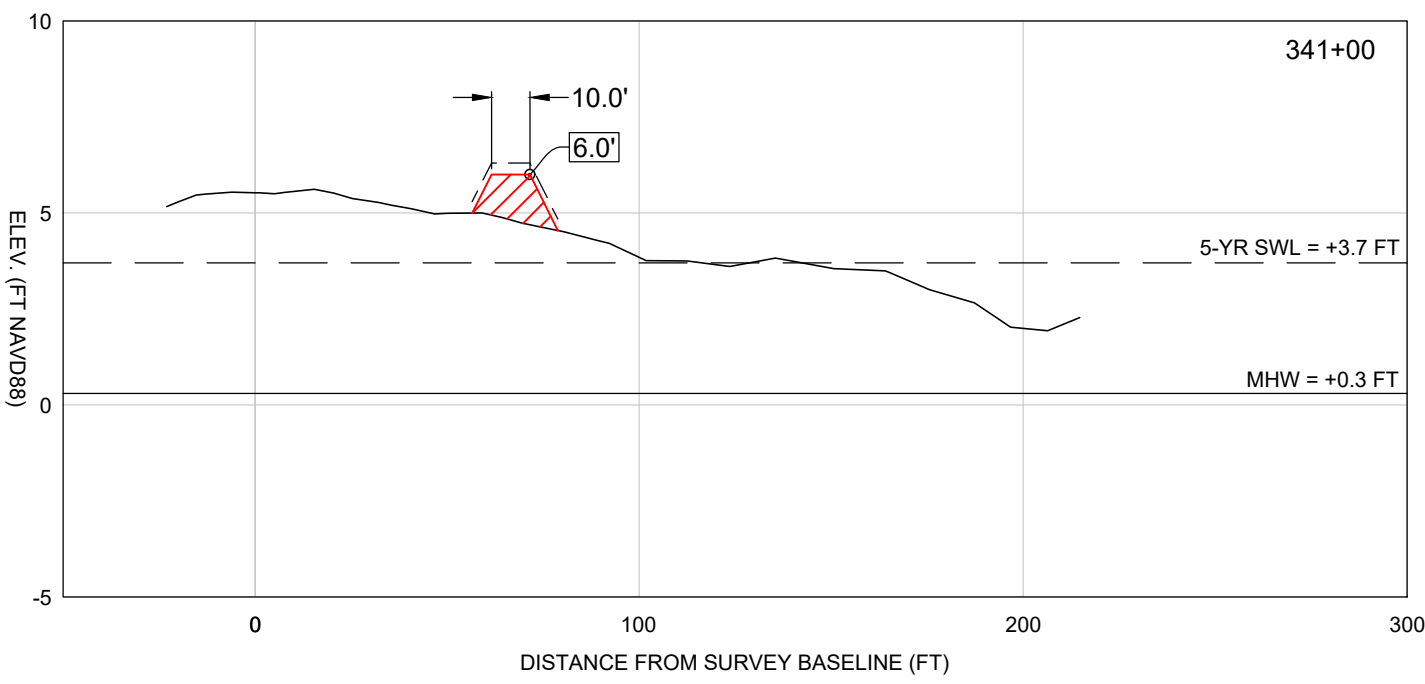
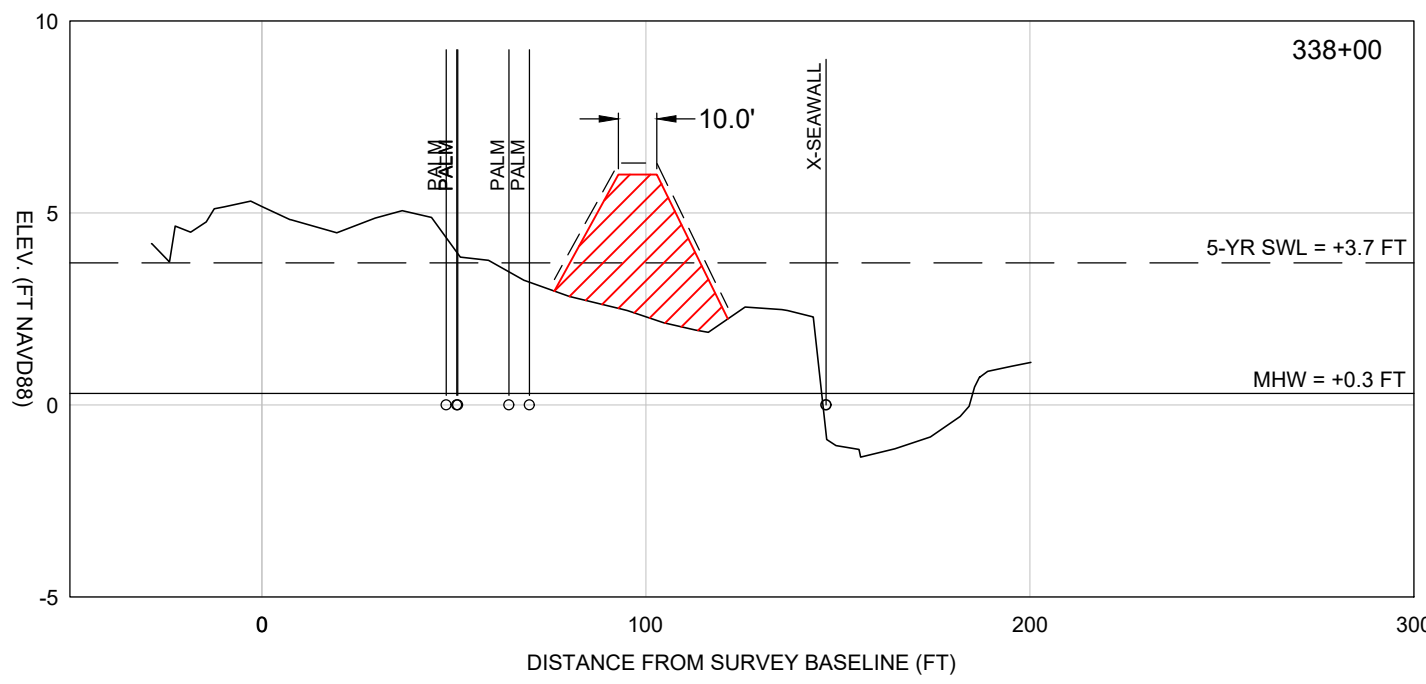
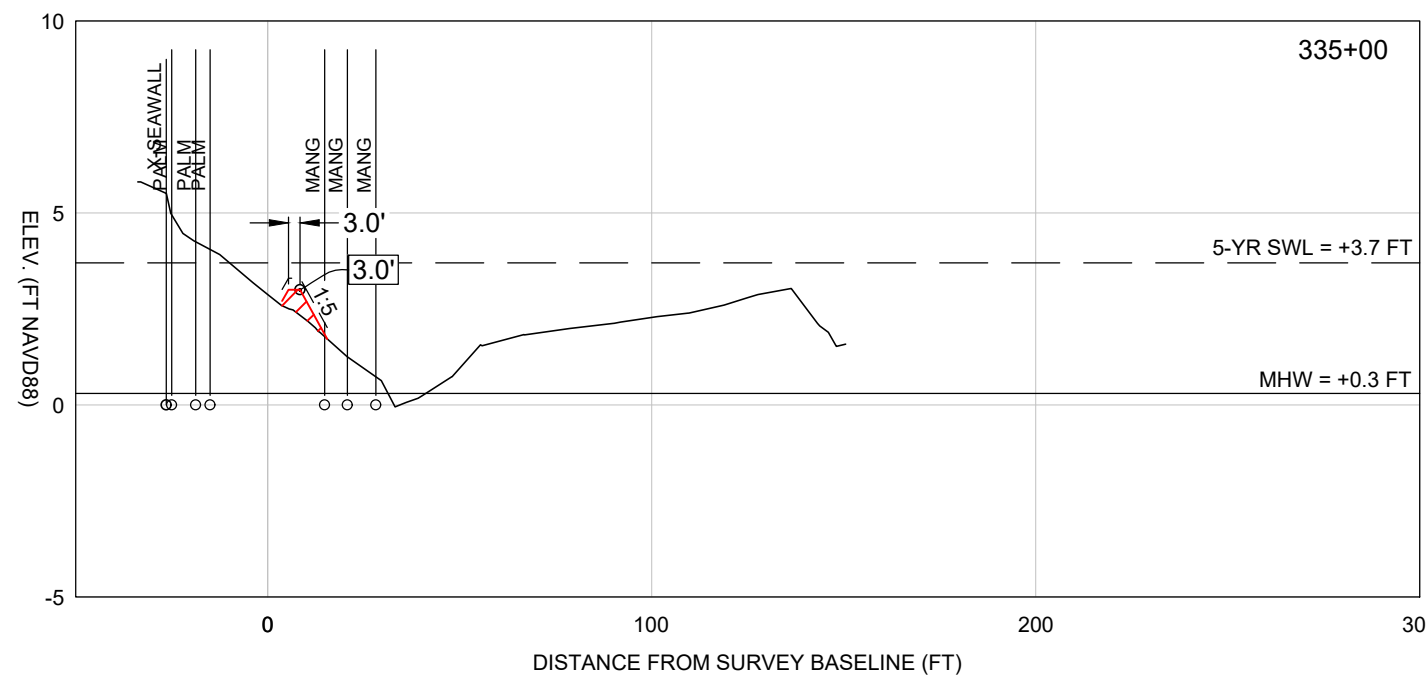
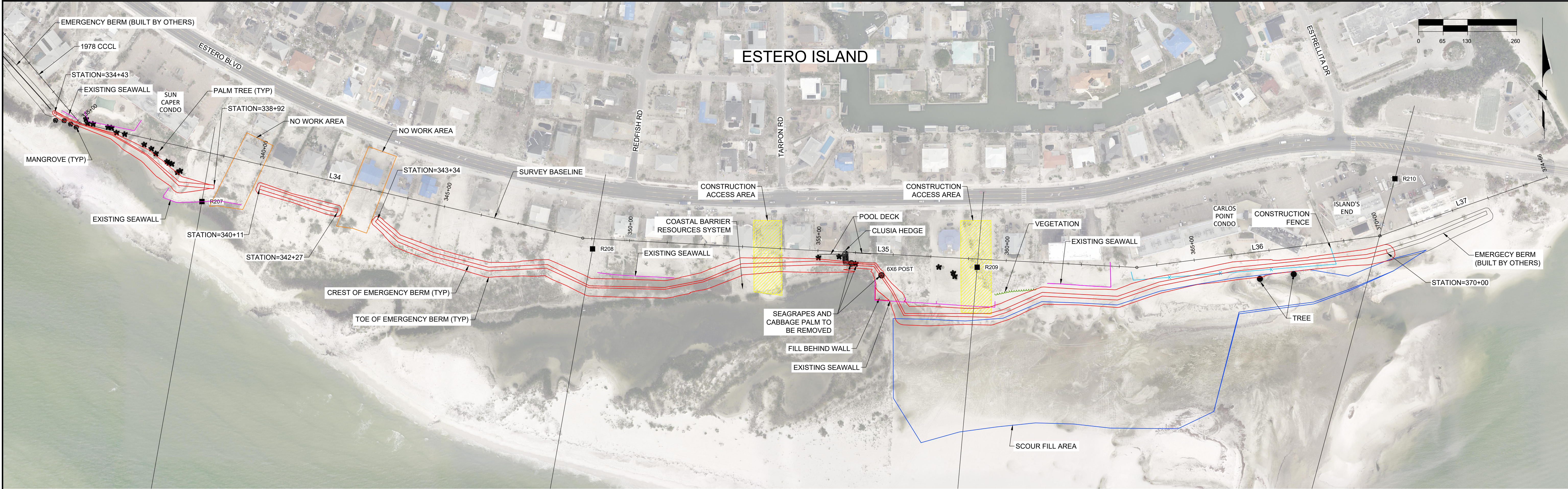


LEGEND
— = EXISTING GRADE (7/25/2023)
▨ = PROPOSED FILL AREA
--- = 0.2' TOLERANCE

SCALE
H: 1" = 20'
V: 1" = 4'



 COASTAL ENGINEERING CONSULTANTS INC. Serving Coastal Communities Since 1977 28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135										COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEY AND MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464										TOWN OF FORT MYERS BEACH										DATE: 10/20/2023										SCALE: AS NOTED										DRAWN: SDB F.B.										CHECKED: MTP PG.										SEC. TWP. RNG.										ACAD NO. 22303-Access Fill.dwg										REF. NO. 22.303										NO. DATE										BY										REVISION DESCRIPTION																			
SHEET 12										FILE NO.: 22303-EX-12										TITLE: BEACH ACCESS 34 AVENUE C										CLIENT: TOWN OF FORT MYERS BEACH										DATE: 10/20/2023										SCALE: AS NOTED										DRAWN: SDB F.B.										CHECKED: MTP PG.										SEC. TWP. RNG.										ACAD NO. 22303-Access Fill.dwg										REF. NO. 22.303										NO. DATE										BY										REVISION DESCRIPTION									
TOWN OF FORT MYERS BEACH										BEACH ACCESS 34 AVENUE C										CLIENT: TOWN OF FORT MYERS BEACH										DATE: 10/20/2023										SCALE: AS NOTED										DRAWN: SDB F.B.										CHECKED: MTP PG.										SEC. TWP. RNG.										ACAD NO. 22303-Access Fill.dwg										REF. NO. 22.303										NO. DATE										BY										REVISION DESCRIPTION																			

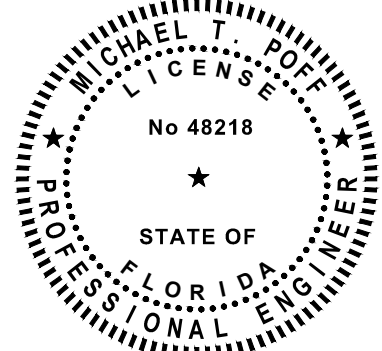


- LEGEND**
- MARCH 2023 SURVEY (CEC)
 - ▨ EMERGENCY BERM / SCOUR FILL AREA
 - - - 0.3' TOLERANCE
 - MG MANGROVE
 - MANG EDGE MANGROVE EDGE
 - FNC FENCE
 - R ROCK
 - BLDG BUILDING
 - SW SEAWALL
 - CONC CONCRETE
 - V / VEG VEGETATION
 - CBRS COASTAL BARRIER RESOURCES SYSTEM

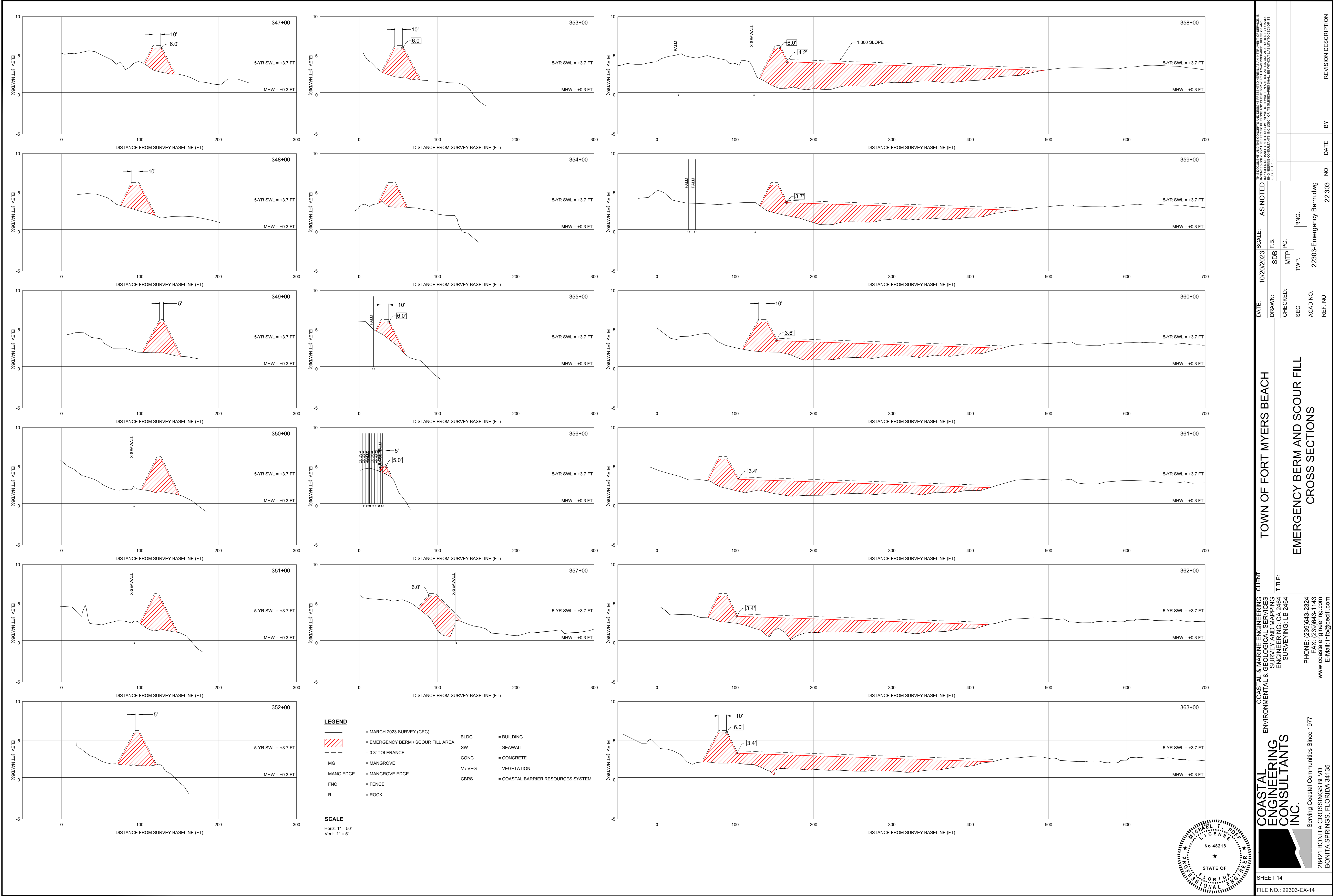
SCALE

Horiz: 1" = 50'

Vert: 1" = 5'



TOWN OF FORT MYERS BEACH		CLIENT: COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEY AND MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464	
EMERGENCY BERM AND SCOUR FILL PLAN VIEW AND CROSS SECTIONS		TITLE:	
DATE: 10/20/2023	SCALE: AS NOTED	DRAWN: SDB	F.B.
CHECKED: MTP	PG.	TWP.	RNG.
ACAD NO.	22303-Emergency Berm.dwg	REF. NO.	22,303
NO.	22,303	DATE	BY
REVISION DESCRIPTION			



COASTAL & MARINE ENGINEERING
ENVIRONMENTAL & GEOLOGICAL SERVICES
SURVEY AND MAPPING
ENGINEERING: CA 2464
SURVEYING: LB 2464

CLIENT:
TOWN OF FORT MYERS BEACH

TITLE:
EMERGENCY BERM AND SCOUR FILL
CROSS SECTIONS

DATE: 10/20/2023
DRAWN: SDB
CHECKED: MTP
SEC: TWP.
ACAD NO. 22303-Emergency Berm.dwg
REF. NO. 22.303

AS NOTED
SCALE: F.B.
PG. RING.
NO. DATE BY
22.303

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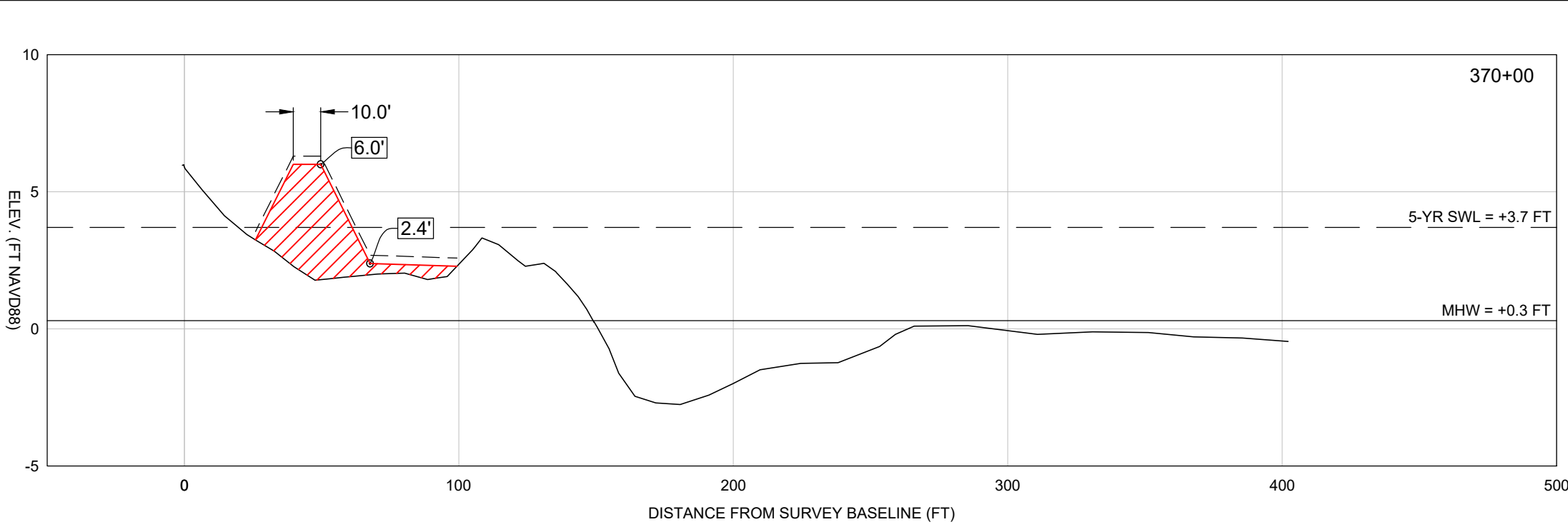
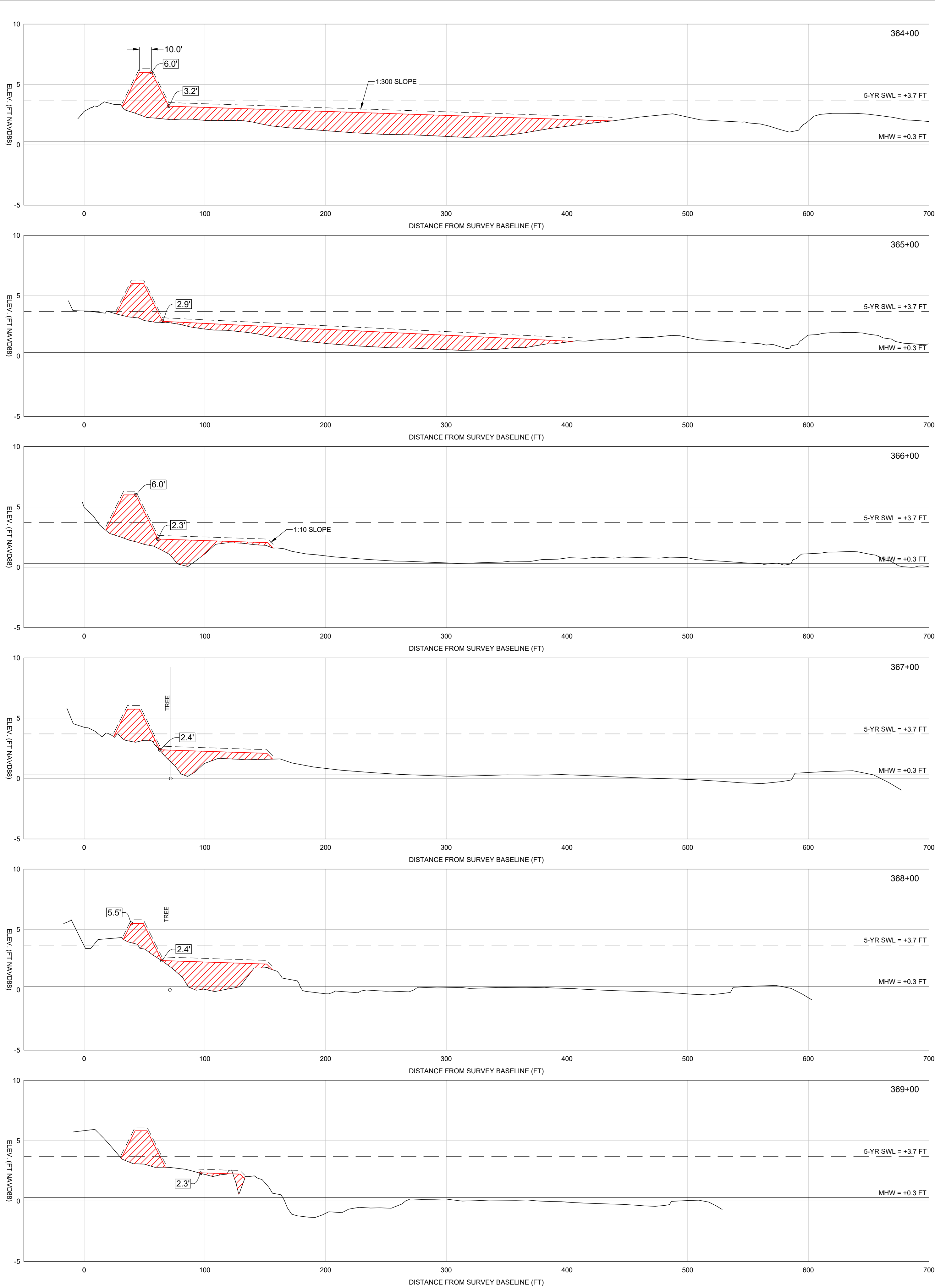
COASTAL
ENGINEERING
CONSULTANTS
INC.

STATE OF
FLORIDA
PROFESSIONAL ENGINEER
MICHAEL T. POPE
LICENSE
No 48218

SHEET 14

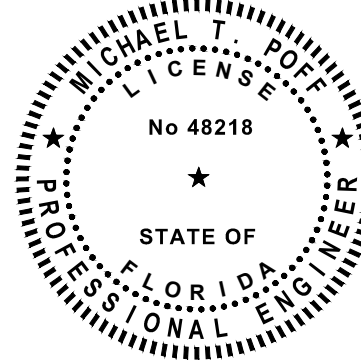
FILE NO.: 22303-EX-14

Page 98 of 407



- LEGEND**
- | | | | |
|-----------|------------------------------------|---------|------------------------------------|
| | = MARCH 2023 SURVEY (CEC) | BLDG | = BUILDING |
| | = EMERGENCY BERM / SCOUR FILL AREA | SW | = SEAWALL |
| | = 0.3' TOLERANCE | CONC | = CONCRETE |
| MG | = MANGROVE | V / VEG | = VEGETATION |
| MANG EDGE | = MANGROVE EDGE | CBRS | = COASTAL BARRIER RESOURCES SYSTEM |
| FNC | = FENCE | | |
| R | = ROCK | | |

SCALE
Horiz: 1" = 50'
Vert: 1" = 5'



COASTAL ENGINEERING CONSULTANTS INC. Serving Coastal Communities Since 1977 28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FLORIDA 34135	CLIENT: TOWN OF FORT MYERS BEACH	DATE: 10/20/2023	SCALE: AS NOTED	THIS DOCUMENT AND THE CONCEPTS AND DESIGN PRESENTED HEREIN ARE AN INSTRUMENT OF SERVICE. NO WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY COASTAL ENGINEERING CONSULTANTS, INC. (CEC) OR ITS SUBSIDIARIES SHALL BE WITHOUT LIABILITY TO CEC OR ITS SUBSIDIARIES.			
	TITLE: EMERGENCY BERM AND SCOUR FILL CROSS SECTIONS	DRAWN: SDB F.B.	CHECKED: MTP PG.	SEC. TWP. RNG.	ACAD NO. 22303-Emergency Berm.dwg	REF. NO. 22.303	NO. DATE BY REVISION DESCRIPTION

FMB:006 - CONSTRUCTION CONTRACT AGREEMENT FORM
(1 of 9 Pages)

CONSTRUCTION CONTRACT AGREEMENT

Contract No. _____

Council Award Date: _____

AGREEMENT

THIS AGREEMENT (also referred herein as "Contract") is made this _____ day of _____ by and between the TOWN OF FORT MYERS BEACH, FLORIDA, hereinafter called "**TOWN**," and _____, a corporation, hereinafter called "**CONTRACTOR**."

WITNESSETH:

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

ARTICLE 1. WORK

The CONTRACTOR shall commence and complete all work for PROJECT TITLE ITB-24-EN in accordance with the Contract Documents. CONTRACTOR shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the project described in the Contract Documents. A Scope of Services is attached marked Exhibit "A".

ARTICLE 2. CONTRACT SUM

2.1. The TOWN shall pay the CONTRACTOR, in current funds, for the performance of the work described in Exhibit "A", subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of _____, said amount being the **Total Base Bid Amount** as listed on the CONTRACTOR's Official Bid Proposal Form that was submitted for this project.

ARTICLE 3. PROGRESS PAYMENTS

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

3.1. Not later than ninety (90) calendar days following the approval of an Application for payment, TOWN will make payment to CONTRACTOR in an amount equal to ninety-five percent (95%) of that portion of the Contract Price properly allocated to labor, materials and equipment incorporated in the Work and ninety-five percent (95%) of the

portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the TOWN.

- 3.2. The Town shall withhold 5% of each progress payment as retainage until the project is completed.
- 3.3. Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the TOWN shall determine for all incomplete work, unsettled claims or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

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

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 5.1. The CONTRACTOR shall commence work as required by the CONTRACT DOCUMENTS and as provided in the Official Notice to Proceed.
- 5.2. Substantial completion shall be achieved not later than the number of days specified in the Bid Proposal, unless the period for substantial completion is extended otherwise by the CONTRACT DOCUMENTS or by written agreement of the parties.
- 5.3. Final completion shall be achieved not later than the number of days specified in the Bid Proposal, unless the period for final completion is extended otherwise by the CONTRACT DOCUMENTS or by written agreement of the parties.
- 5.4. Time is of the essence in the performance of this Contract.

Liquidated Damages:

- 5.5. The TOWN and CONTRACTOR recognize that time is of the essence of this agreement and that the TOWN will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding and the actual loss suffered by the TOWN if the work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that Liquidated Damages will be assessed in the amount of **\$500.00** per day for each calendar day that is beyond the substantial and final completion dates required by the CONTRACT DOCUMENTS.

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

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

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

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS.

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

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

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

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

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

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

ARTICLE 7. GENERAL CONDITIONS

7.1 RESPONSIBILITY OF THE CONTRACTOR.

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

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

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

ARTICLE 8. TERMINATION FOR CONVENIENCE

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

ARTICLE 9. PUBLIC RECORDS

The following provisions are required by §119.0701, Fla. Stat., and may not be amended. Contractor shall keep and maintain public records required by the Town to perform the services required under this Contract. Upon request from Town's custodian of public records, Contractor shall provide Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract's term and following completion of the Contract if Contractor does not transfer the public records to Town. Upon completion of the Contract, Contractor may transfer, at no cost, to Town all public records in possession of Contractor or keep and

maintain public records required by Town to perform the services required under the Contract.

If Contractor transfers all public records to Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town, upon request from Town's custodian of public records, in a format that is compatible with Town's information technology systems. The failure of Contractor to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM, 2545 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

Contractor further agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

The Contractor agrees to provide (insert non-federal entity), (insert name of pass-through entity, if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.1. Final payment, constituting the entire unpaid balance of the Contract Price shall be paid by the TOWN to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, form No. FMB: 013, has been approved by the TOWN.
- 10.2. Terms used in the Agreement which are defined in the General Conditions of the Contract (Part F) shall have the meaning designated in those conditions.

- 10.3. The TOWN and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.4. This Agreement may not be assigned except with the written consent of the TOWN, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 10.5. The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that he shall hold harmless and defend the TOWN and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the TOWN, excluding only the sole negligence of the TOWN. This provision shall also pertain to any claims brought against the TOWN by any employee of the CONTRACTOR, or sub-CONTRACTOR(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection. The parties acknowledge the exchange and receipt of additional consideration for this indemnification, which shall survive the termination of this Agreement.
- 10.6. This Agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or oral.
- 10.7. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provision(s) were omitted.
- 10.8. No Amendments or changes to the terms or conditions of this agreement shall be valid unless in writing and signed by all parties.
- 10.9. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. All claims and/or dispute resolution concerning this Agreement, whether by mediation, litigation, or other agreed to method of dispute resolution, shall take place in Lee County, Florida. Any litigation between the parties arising from this Agreement shall be filed in the 20th Judicial Circuit in and for Lee County, Florida.
- 10.10. TOWN reserves unto itself the sole authority to execute and authorize the issuance of Change Orders, directives, or other documents to the CONTRACTOR which impact on or change the Contract Time or Price. These actions by the TOWN will be taken after due consideration of the recommendations and analysis of the TOWN's architect or consulting engineer, if applicable. This provision supersedes any other contradictory provisions in the Contract Documents.

- 10.11 Any dispute arising out of or relating to any of the contract documents or this Agreement shall be first submitted to mediation for resolution. The parties shall mutually agree upon a mediator and equally divide the expenses of such mediation. In the event of an impasse and litigation, the parties agree to each pay their own attorney fees and costs.
- 10.12 No provision in this contract shall be construed more strongly against either party or in a light less favorable to either party because of who drafted it as a method of contract interpretation.

ARTICLE 11. E-VERIFICATION

- 11.1. As a condition precedent to entering into this Agreement, and in compliance with Section 448.095, Fla. Stat., Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
- 11.2. A contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of the Agreement.
- 11.3. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
- 11.4. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
- 11.5. A contractor terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this Agreement by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that the Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.
- 11.6. Contractor agrees to require its subcontractors to include in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

ARTICLE 12. PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES

12.1. By execution of this Contract, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of Contract. The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.

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

Signed, sealed, and delivered in the presence of:

(Secretary)

(Correct Name of Business)

BY: _____
(Title)

(Corporate Seal)

Date: _____

TOWN OF FORT MYERS BEACH COUNCIL
FORT MYERS BEACH, FLORIDA

ATTEST:

BY: _____
Town Clerk

BY: _____
Town Manager

Date: _____

Date: _____

APPROVED AS TO FORM

BY: _____
Town Attorney

EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS ____ day of _____,
20 BETWEEN THE TOWN AND _____, PROVIDER.

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

ESTERO ISLAND BEACH SAND TRUCK HAUL PROJECT

Transport, deliver, and place beach compatible sand the Town is directly purchasing from Stewart Materials to restore public beach access points, improve public beach accesses with ADA guideline access slopes, construct new emergency berm, construct emergency berm segments to connect emergency berm previously constructed by others, repair emergency berm segments previously constructed by others, fill Newton Park, and fill scour holes to offset the impacts caused by Hurricanes Ian and Nicole.

1. **Requested Motion:**

Meeting Date: January 22, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ENCOURAGING AND PROVIDING SUPPORT TO THE LEE COUNTY BOARD OF COUNTY COMMISSION TO CONSIDER ENHANCEMENTS WHEN REBUILDING THE PIER LOCATED ON ESTERO ISLAND IN ORDER TO BUILD BACK A BETTER AND BOLDER FACILITY FOR THE ENJOYMENT OF THE PUBLIC AND ECONOMIC BENEFIT TO THE COMMUNITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

To provide support to use the opportunity to rebuild the pier bigger and better as directed by Town Council on January 8, 2024.

What the action accomplishes:

Complies with direction of Town Council.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

At the Town Council meeting on January 8, 2024, the Town Attorney was directed to prepare a Resolution for review and adoption by the Town Council in support of the rebuild of the pier.

Attachments:

1. 24-16, Support for Rebuild of Pier

Financial Impact:

Unknown at this time.

6. **Alternative Action**

Reject or modify the resolution.

7. **Management Recommendations:**

N/A

8. **Recommended Approval:**

Amy Baker, Town Clerk
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/17/2024
Approved - 1/17/2024
Approved - 1/17/2024
Final Approval - 1/17/2024

RESOLUTION NUMBER 24-16

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ENCOURAGING AND PROVIDING SUPPORT TO THE LEE COUNTY BOARD OF COUNTY COMMISSION TO CONSIDER ENHANCEMENTS WHEN REBUILDING THE PIER LOCATED ON ESTERO ISLAND IN ORDER TO BUILD BACK A BETTER AND BOLDER FACILITY FOR THE ENJOYMENT OF THE PUBLIC AND ECONOMIC BENEFIT TO THE COMMUNITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, September 28, 2022 is a date that will always be remembered as a time of personal and public tragedy and loss suffered by the Fort Myers Beach community; and

WHEREAS, in addition to the loss of life and personal property by many residents of Fort Myers Beach, Hurricane Ian was responsible for the destruction of the community's iconic pier; and

WHEREAS, as the community has demonstrated its resiliency over the past year to build back stronger and better, it is incumbent upon the area's leadership to similarly consider and use this opportunity to rebuild and restore the pier to a bigger and better facility for the enjoyment of future generations and as a tangible investment in the area's economic future; and

WHEREAS, the Town Council has determined it is in the best interest of the Town of Fort Myers Beach and its residents and business owners to adopt this Resolution encouraging and providing support to efforts by the Lee County Board of County Commissioners to rebuild and restore the pier on Estero Island in a way that will make it larger and better for Lee County, its residents and its visitors.

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

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

Section 2. The Town Council hereby strongly encourages the Lee County Board of County Commissioners to not only rebuild the pier, but to also consider enhancements to it that will not only restore the iconic landmark but will also make it a bigger and better facility consistent with the community's resiliency.

Section 3. The Resolution shall be effective upon adoption. The Town Clerk is directed to immediately forward a copy of the Resolution to the Chairman of the Lee County Board of County Commissioners upon 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	_____
John R. King, Council Member	_____
Vacant, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of January 2024.

1. **Requested Motion:**

Meeting Date: January 22, 2024

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council decides rezoning requests.

What the action accomplishes:

Approval of the request will allow redevelopment of a convenience store in accordance with the MCP at 1301 Estero Blvd.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

The applicant for 1301 Estero Blvd is requesting a rezoning from Downtown zoning to Commercial Planned Development for the redevelopment of a convenience store. The proposed development will have an entrance on Estero Blvd and an entrance on Palermo Circle and a dumpster enclosure with access off of Santos Rd. The site previously contained a 7-Eleven convenience store. The Downtown zoning does allow a convenience store use by-right. The applicant is requesting a CPD to develop the site rather than requesting multiple variances from the Land Development Code. The requested deviations are listed below in this report.

Attachments:

1. 24-02, 1301 Estero Blvd 7-11 CPD
2. business-impact-estimate
3. Staff Report
4. Exhibit A MCP 01-03-24
5. Exhibit B Postcard
6. Exhibit C Complete application

Financial Impact:

unknown

6. **Alternative Action**

Deny request

7. **Management Recommendations:**

Recommend approval with conditions

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/12/2024
Approved - 1/12/2024
Approved - 1/17/2024
Approved - 1/17/2024
Final Approval - 1/17/2024

ORDINANCE 24-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, 7-Eleven Inc. and The Neighborhood Company, owner and agents for the property owner, located at 1301 Estero Blvd., parcels generally identified as STRAP numbers 19-46-24-W4-0060B.0160 in the Town of Fort Myers Beach, filed applications to rezone the property from the Downtown Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a convenience store ; and

WHEREAS, the subject property is a single parcel located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 9, 2024; and

WHEREAS, at the January 9, 2024 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) sec. 34-85; and

WHEREAS, at the January 9, 2024 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the variance by a 6-0 vote with one member abstaining; and

WHEREAS, on January 22, 2024 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 Fort Myers Beach Land Development Code (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 noticed in an appropriate publication 10 days prior to the Town Council on February 5, 2024; 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 Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, a Business Impact Estimate has been prepared and published on the Town's website; and

WHEREAS, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; 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 that this request to rezone the property from the Downtown Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a convenience store, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #1

Deviation from LDC Section 34-706(d) which requires properties that front on Estero Blvd and have access to a secondary street, to take access from the secondary street, except when the requirement would prohibit reasonable access. The deviation allows driveway access from Palermo Circle and Estero Blvd.

Deviation #2

Deviation from LDC Section 34-2013(a)(3) which limits driveway apron width, at the property line, to 25 feet. The request is to allow a 60-foot-wide curb cut at Palermo Circle and a 35-foot-wide curb cut on Estero Blvd.

Deviation #3

Deviation from LDC Section 10-285 the minimum driveway separation requirements along Estero Boulevard and Palermo Circle. The deviation would allow driveway (vehicle access) separation along Estero Boulevard to be a minimum of approximately 141 feet from the adjacent access point to the east and a minimum of approximately 52 feet from the Estero Blvd/Palermo Intersection. The deviation would also allow driveway (vehicle access) separation along Palermo Circle to be a minimum of approximately 52 feet from the Santos Road intersection and approximately 105 feet

from the Estero Blvd/Palermo Circle intersection.

Deviation #4

Deviation from LDC Section 34-706(a) which requires parking to be located in the side or rear of the property. This deviation will allow the parking to be located closer to Palermo Circle than the primary structure.

Deviation #5

Deviation from LDC Section 34-2020(d)(2)i.1. which requires a minimum of four spaces per 1,000 square feet, for a total of 14 spaces for the 3,500 square foot structure. To allow eight parking spaces.

Deviation #6

Deviation from LDC Section 34-705(a)(1) which requires buildings on Estero Blvd. to have at least 50% building frontage. The request would allow a building with at least 43% frontage along Estero Blvd.

Deviation #7

Deviation from LDC Section 34-2015(5) which requires sufficient maneuvering room to allow an exiting vehicle to leave the parking lot in a forward motion. The deviation would allow vehicles to leave the most northern parking spaces in a reverse motion into the Palermo Circle right-of-way

Findings for the rezoning:

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

- a. Minor ambiguities were resolved through the deviation process.
- b. Long-standing blighted conditions on the subject property can be ameliorated through approval of this rezoning.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause

damage, hazard, nuisance, or other detriment to persons or property.

- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

WHEREAS, the Town Council made the following formal findings before making final decisions on the seven requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216 and 34-1803):

- 1. Deviations #1, #2, #3, #4, #5, #6, #7 are being approved only due to the exceptional circumstances presented by the coordinated redevelopment of several critical parcels in the downtown zoning district in furtherance of policies in the Comprehensive Plan.
- 2. All aspects of the proposed development, as limited by the special conditions being imposed by the Town Council, are compatible with the surrounding are including building height, traffic flow, and intensity of use.
- 3. The proposed development, as modified by these deviations, clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.
- 4. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
- 5. Granting these deviations will enhance the achievement of the objectives of the proposed development.
- 6. The general intent of the LDC to protect the public health, safety, and welfare will be preserved and promoted with these deviations.
- 7. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
- 8. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to approve Ordinance 24-02 which 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, IT IS HEREBY 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 meet its burden of proof that the request to approve Town of Fort Myers Beach's Ordinance no. 24-02 and the conditions of approval 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 **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-02 is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

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

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

Section 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 ____ day of February 2024.

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

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:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of February 2024.

Exhibit A CONDITIONS OF APPROVAL

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230160 with the attached conditions:

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. The parking space closest to Palermo Circle shall includes signage which warns drivers that they are backing into a right of way and to be aware of oncoming traffic.
4. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Proposed Ordinance 24-02: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or

¹ See Section 166.041(4)(c), Florida Statutes.



- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

The ordinance allows the development of a site, no compliance costs are likely to occur.

Ordinance 23-101 does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

The Town estimates that 1 private business will be impacted by this ordinance.



4. Additional information the governing body deems useful (if any):

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: [City/Town/Village] staff solicited comments from businesses in the [City/Town/Village] as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on [City/Town/Village] website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Commercial Planned Development

CASE NUMBER: DCI Rezoning, 20230160

CASE NAME: 1301 Estero Blvd, rezone the property from Downtown Zoning to Commercial Planned Development for the redevelopment of a convenience store.

**TOWN COUNCIL
HEARING DATE** January 22, 2024 at 9 AM

**LPA
HEARING DATE:** January 9, 2024 at 9 AM

**STAFF
RECOMMENDATION:** Approve with conditions

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

I. APPLICATION SUMMARY

Applicant/Owner: The Neighborhood Company/ 7-Eleven Inc.

Request: The applicant is requesting to rezone the property from Downtown Zoning to Commercial Planned Development for the redevelopment of a convenience store.

Subject property: See attached site plan

Physical Address: 1301 Estero Blvd

STRAP #: 19-46-24-W4-0060B.0160

FLU: Pedestrian Commercial

Zoning: Downtown

Adjacent zoning and land uses:

North:	Santos/ Mixed Residential Multi-Family Residence
South:	Downtown/ Pedestrian Commercial Commercial
East:	Downtown/ Pedestrian Commercial Parking Lot
West:	Downtown/ Pedestrian Commercial Restaurant

II. BACKGROUND AND ANALYSIS

Background:

The Neighborhood Company, applicant for 1301 Estero Blvd, 7-Eleven, is requesting a rezoning from Downtown zoning to Commercial Planned Development for the redevelopment of a convenience store. The proposed development will have an entrance on Estero Blvd and an entrance on Palermo Circle and a dumpster enclosure with access off of Santos Rd. The site previously contained a 7-Eleven convenience store, the Downtown zoning does allow a convenience store use by-right. The applicant is requesting a CPD to develop the site rather than requesting multiple variances from the Land Development Code. The requested deviations are listed below in this report.

Analysis:

1301 Estero Blvd. has supported a convenience store in this location since 1965. The previous convenience store was approximately 2,100 square feet in size and appears to have provided eight compliant parking spaces and several noncompliant parking spaces. The curb cuts did not comply with the Town's road design requirements and very little landscaping was provided. The previous building did not meet current flood or building code requirements.

The proposed store is 3,500 square feet and will provide eight parking spaces. One of the parking spaces does not meet the minimum depth and two parking spaces will require backing into the Palermo Circle right of way. The proposed site will provide landscaping and compliant curb cut widths. The proposed building will meet all building regulations and will be designed to be FEMA compliant with dry floodproofing.

Requested Deviations:

- 1) Relief from Sec. 34-706(d) which requires properties that front on Estero Blvd and have access to a secondary street, to take access from the secondary street, except when the requirement would prohibit reasonable access. The deviation allows driveway access from Palermo Circle and Estero Blvd.**

Applicant Justification: *The prior site condition provided for existing access points (driveways) both onto Estero Blvd (Primary Street) and Palermo Circle*

(Secondary Street). Estero Blvd. was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. Due to the unique triangular configuration of the subject property, which has been in place for decades and the need to redevelop the property to bring back the desired commercial convenience store use to the Town, it is necessary to continue to allow for access points from Estero Blvd., and Palermo Circle. Convenience stores rely heavily on customer vehicular traffic and truck deliveries, which require appropriately designed and safe traffic movement. Due to the physical limitations resulting from the triangular shape of the property the site plan continues access from Estero; however, the design has been improved to enhance functionality and safety.

Staff Comment: The proposed deviation seems appropriate in this instance due to the irregular shape of the parcel. Truck deliveries on this particular parcel would be difficult to accommodate without the ability to enter one side and exit the opposite.

2) Relief from Sec. 34-2013(a)(3) which limits driveway apron width, at the property line, to 25 feet. The request is to allow a 60-foot-wide curb cut at Palermo Circle and a 35-foot-wide curb cut on Estero Blvd.

Applicant Justification: The pre-Ian site design had non-conforming access (driveway) widths along Estero Blvd. and Palermo Circle. Estero Blvd. was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. In order to bring back the desired commercial convenience store use to Fort Myers Beach, the odd shaped lot configuration requires the need to maintain an access point wider than 25 feet along both Palermo Circle and Estero Blvd. The proposed MCP reduces the access point widths from over 100 feet to a maximum of 60 feet for Palermo Circle and 80 feet wide down to a maximum of 35 feet. This new configuration will improve circulation patterns, ensure safe and efficient truck maneuverability, and improve overall public safety conditions.

Staff Comment: The irregular angle of the Palermo Circle entrance and the short width of the parking lot means that cars may need the additional entrance width to properly make turns and maneuver in the small parking lot.

3) Relief from Sec. 10-285 the minimum driveway separation requirements along Estero Boulevard and Palermo Circle. The deviation would allow driveway (vehicle access) separation along Estero Boulevard to be a minimum of approximately 141 feet from the adjacent access point to the east and a minimum of approximately 52 feet from the Estero Blvd/Palermo Intersection. The deviation would also allow driveway (vehicle access) separation along Palermo Circle to be a minimum of approximately 52 feet from the Santos Road intersection and approximately 105 feet from the Estero Blvd/Palermo Circle intersection.

Applicant Justification: The proposed accessways onto Estero Boulevard and Palermo Circle existed prior to Hurricane Ian and the destruction of the existing

convenience store use. Relocation of the existing accessways to meet the distance separation from all surrounding street intersections or other accessways is impossible. Due to the unique triangular configuration of the subject property and the need to manage vehicular traffic and pedestrian connectivity to the site, the proposed site layout as detailed on the Master Concept Plan requires both accessways from Estero Blvd. and Palermo Circle to remain. The two accessways were non-conforming in terms of their location and overall width. The Estero Blvd. accessway was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. Both accessways, pursuant to requested Deviation #2, will be significantly reduced in width. This will improve traffic circulation to and from the adjacent roadways. The proposed configuration, as detailed on the MCP, increases distance separation from all surrounding street intersection and accessways than what previously existed, thus working toward achieving general consistency of the intent of LDC Section 10-285 to provide as much connection separation while keeping the proposed redevelopment feasible.

Staff Comment: The proposed location for the Palermo Circle entrance is likely the best scenario for this parcel, it is as far away from Estero Blvd without being too close to the Santos Rd. right of way. The location of the entrance from Estero Blvd could be further from Palermo Circle if the proposed building were closer to the Palermo Circle side of the property and the driveway were shifted to the southeast. However, the applicant has indicated that this site layout will not accommodate the proposed structure.

4) Relief from Sec. 34-706(a) which requires parking to be located in the side or rear of the property. This deviation will allow the parking to be located closer to Palermo Circle than the primary structure.

Applicant Justification (full justification in application packet): *The proposed redevelopment of the site has relocated the off-street parking to the western side of the site facing Palermo Circle, which is now the primary frontage and main entrance to the building. Although parking is not located in the side or rear yard, it has been relocated from the Estero Blvd. frontage. The reconfigured accessways into the site from Estero Blvd. and Palermo Circle have been reduced in width, allowing for more controlled vehicular movements in and out of the site. The new configuration removes the prior unsafe and undesirable off-street parking onto Estero Blvd. The closest parking stall proposed is more appropriately orientated parallel to Estero Blvd. and with a 10' separation from the Estero Blvd. This orientation also allows for the addition of an internal sidewalk connecting to the existing sidewalk along Estero Blvd., thus allowing for a safer, more pedestrian friendly site.*

Staff Comment: The proposed site layout has the parking to the side of the primary structure from the main roadway frontage, Estero Blvd. The parking is closer to Palermo Circle than the primary structure, however, the oddly shaped lot makes reorientation of the building and relocation of the parking lot challenging.

5) Relief from Sec. 34-2020(d)(2)i.1. which requires a minimum of four spaces per 1,000 square feet, for a total of 14 spaces for the 3,500 square foot structure. To allow eight parking spaces.

Applicant Justification (full justification in application packet): The site is located within an area of the town (Downtown zoning district) considered a “park-once” district and allows for a reduction of required vehicle parking by a multiplier of 67%. Through this multiplier, the required number of vehicle parking spaces would be reduced to a total of 5 spaces. However, LDC Sec. 34-953 states that requests for a rezoning to a Commercial Planned Development (CPD) zoning district require that building placement, size, design, and all other property development regulations, such as parking, shall be the same as for the CB zoning district. Following this requirement means the proposed convenience store is required to revert to providing a minimum of 14 vehicle parking spaces. This is counterproductive to the desired “park-once” intent the town is seeking for this area. Reverting to the CB requirements results in the applicant’s inability to apply the parking reduction multiplier and burdens the site with excessive off-street parking in this more urbanized area of the town.

The applicant desires to meet the intent of being within the Downton “park-once” district by seeking a reduction in the number of off-street vehicle spaces from 14 to 8. Due to the unique triangular configuration of the subject property, the need to manage vehicular traffic and pedestrian connectivity to the site, and the need to support the proposed convenience store use results in the need to maintain a minimum of 8 parking spaces. The applicant also sees the benefit of and wants to promote the use of alternative modes of transportation to their development. The applicant is accomplishing this by designating an area for 2 bicycle racks, each able to hold 4 bicycles.

Staff Comment: The applicant justification for providing fewer parking spaces does seem appropriate in this location. The Downtown reduction would apply to this property, if a rezoning to CPD were not being requested.

6) Relief from Sec. 34-705(a)(1) which requires buildings on Estero Blvd. to have at least 50% building frontage. The request would allow a building with at least 43% frontage along Estero Blvd.

Applicant Justification(full justification in application packet): The unique triangular shape of the lot presents a design challenge when attempting to meet the 50% Estero Blvd. frontage requirement. The requested deviation will allow for the frontage requirement to be reduced to 43% on Estero Blvd. The proposed site configuration locates the building where the property is the widest, removes off-street parking from the Estero Blvd. frontage, reduces the width of the vehicular access points from Estero Blvd. and Palermo Circle, and allows for an internal sidewalk from the entrance of the 7-Eleven to the sidewalk along Estero Blvd. This site configuration also brings the building closer to Estero Blvd., establishes a much safer, more pedestrian friendly environment and encourages pedestrian connectivity in a heavily traveled, walkable area of the island.

Staff Comment: The irregular shape of the lot makes this requirement difficult to meet. Staff and the applicant did discuss other layout options which would accomplish the 50% building frontage. Per the applicant, the other layout options were not able to accommodate the proposed building size and all of the necessary site features.

7) Relief from Sec. 34-2015(5) which requires sufficient maneuvering room to allow an exiting vehicle to leave the parking lot in a forward motion. The deviation would allow vehicles to leave the most northern parking spaces in a reverse motion into the Palermo Circle right-of-way.

Applicant Justification: Prior to Hurricane Ian, the convenience store's parking configuration required vehicles to back into the Palermo Circle, a local street, and Estero Boulevard, an arterial roadway, rights-of-ways in order to exit the site. The unique triangular shape of the lot presents a design challenge for access and the required parking of vehicles. The lot and redevelopment of the prior use does not provide sufficient room to allow for all spaces to leave in a forward motion into Palermo Circle right-of-way. The proposed reconfiguration of the site has created a defined two-way access from Estero Boulevard as well as Palermo Circle to improve vehicle maneuvering to and from the property. The site configuration has also allowed for improved pedestrian safety and connectivity from the right-of-way to the use. The proposed parking spaces, which are located on a property within the Pedestrian Commercial future land use category, do not unduly interfere with a critical congested road segment (Estero Boulevard) and do not affect normal usage of any existing or proposed sidewalks along Palermo Circle. The requested deviation to allow vehicles to back out of the most northern parking spaces into Palermo Circle, a local street, will not negatively impact the health, safety, and welfare of the community.

Staff Comment: The irregular shape and small size of the lot makes this requirement difficult to meet. The previous site included several spaces that backed onto Estero Blvd and Palermo Circle. This is an improvement on the previous layout however staff recommends that the parking space includes signage warning drivers that they are backing into a right of way.

Neighborhood Compatibility:

Many of the previously existing commercial and residential properties in the area were destroyed by hurricane Ian. Very few structures remain standing. The proposed development will be more compliant than the previous development and will conform in many aspects. This convenience store use has been in existence in this area for many decades and is not likely to have an adverse impact on the neighborhood.

Findings and Conclusions:

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning.

(b) Considerations. In reaching its decision, the town council shall consider the

following, whenever applicable:

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

No errors or ambiguities exist.

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

The previous structure was destroyed by Hurricane Ian and redevelopment of the oddly shaped site makes the requests appropriate.

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

No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

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

(6) The testimony of the public.

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

The proposed development is in compliance with the intent and intensity of the district and the use is allowed in the Downtown zoning district. The proposed site development will create more pedestrian safe sidewalks where an open apron previously existed, this is consistent with several pedestrian related objectives of the comprehensive plan. The redevelopment of a commercial use in the Pedestrian Commercial district is supported by the comprehensive plan. The new structure will be dry floodproofed and designed to current building and flood requirements which is supported by the comprehensive plan.

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

The proposed development will meet performance standards set for the in 34-2031.

There are no special location standards for convenience stores.

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

The urban services exist in this location.

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

The request will have no impact on environmentally critical areas and natural resources.

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

The proposed use has been in existence in this location for many decades. It is not anticipated to have any detrimental impacts on existing or planned uses.

(12) Whether the location of the request places an undue burden upon existing

transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
This use in this location will not place additional burden on the transportation network or other facilities and services.

(13) For planned development rezonings, see [§ 34-216](#) for additional considerations.

(c) Findings. Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

The proposed use and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

The proposed use complies with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.

The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see [§ 34-216](#) of this chapter for additional findings.

Sec. 34-216 Findings:

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

The use is allowed by right in this location.

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

Sufficient safeguards are provided for the public interest.

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

All conditions are related to the impacts on the public interest.

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

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

Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Not applicable.

3. Policy 4-C-4 on building heights taller than the standard height limit.

Not applicable.

4. Policy 4-C-8 on density transfers.

Not applicable.

5. Policy 4-E-1 on pre-disaster buildback.

Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

The proposed development is similar in size and use to the previous development and is expected to have no adverse impact on traffic.

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and

The requested deviations allow the development of the site, and are primarily due to the odd shape of the parcel.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and

The proposed deviations preserve the public health. The parking space that backs into Palermo Circle is a safety concern, however signage warning of oncoming traffic is required in the conditions.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

The deviations are not a detriment to the public interest and the proposed site is an improvement over the previous development.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

The deviations are consistent with the comprehensive plan.

III. RECOMMENDATION

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230160 with the attached conditions.

At the January 9th LPA hearing, the LPA recommended 6-0, with one member abstaining, to approve the request with conditions.

IV. CONDITIONS OF APPROVAL

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.

3. The parking space closest to Palermo Circle shall includes signage which warns drivers that they are backing into a right of way and to be aware of oncoming traffic.
4. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

Staff Report Exhibits:

A – Master Concept Plan

B – Letter to Adjacent Property Owners

C – Complete Application

OPEN SPACE		
	REQUIRED	PROVIDED
MINIMUM PERCENTAGE	0	16%
MINIMUM AREA	0 AC	0.049 AC

1. THE BUILDING SHALL BE A MAXIMUM OF 3,500 +/- SQUARE FEET.
2. PROJECT WILL BE DEVELOPED IN ONE PHASE.
3. WATER MANAGEMENT REQUIREMENTS FOR REDEVELOPMENT PROJECTS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT THE TIME OF D.O.
4. THE EXACT BUILDING AND SITE IMPROVEMENT CONFIGURATIONS ARE PRELIMINARY IN NATURE AND SUBJECT TO CHANGE. THE FINAL DESIGN AND IMPROVEMENT DETAILS SHALL BE DEFINED AS PART OF THE DEVELOPMENT ORDER (DO) PROCESS.
5. ALL OTHER DEVELOPMENT STANDARDS SHALL BE SET FORTH IN LDC CHAPTER 34 OR OTHER APPLICABLE PROVISIONS OF THE LDC.
6. NO ENVIRONMENTALLY SENSITIVE LAND OR WATER EXISTS ON SITE AS SITE WAS IMPACTED BY PREVIOUS DEVELOPMENT. NO PROTECTED SPECIES SURVEY IS REQUIRED AS PROPERTY IS LESS THAN ONE (1) ACRE PER LDC SEC. 10-473.
7. ANY PROPOSED STRUCTURE LOCATED IN A SPECIAL FLOOD HAZARD AREA (SFHA) WITH COMMERCIAL SPACE BELOW THE BASE FLOOD ELEVATION (AT GROUND LEVEL) WILL BE PROPERLY DRY-FLOODPROOFED IN ACCORDANCE WITH LDC ARTICLE IV, FLOODPLAN REGULATIONS AND LDC SECTION 34-631(C). THE DRY-FLOODPROOFING SHALL INCLUDE FASTENING DESIGNED TO BE 'VISUALLY UNOBTUSIVE' AND INTEGRATED INTO THE DESIGN OF THE PRINCIPAL FACADES.

1. RETAIL STORE, SMALL TO INCLUDE: CONVENIENCE STORES, NO FUEL PUMPS
(OPEN 24 HOURS / 7 DAYS)

1. 8 VEHICLE PARKING SPACES FOR CONVENIENCE FOOD AND BEVERAGE STORES.
2. 8 BICYCLE PARKING SPACES.

3. SEEKS RELIEF FROM LDC SECTION 34-706(D), WHICH REQUIRES THAT WHEN PROPERTIES FRONTING ON ESTERO BOULEVARD, EXISTING DRIVEWAY AND PARKING SPACES SHALL BE RELOCATED FROM ESTERO BOULEVARD TO SECONDARY STREETS, EXCEPT WHERE THESE REQUIREMENTS WOULD PROHIBIT ALL REASONABLE ACCESS TO A PROPERTY. THE DEVIATION WOULD ALLOW DRIVEWAYS TO REMAIN THAT CONNECT TO ESTERO BOULEVARD AND PALMERIO CIRCLE.
4. SEEKS RELIEF FROM SECTION 34-2013 (A)(3) WHICH STATES THAT THE MAXIMUM WIDTH AT THE PROPERTY FOR PARKING LOT ACCESS IS 25 FEET. THE DEVIATION WOULD ALLOW FOR A MAXIMUM PARKING LOT ACCESS WIDTH AT THE PROPERTY LINE OF 60 FEET ALONG PALERMO CIRCLE AND 35 FEET ALONG ESTERO BLVD.
5. SEEKS RELIEF FROM THE DRIVEWAY SEPARATION REQUIREMENTS OF LDC SECTION 10-285 ALONG PALERMO CIRCLE. THE DEVIATION WOULD ALLOW DRIVEWAY (VEHICLE ACCESS) SEPARATION ALONG ESTERO BOULEVARD TO BE APPROXIMATELY 141 FEET FROM THE ADJACENT ACCESS POINT TO THE EAST AND APPROXIMATELY 52 FEET FROM THE ESTERO BLVD/PALERMO INTERSECTION. THE DEVIATION WOULD ALSO ALLOW DRIVEWAY (VEHICLE) SEPARATION ALONG PALERMO CIRCLE TO BE APPROXIMATELY 52 FEET FROM THE SANTOS ROAD INTERSECTION AND APPROXIMATELY 105 FEET FROM THE ESTERO BLVD/PALERMO CIRCLE INTERSECTION.
6. SEEKS RELIEF FROM LDC SECTION 34-706(A) WHICH REQUIRES OFF-STREET PARKING LOT TO BE PLACED IN THE SIDE OR REAR YARDS. THE DEVIATION WOULD ALLOW THE OFF-STREET PARKING TO BE LOCATED AND ORIENTATED TOWARD THE PALERMO CIRCLE FRONTAGE.
7. SEEKS RELIEF FROM LDC SECTION 34-2020(D)(2)I.1 WHICH REQUIRES A MINIMUM OF FOUR SPACES PER 1,000 SQUARE FEET OF TOTAL FLOOR AREA OR 14 PARKING SPACES FOR THE PROPOSED MAX. 3,500 SQUARE FEET OF CONVENIENCE STORE TOTAL FLOOR AREA. THE DEVIATION WOULD ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED PARKING SPACES TO 8 PARKING SPACES.
8. SEEKS RELIEF FROM LDC SECTION 34-705(A)(1) WHICH REQUIRES BUILDING FRONTAGES ON ESTERO BOULEVARD TO BE AT LEAST 50 PERCENT OF THE LOT FRONTAGE. THE DEVIATION WOULD ALLOW FOR THE BUILDING FRONTAGE ON ESTERO BOULEVARD TO BE AT LEAST 43 PERCENT OF THE LOT FRONTAGE.
9. SEEKS RELIEF FROM LDC SECTION 34-2015(5) WHICH REQUIRES SUFFICIENT MANEUVERING ROOM TO ALLOW AN EXITING VEHICLE TO LEAVE THE PARKING LOT IN A FORWARD MOTION. THE DEVIATION WOULD ALLOW FOR VEHICLES TO LEAVE THE MOST NORTHERN PARKING SPACES IN A REVERSE MOTION INTO THE PALERMO CIRCLE RIGHT-OF-WAY.

BRANDON M. FREY, P.E.
FL. LICENSE NO. 86651
FL. COA # 29226



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please check for meeting changes on our website WWW.FMBGOV.com.

TIME: 9 AM

DATE: LPA January 9, 2023 and Town Council January 22, 2023

CASE: DCI20230160

ADDRESS: 1301 Estero Blvd

APPLICANT: Kenrick Gallander AICP

REQUEST: The applicant is requesting to rezone from Downtown to Commercial Planned Development for the redevelopment of a 7-Eleven convenience store.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency** will review the application materials and hear testimony to make a **recommendation**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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2525 Estero Blvd,
Fort Myers Beach, FL 33931

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«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

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

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

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»



August 25, 2023

Town of Fort Myers Beach
Community Development Department
2525 Estero Blvd.
Ft Myers Beach, FL 33931

**Subject: 1301 Estero Blvd Commercial Planned Development (CPD) – Submittal #1
A Planned Development Rezone Application**

Intake Team:

The Neighborhood Company is pleased to submit on behalf of our client, J.R. Evans Engineering, P.A. an Application for a Planned Development associated with the subject property located at 1301 Estero Blvd., Ft Myers Beach, FL 33931. The proposed request is to seek the following:

- Rezoning of the subject property from Downtown to Commercial Planned Development (CPD) to allow flexibility to redevelop the subject property and rebuild a desired 3,500 +/- SF convenience store.

Please find attached the following items to this cover letter consistent with application submittal checklist:

1. Application Filing Fee;
2. Application for Public Hearing:
 - Disclosure of Interest Affidavit & Authorization Form;
 - Letter of Authorization;
 - Exhibit 6-1 – STRAP # and Legal Description (Platted Lots)
 - Exhibit 6-2 – Boundary Survey;
 - Exhibit 6-3 – Area Location Map;
 - Exhibit 6-6 – List of Surrounding Property Owners within 500';
 - Exhibit 6-7– Map Surrounding Property Owners within 500'; and
 - Mailing Labels Surrounding Property Owners within 500';
3. Planned Development Zoning - Supplement PH-D:
 - Narrative:
 - o Background & Request
 - o Proposed Use/Development
 - o Location, Site Design, & Compatibility
 - o Supplement PH-D Section A: Comprehensive Plan Amendments
 - o Supplement PH-D Section B: Phasing of Construction
 - o Supplement PH-D Section C: Comp Plan Compliance
 - o Supplement PH-D Section D: Design Standards Compliance:
 - o Supplement PH-D Section E: Decision-making Compliance
 - o Conclusion



- Schedule of Deviations and Justifications;
- Master Concept Plan;
- Architectural Elevations; and
- Schedule of Uses.

We look forward to your review and are available to answer questions related to this application.

Sincerely,

The Neighborhood Company

Kenrick Gallander, AICP
Vice President, Partner

Attachments: Application Submittal Requirements (listed above)

cc: Creighton Construction & Management
Elizabeth Fountain
Daniel Mumford
File: #230031.01.01



**1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone**

FILING FEE

Town Fee Schedule 2023:

- PD Rezone = \$8,000

TOTAL: \$8,000



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: 1301 Estero Blvd., Ft Myers Beach, FL 33931

STRAP Number: 19-46-24-W4-0060B.0160

Applicant: The Neighborhood Company Phone: 850-803-5621

Contact Name: Kenrick S. Gallander, AICP Phone: _____

Email: kg@theneighborhood.company Fax: _____

Current Zoning District: Downtown

Future Land Use Map (FLUM) Category: Pedestrian Commercial

FLUM Density Range: _____ Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

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

SUPPLEMENTAL FORM REQUIRED

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

PART I – General Information

A. Applicant*: The Neighborhood Company Phone: 850-803-5621

**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: 5618 Whispering Willow Way, Fort Myers, FL 33908

Email: kg@theneighborhood.company Fax: _____

Contact Name: Kenrick Gallander Phone: 850-803-5621



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: Kenrick Gallander, AICP Phone: 850-803-5621
Address: 5618 Whispering Willow Way, Ft Myers, FL 33908
Email: kg@theneighborhood.company Fax: _____

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

Name: Elizabeth Fountain, P.E. Phone: 239-405-9148
Address: 9961 Interstate Commerce Dr. #230, Fort Myers, FL 33913
Email: Elizabeth@jrevansengineering.com Fax: _____

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

PART II – Nature of Request

Requested Action (each request requires a separate application)

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

PART III – Waivers

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

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

- ☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Signature

Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of _____ physical
presence OR _____ online notarization, this _____ day of _____, 20____, by

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

_____ as identification.

(SEAL)

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

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

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

DISCLOSURE OF OWNERSHIP INTEREST

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

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Name, Address and Office

7-Eleven, INC- 3200 Hackberry Rd Irving, TX 75063

Percentage of Stock

100%

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

Name and Address

Percentage of Interest

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

Name and Address

Percentage of Ownership

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

Name, Address and Office

Percentage of Stock



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

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

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____

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

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

Signature

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, Grant Distel (name), as Sr. Director of Development (title)
of 7-Eleven 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
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7-Eleven Inc

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

Grant Distel

Signature

Sr Director of Development

Title

Grant Distel

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 15 day of AUGUST, 2023, by GRANT DISTEL, ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Kelli J Frost
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W4-0060B.0160

Property Address: 1301 Estero Blvd., Ft Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☒ Yes. Property identified in subdivision: Venetain Gardens Blk B

Book: 6 Page: 70 Unit: _____ Block: _____ Lot(s): 16 & 17

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: **SEE SURVEY.**

Width (please provide an average width if irregular in shape) _____ feet

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

Frontage on street: _____ feet. Frontage on waterbody: _____ feet

Total land area: 10,677 +/- _____ ☐ acres ☒ square feet

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

The site is approximately 0.2 miles south and east of the Matanzas Pass Bridge on
Estero Blvd. at the corner of Estero Blvd. and Palermo Circle.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

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

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

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

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

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

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

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

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

☐ Low Density

☐ Mixed Residential

☐ Boulevard

☒ Pedestrian Commercial

☐ Marina

☐ Recreation

☐ Wetlands

☐ Platted Overlay



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

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

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

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

Explanatory Notes – Part IV & V

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



THE NEIGHBORHOOD
COMPANY

I Grant Distel, as authorized member of 7-Eleven, Inc. owner of property located at 1301 Estero Blvd., Fort Myers Beach, FL, identified by STRAP Number 19-46-24-W4-0060B.0160, hereby authorizes The Neighborhood Company regarding the above-referenced property to serve as agent for the Town of Ft Myers Beach Planned Development Rezone Application.

7-Eleven, Inc.

By: 

Print Name: Grant Distel

Title: Sr. Director of Development

STATE OF FLORIDA
CITY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15 day of AUGUST, 2023 by GRANT DISTEL, as SR. DIRECTOR OF DEVELOPMENT of 7-ELEVEN, INC, on behalf of the company(s), who ☐ is personally known to me OR ☐ has produced a(n) driver's license as identification.

(NOTARY STAMP)




Notary Public, State of FLORIDA
Print Name: Kelli J Frost
My Commission Expires: 2-26-24



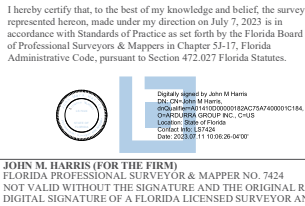
**1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone**

EXHIBIT 6-1: STRAP# & LEGAL DESCRIPTION

- STRAP#: 19-46-24-W4-0060B.0160
- Description: (*Instr. No. 2006000352023*)
 - o Lots 16 and 17, Block B, Venetian Gardens, according to the plat thereof as recorded in Plat Book 6, Page 70, Public Records of Lee County, Florida.

Lots 16 and 17, Block B, Venetian Gardens, according to the plat thereof as recorded in Plat Book 6, Page 70
Public Records of Lee County, Florida.

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[illegible]

John M. Harris
 License Number
 LS 7424
 STATE OF
 FLORIDA
 Professional Surveyor and Mapper
 FLORIDA PROFESSIONAL
 SURVEYOR & MAPPER NO. 7424

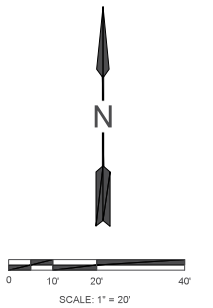
1 of 1

DRAWN BY
MW





PROJECT LOCATION (N.T.S)



1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)

EXHIBIT 6-6: 500' SURROUNDING PROPERTY OWNERS LIST

Buffer: 500 List Size: 90

FolioId	OwnerName	OwnerName2	MailAddress	MailCity	MailState	MailZip
10228074	7-ELEVEN INC	CORP INCOME TAX DEPT	3200 HYACKBERRY RD	IRVING	TX	75063
10127256	TPI-FMB LLC		103 15TH AVE NW STE 200	WILLMAR	MN	56201
10617008	VENETIAN GARDENS CANAL		PALERMO CIR	FORT MYERS BEACH	FL	33931
10617009	VENETIAN GARDENS CANAL		PALERMO CIR	FORT MYERS BEACH	FL	33931
10228046	VAN BURGESS ROBERT		PO BOX 2717	FORT MYERS BEACH	FL	33932
10228062	LANI KAI LP		1400 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10228063	LANI KAI LP		1400 ESTERO RD	FORT MYERS BEACH	FL	33931
10228064	AULLS PATRICIA E L/E		7241 BERGAMO WAY UNIT 101	FORT MYERS	FL	33966
10228065	WILCOX LANCE		1339 SANTOS RD	FORT MYERS BEACH	FL	33931
10228066	PARILLA DAVID R TR		1335 SANTOS RD	FORT MYERS BEACH	FL	33931
10228067	CONNER CHARLES R & GAIL D		53 POMPAÑO ST	FORT MYERS BEACH	FL	33931
10228068	PARILLA DAVID R TR		1335 SANTOS RD	FORT MYERS BEACH	FL	33931
10477703	LKLB OF FLORIDA INC		1400 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10228069	KLC SURF LLC	CHRISTOPHER PRIMEAU	4625 W EUCLID AVE	TAMPA	FL	33629
10228070	KLC SURF LLC	CHRISTOPHER PRIMEAU	4625 W EUCLID AVE	TAMPA	FL	33629
10228071	LANI KAI LP	ROBERT G CONIDARIS	1400 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10228072	LANI KAI LP	ROBERT G CONIDARIS	1400 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10228073	LANI KAI LP	ROBERT G CONIDARIS	1400 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10469664	463 PALMERO LLC		1421 E LAKE SHORE DR	SPRINGFIELD	IL	62712
10228091	499 PALERMO LLC		1421 E LAKE SHORE DR	SPRINGFIELD	IL	62712
10228092	MILLER JONATHAN T		PO BOX 80490	FORT WAYNE	IN	46898
10228093	TEZAK HELEN C TR		50 CHAPEL ST APT 4	FORT MYERS BEACH	FL	33931
10228094	R & D ENTERPRISES OF		3436 CHURCH ST	STEVENS POINT	WI	54481
10558864	WEIGERT ANTJE & MARTIN		415 CAPE CORAL PKWY W	CAPE CORAL	FL	33914
10228095	JAMES R BRATLEY & JOAN E BRATL		15120 WEST ILIFF PL	LAKEWOOD	CO	80228
10228096	GNIRCK RAPHAEL +		AM MUEHLBERG 39A	BAD HOMBURG VD HOEHE	GERMANY	61348
10228097	STRICK RICHARD A &		5804 PARK RIDGE CT	FORT COLLINS	CO	80528
10228098	HENNESSEY PATRICIA J &		460 PALERMO CIR	FORT MYERS BEACH	FL	33931
10228099	NORTH KEY INC		7150 RED LION FIVE POINTS RD	SPRINGBORO	OH	45066
10228100	DONNA M BYRD TRUST +		5701 BLUNK KNOB RD	ELIZABETH	IN	47117
10228101	RELAAX LLC		2201 E WILLOW ST STE D 363	SIGNAL HILL	CA	90755
10228102	RELAAX LLC		2201 E WILLOW ST STE D 363	SIGNAL HILL	CA	90755
10599453	LUSSIER TARA CORBISHLEY &		745 BIMINI LN	PUNTA GORDA	FL	33950
10599454	RELAAX LLC		2201 E WILLOW ST STE D 363	SIGNAL HILL	CA	90755
10228134	JKCK LLC		3360 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10619304	201 PALERMO LLC		1421 E LAKE SHORE DR	SPRINGFIELD	IL	62712
10619305	201 PALERMO LLC		1421 E LAKE SHORE DR	SPRINGFIELD	IL	62712
10228136	DAY BILLY WAYNE		3708 SHANNON RUN TRL	LOUISVILLE	KY	40299
10228137	LUMP THOMAS F & ANN C		145 PALERMO CIR	FORT MYERS BEACH	FL	33931
10228138	SLOMSKI STEVEN A &		PO BOX 2428, PMB 25382	PENSACOLA	FL	32513
10228156	RILEY SUSAN K TR		180 PRIMO DR	FORT MYERS BEACH	FL	33931
10228157	BAILEY JAMES P & LANA C		162 PRIMO DR	FORT MYERS BEACH	FL	33931
10574248	SANDY BEACH L L C		1892 SANDY BEACH RD	CLARION	IA	50525
10574249	NEUMANN SHEILA		146 PRIMO DR	FORT MYERS BEACH	FL	33931
10228159	140 PRIMO LLC	SHEILA NEUMANN	146 PRIMO DR	FORT MYERS BEACH	FL	33931
10228160	SEABIRD RESIDENTIAL LLC		1709 SW 47TH TER	CAPE CORAL	FL	33914
10228161	HIGHLEY JAY E & MARY B		124 PRIMO DR	FORT MYERS BEACH	FL	33931
10228162	HIGHLEY MARY BETH TR		6620 ESTERO BLVD #1006	FORT MYERS BEACH	FL	33931
10228163	KWSH RE LLC		2601 MULBERRY AVE	MUSCATINE	IA	52761
10228164	ARLINGTON GREEN HOMES LLC		44 ALGONQUIN CT	MARCO ISLAND	FL	34145
10228165	KALIDINDI RAMA USHA +		44354 APACHE CIR	ASHBURN	VA	20147
10228167	1249 ESTERO ADVENTURES LLC		290 BAHIA VIA	FORT MYERS BEACH	FL	33931
10228184	SMART PARK OF FMB LLC		11330 LONG WATER CHASE COURT	FORT MYERS	FL	33908
10228190	GANIM GEORGE W & JOSEPHINE		4666 MAIN ST	BRIDGEPORT	CT	6606
10228191	GANIM GEORGE W & JOSEPHINE		4666 MAIN ST	BRIDGEPORT	CT	6606
10228192	LANI KAI LP	ROBERT G CONIDARIS	1400 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10228193	STEPNEY LLC		4666 MAIN ST	BRIDGEPORT	CT	6606
10228194	GANIM GEORGE W SR &		4666 MAIN ST	BRIDGEPORT	CT	6606
10228195	ATWATTER LLC	WALTER RAY SIMMONS	12711 CHATHAM DR	FORT MYERS	FL	33908
10228196	RIGHT CHOICE INVESTMENTS LLC		4448 KELLY DR	STERLING HEIGHTS	MI	48314
10228197	OUR BEACH SAND LLC		12483 SUMMERWOOD DR	FORT MYERS	FL	33908
10228348	GANIM PROPERTIES LLC		4666 MAIN ST	BRIDGEPORT	CT	6606
10557364	GANIM PROPERTIES LLC		4666 MAIN ST	BRIDGEPORT	CT	6606
10599528	TPI-FMB LLC		103 15TH AVE NW STE 200	WILLMAR	MN	56201
10557293	TPI-FMB SUITES LLC		1207 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10228358	JAMES A + JEAN B BISCHOFF TRUS	JEFF MAAAS	20468 ARDORE LN	ESTERO	FL	33928
10228359	GRIFFIS LLC		9051 E CHICAGO RD	JEROME	MI	49249
10228360	PATTON THOMAS D &		153 PRIMO DR	FORT MYERS BEACH	FL	33931
10228361	ALMEIDA ROBERT M +		163 PRIMO DR	FORT MYERS BEACH	FL	33931
10228378	RICHARD JOHN W TR		237 OLD SAN CARLOS BLVD	FORT MYERS BEACH	FL	33931
10228379	DEEP DISH DOUGH LLC		328 BUCKLIN ST	LA SALLE	IL	61301

10228380	MILLER CONRAD RE LLC		PO BOX 80490	FORT WAYNE	IN	46898
10456515	INVESTMENTS OF FMB LLC	MARK DEIFT	560 NW 118 AVE	PLANTATION	FL	33325
10569721	RICHARD JOHN W TR		237 OLD SAN CARLOS BLVD	FORT MYERS BEACH	FL	33931
10228395	BATIKI WEST CONDO ASSN INC	SUITOR MIDDLETON COX + ASSOC	15751 SAN CARLOS BLVD STE 8	FORT MYERS	FL	33908
10462572	CRESCENT SHORE CONDO ASSOC		PO BOX 2990	FORT MYERS BEACH	FL	33932
10599529	TPI-FMB LLC		103 15TH AVE NW STE 200	WILLMAR	MN	56201
10599530	TPI-FMB LLC		103 15TH AVE NW STE 200	WILLMAR	MN	56201
10599531	TPI-FMB LLC		103 15TH AVE NW STE 200	WILLMAR	MN	56201
10599532	TPI-FMB LLC		103 15TH AVE NW STE 200	WILLMAR	MN	56201
10228463	1300 ESTERO BLVD LLC		32 BAYVIEW BLVD	FORT MYERS BEACH	FL	33931
10228464	BEYER TAMMY E TR		9656 HALYARDS CT # 24	FORT MYERS	FL	33919
10228465	ANDRESEN EDWIN TR		7960 PRESERVATION DR	INDIANAPOLIS	IN	46278
10228466	BOCCELLA SALVATORE		4 POINT VIEW CT	SICKLERVILLE	NJ	8081
10228467	JOHNSON NANCY ANN L/E		9 NANCY LN	FORT MYERS BEACH	FL	33931
10228468	HECK LLC		15561 CATALPA COVE DR	FORT MYERS	FL	33908
10228469	CONANT DONNA TR		8122 S FOREST HILL CIR	FRANKLIN	WI	53132
10228470	DENNIS R + CYNTHIA L LOKEN TRU		106 ICHABOD LN	MANKATO	MN	56001
10228471	LANDOLFI STEVEN J		22 VETO ST	PROVIDENCE	RI	2908
10228472	NIEMEIER RYAN & SUMMER		106 S WALNUT ST	LA CRESCENT	MN	55947



THE NEIGHBORHOOD COMPANY

1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD) Planned Development Rezone

EXHIBIT 6-7: 500' SURROUNDING PROPERTY OWNERS MAP



TPI-FMB LLC
103 15TH AVE NW STE 200
WILLMAR MN 56201

VENETIAN GARDENS CANAL
PALERMO CIR
FORT MYERS BEACH FL 33931

VENETIAN GARDENS CANAL
PALERMO CIR
FORT MYERS BEACH FL 33931

VAN BURGESS ROBERT
PO BOX 2717
FORT MYERS BEACH FL 33932

LANI KAI LP
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LANI KAI LP
1400 ESTERO RD
FORT MYERS BEACH FL 33931

AULLS PATRICIA E L/E
7241 BERGAMO WAY UNIT 101
FORT MYERS FL 33966

WILCOX LANCE
1339 SANTOS RD
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

CONNER CHARLES R & GAIL D
53 POMPAÑO ST
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

LKLB OF FLORIDA INC
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

KLC SURF LLC
CHRISTOPHER PRIMEAU
4625 W EUCLID AVE
TAMPA FL 33629

KLC SURF LLC
CHRISTOPHER PRIMEAU
4625 W EUCLID AVE
TAMPA FL 33629

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

463 PALMERO LLC
1421 E LAKE SHORE DR
SPRINGFIELD IL 62712

499 PALERMO LLC
1421 E LAKE SHORE DR
SPRINGFIELD IL 62712

MILLER JONATHAN T
PO BOX 80490
FORT WAYNE IN 46898

TEZAK HELEN C TR
50 CHAPEL ST APT 4
FORT MYERS BEACH FL 33931

R & D ENTERPRISES OF
3436 CHURCH ST
STEVENS POINT WI 54481

WEIGERT ANTJE & MARTIN
415 CAPE CORAL PKWY W
CAPE CORAL FL 33914

JAMES R BRATLEY & JOAN E BRATL
15120 WEST ILIFF PL
LAKEWOOD CO 80228

GNIRCK RAPHAEL +
AM MUEHLBERG 39A
BAD HOMBURG VD HOEHE 61348
GERMANY

STRICK RICHARD A &
5804 PARK RIDGE CT
FORT COLLINS CO 80528

HENNESSEY PATRICIA J &
460 PALERMO CIR
FORT MYERS BEACH FL 33931

NORTH KEY INC
7150 RED LION FIVE POINTS RD
SPRINGBORO OH 45066

DONNA M BYRD TRUST +
5701 BLUNK KNOB RD
ELIZABETH IN 47117

RELAAX LLC
2201 E WILLOW ST STE D 363
SIGNAL HILL CA 90755

RELAAX LLC
2201 E WILLOW ST STE D 363
SIGNAL HILL CA 90755

LUSSIER TARA CORBISHLEY &
745 BIMINI LN
PUNTA GORDA FL 33950

RELAAX LLC
2201 E WILLOW ST STE D 363
SIGNAL HILL CA 90755

JKCK LLC
3360 ESTERO BLVD
FORT MYERS BEACH FL 33931

201 PALERMO LLC
1421 E LAKE SHORE DR
SPRINGFIELD IL 62712

201 PALERMO LLC
1421 E LAKE SHORE DR
SPRINGFIELD IL 62712

DAY BILLY WAYNE
3708 SHANNON RUN TRL
LOUISVILLE KY 40299

LUMP THOMAS F & ANN C
145 PALERMO CIR
FORT MYERS BEACH FL 33931

SLOMSKI STEVEN A &
PO BOX 2428 PMB 25382
PENSACOLA FL 32513

RILEY SUSAN K TR
180 PRIMO DR
FORT MYERS BEACH FL 33931

BAILEY JAMES P & LANA C
162 PRIMO DR
FORT MYERS BEACH FL 33931

SANDY BEACH L L C
1892 SANDY BEACH RD
CLARION IA 50525

NEUMANN SHEILA
146 PRIMO DR
FORT MYERS BEACH FL 33931

140 PRIMO LLC
SHEILA NEUMANN
146 PRIMO DR
FORT MYERS BEACH FL 33931

SEABIRD RESIDENTIAL LLC
1709 SW 47TH TER
CAPE CORAL FL 33914

HIGHLEY JAY E & MARY B
124 PRIMO DR
FORT MYERS BEACH FL 33931

HIGHLEY MARY BETH TR
6620 ESTERO BLVD #1006
FORT MYERS BEACH FL 33931

KWSH RE LLC
2601 MULBERRY AVE
MUSCATINE IA 52761

ARLINGTON GREEN HOMES LLC
44 ALGONQUIN CT
MARCO ISLAND FL 34145

KALIDINDI RAMA USHA +
44354 APACHE CIR
ASHBURN VA 20147

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

SMART PARK OF FMB LLC
11330 LONG WATER CHASE COURT
FORT MYERS FL 33908

GANIM GEORGE W & JOSEPHINE
4666 MAIN ST
BRIDGEPORT CT 06606

GANIM GEORGE W & JOSEPHINE
4666 MAIN ST
BRIDGEPORT CT 06606

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

STEPNEY LLC
4666 MAIN ST
BRIDGEPORT CT 06606

GANIM GEORGE W SR &
4666 MAIN ST
BRIDGEPORT CT 06606

ATWATTER LLC
WALTER RAY SIMMONS
12711 CHATHAM DR
FORT MYERS FL 33908

RIGHT CHOICE INVESTMENTS LLC
4448 KELLY DR
STERLING HEIGHTS MI 48314

OUR BEACH SAND LLC
12483 SUMMERWOOD DR
FORT MYERS FL 33908

GANIM PROPERTIES LLC
4666 MAIN ST
BRIDGEPORT CT 06606

GANIM PROPERTIES LLC
4666 MAIN ST
BRIDGEPORT CT 06606

TPI-FMB LLC
103 15TH AVE NW STE 200
WILLMAR MN 56201

TPI-FMB SUITES LLC
1207 ESTERO BLVD
FORT MYERS BEACH FL 33931

JAMES A + JEAN B BISCHOFF TRUS
JEFF MAAAS
20468 ARDORE LN
ESTERO FL 33928

GRIFFIS LLC
9051 E CHICAGO RD
JEROME MI 49249

PATTON THOMAS D &
153 PRIMO DR
FORT MYERS BEACH FL 33931

ALMEIDA ROBERT M +
163 PRIMO DR
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

DEEP DISH DOUGH LLC
328 BUCKLIN ST
LA SALLE IL 61301

MILLER CONRAD RE LLC
PO BOX 80490
FORT WAYNE IN 46898

INVESTMENTS OF FMB LLC
MARK DEIFT
560 NW 118 AVE
PLANTATION FL 33325

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

BATIKI WEST CONDO ASSN INC
SUITOR MIDDLETON COX + ASSOC
15751 SAN CARLOS BLVD STE 8
FORT MYERS FL 33908

CRESCENT SHORE CONDO ASSOC
PO BOX 2990
FORT MYERS BEACH FL 33932

TPI-FMB LLC
103 15TH AVE NW STE 200
WILLMAR MN 56201

TPI-FMB LLC
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WILLMAR MN 56201

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1300 ESTERO BLVD LLC
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BEYER TAMMY E TR
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FORT MYERS FL 33919

ANDRESEN EDWIN TR
7960 PRESERVATION DR
INDIANAPOLIS IN 46278

BOCCELLA SALVATORE
4 POINT VIEW CT
SICKLERVILLE NJ 08081

JOHNSON NANCY ANN L/E
9 NANCY LN
FORT MYERS BEACH FL 33931

HECK LLC
15561 CATALPA COVE DR
FORT MYERS FL 33908

CONANT DONNA TR
8122 S FOREST HILL CIR
FRANKLIN WI 53132

DENNIS R + CYNTHIA L LOKEN TRU
106 ICHABOD LN
MANKATO MN 56001

LANDOLFI STEVEN J
22 VETO ST
PROVIDENCE RI 02908

NIEMEIER RYAN & SUMMER
106 S WALNUT ST
LA CRESCENT MN 55947



Case # _____ Date Received: _____

Town of Fort Myers Beach COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: 1301 Estero Blvd Commercial Planned Development Rezone
Authorized Applicant: Kenrick S. Gallander, The Neighborhood Company
STRAP Number(s): 19-46-24-W4-0060B.0160

Current Property Status: Vacant (Pre-lan - developed with 7-Eleven convenience store)
Current Zoning: Downtown
Future Land Use Map (FLUM) Category: Pedestrian Commercial
Platted Overlay? ☐ yes, ☒ no FLUM Density Range:

Requested Action:

☐	DRI (with rezoning)
☒	Planned Development (also check below)
☒	Rezoning from: Downtown to: CPD
☐	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)
See attached NARRATIVE document.	

B. Phasing of Construction

☒	The development is to be constructed in a single phase.
☐	The development is to be constructed in phases as follows: (describe proposed phasing below)



Case # _____ Date Received: _____

C. Comprehensive Plan Compliance.

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

See attached NARRATIVE document.

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

See attached NARRATIVE document.

E. Decision-making Compliance

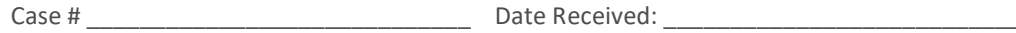
Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

[illegible]

F. Schedule of deviations and written justification

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

[illegible]



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.

[illegible]

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

\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

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NARRATIVE



Figure 2. Pre Hurricane Ian



Figure 3. Post Hurricane Ian



Figure 4. Existing Conditions

PROPOSED USE/DEVELOPMENT

The 7-Eleven, which existed on the property for decades, was a very popular commercial business and provided convenience benefits to local residents and visitors. Based on the historic demand and continued need for convenience stores on Fort Myers Beach (FMB), the owner wants to redevelop the property with the same use. The plan for a new convenience store (7-Eleven) improves upon what existed prior to Hurricane Ian, and also reduces or eliminates non-conformities that existed on the property.

Convenience stores have been and continue to be a staple and necessary commercial business in all communities throughout the United States. Fort Myers Beach, Florida is no exception. A convenience store has been at this location for decades. As Fort Myers Beach continues to rebuild and regain its pre-Hurricane Ian resident and visitor populations, convenience related businesses will once again be needed and expected on this part of the island.

The proposed redevelopment of the property will consist of the following:

- A maximum 3,500+/- sq. ft. convenience store to be open 24 hours and seven days a week.
- Two (2) access points from Palermo Circle and Estero Boulevard significantly reduced in width from those that existed prior to Hurricane Ian.
- Dumpster and enclosure with direct access from Santos Road.



The Comprehensive Plan's Pedestrian Commercial FLU designation indicates that the maximum Floor Area Ratio (FAR) specified under the Land Development Code (LDC) may be as high as 2.5. With the subject property currently located within the Downtown zoning district, LDC Sec. 34-675(c)(3) allows an FAR up to 1.4.

An FAR of 1.4 would allow approximately 14,947.8 square feet of building. The CPD is proposing a total building area of approximately 3,500 square feet that is well below the potential maximum allowed.

LOCATION, SITE DESIGN & COMPATIBILITY

The property is situated within the "Core Area" of Fort Myers Beach at the northeast corner of Estero Blvd. and Palermo Circle. The north side of the property is bordered by Santos Road. Located approximately one quarter mile east of "Times Square" on Estero Blvd., the property is within a heavily travelled and walkable area of the island, which provides visitors with opportunities for shopping, dining, lodging, and access to the beach. This mixed-use "Core Area" is an ideal location for a convenience store. It is where the prior 7-Eleven served the needs of residents and visitors for decades and represents an area of continued activity with the opening of Margaritaville, and the planned redevelopment of the Beached Whale, Tuna Skin Apparel Store and the Cottage.

The subject property is oddly shaped and presents numerous design challenges that would require multiple variances if utilizing conventional zoning regulations. As such, the Commercial Planned Development provides for regulatory flexibility and allows for creative design to address site constraints. The proposed Master Concept Plan (MCP) reconfigures the old site to make it more functional, attractive, resilient, and safer. It also reduces or eliminates non-conformities and makes it generally consistent with the intent of the Downtown redevelopment district.

First, the building is placed where the property is the widest. This allows for a safer and more functional parking lot design where cars will no longer back onto Estero Blvd. Access will be limited to two access points - one along Estero Blvd and the one along Palermo Circle. This will allow for a logical circulation pattern and will provide safer ingress and egress movements. Additionally, this configuration allows for a slightly larger convenience store that will be newer, more resilient, and better meet the needs of the community.

Second, the revised configuration will provide a primary façade along Palermo that will cater to the motorist and improve vehicular access and a secondary facade closer to Estero, which will provide improved, quick and easy access to the pedestrian, cyclist and beachgoer. The placement of the building closer to Estero Blvd is consistent with the Downtown District build to lines and helps activate the street, create visual interest and encourages bicycle and pedestrian activity.

Third the site configuration provides improved setbacks, and more space on the property for bike racks, a connection to the bus/trolley stop, sidewalks, improved landscaping and an enclosed/shielded dumpster pad. These improvements will create a more inviting, visually attractive development and will ensure locational compatibility.

The zoning and existing land uses surrounding the property are as follows:

- North: Santos RPD / Santos Road Right-of Way and Vacant
- South: Downtown / Estero Blvd Right-of-Way and Vacant
- East: Downtown/ Parking Lot
- West: Downtown / Palermo Circle Right-of-Way and Vacant



For decades, the properties surrounding this site were used for commercial purposes and will remain commercial as the island redevelops. Currently, the properties to the north, south and west are mostly vacant due to the impacts of the hurricane. The property to the north was previously Santo by the Beach, a weekly & monthly rental lodging, to the south across Estero Blvd. were various retail stores and public beach access. To the west was The Whale, a longtime Fort Myers Beach restaurant, and to the east is the Lani Kai's commercial parking lot.

As outlined within the Development Standards Table on the MCP, the proposed build to line and setbacks are as follows:

- Build-to line:
 - o Primary Street (Estero Blvd.): 5 feet max
- Minimum Setbacks – Primary and Accessory Structures:
 - o Secondary Street (Palermo Circle): 20 feet
 - o Local Street (Santos Road): 7.5 feet'
 - o Side/Rear: 5 feet

The development standards, inclusive of the build-to line and setbacks, further ensure compatibility with adjacent uses and are appropriate for property located at the center of commercial activity and surrounded by three roadways.

Development order approval will include code compliant landscaping throughout the property. Buffers for the site are not required as the property is adjacent to public rights-of-way on three sides and a parking lot to the east. However, it is the intent to enhance landscaping on the property. Plantings will be planned as part of the development order approval within the buffer areas along Palermo Circle, Santos Road, and between a portion of the subject property and the commercial parking lot to the east. Building edge plantings will also be provided along portions of the building facing Estero Blvd. and the remainder of the property adjacent to the commercial parking lot to the east. The dumpster enclosure, located on the north side of the property will be screened as required by LDC.

A minimum of 50% of the subject property is required to be open space in the Downtown zoning district as stated in LDC Sec. 34-677(b)(2). Prior to Hurricane Ian, the existing site provided an estimated 21% of open space. Due to the unique characteristics of the property and in order to build a modern convenience store and supporting infrastructure that provides for a safer and better functioning property, the site will not meet the intended 50% open space requirement but will maintain a minimum of 21% as previously provided. The 50% requirement would severely reduce the development footprint and render the project unfeasible. A 50% open space requirement is more consistent with suburban standards and is not realistic for an urban infill redevelopment project. The project intends to increase the amount of open space from what existed prior to Hurricane Ian to approximately 25%, which the majority will be located within the northern portion of the property helping to ensure further compatibility with those surrounding uses in the area.

The previously established convenience store use has a proven history of being compatible at this location with the surrounding roadways, lodging, restaurant and retail uses over the years. The proposed development standards, enhanced buffering, additional open space requirements outlined within the proposed CPD will continue to ensure any proposed use is compatible.



**THE FOLLOWING ADDRESSES APPLICABLE SECTIONS PROVIDED FOR IN THE
PLANNED DEVELOPMENT APPLICATION – SUPPLEMENT PH-D FORM:**

A. COMPREHENSIVE PLAN AMENDMENTS

The following Comprehensive Plan Amendments are pending and could affect the future use of this property:

- Mixed Use Districts Designation – Time Square Mixed-Use District



The applicant is aware that the town is currently in the early stages of amending its Comprehensive Plan Future Land Use Map (FLUM) as presented by the town's consultant, the town is considering a Future Land Use change for the subject property that would remove the property from the Pedestrian Commercial FLUM designation and place the property within a newly created "Time Square Mixed-Use District". The applicant intends to comply and be consistent with the existing and potential Future Land Use designation for this area. While it is uncertain if and when the

Time Square Mixed Use District will be approved, it is our understanding that it intends to promote a mix of uses, greater commercial intensity and enhanced bicycle and pedestrian activity, which are all consistent with the proposed CPD.



B. PHASING OF CONSTRUCTION

The development is to be constructed in a single phase.



C. COMPREHENSIVE PLAN COMPLIANCE

COMMUNITY DESIGN ELEMENT:

OBJECTIVE 1-A ESTERO BOULEVARD — Improve the functioning and appearance of Estero Boulevard as the premier public space and primary circulation route of Fort Myers Beach.

POLICY 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

The redevelopment plan proposes enhancements to the frontage along Estero Blvd. and throughout the site. These enhancements will include improved access management, increased open space and green areas, defined sidewalks for pedestrian connectivity to Estero Blvd and nearby transit, and improved landscaping. Due to the unusual configuration of the site, which is triangular in shape and bordered by Estero Blvd., Palermo Circle and Santos Road, it was determined that the proposed building location and orientation resulted in a more functional site with improved managed traffic flow to allow all vehicles to leave the parking lot in a forward motion.

This plan proposes a reduction in the width of the driveway opening along Estero Blvd. to create a defined and controlled entrance into the development. Moreover, the new configuration will provide more open space and green areas along Estero Blvd and throughout the property. Additional enhancements to the site include landscaping, enhanced buffering, and potential mural artwork along Estero Blvd. and the rear portion of the building. These enhancements create a development with improved accessibility and safety for pedestrians, while improving the appearance for residents and visitors on the primary circulation route of Fort Myers Beach, thus supporting the “Estero Blvd” vision as described in Objective 1-A and Policy 1-A-1 of the Fort Myers Beach Comprehensive Plan.

FUTURE LAND USE ELEMENT:

GOAL 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.

OBJECTIVE 4-A SMALL-TOWN CHARACTER — Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.

The proposed project will rebuild a previously established commercial business which for decades provided easy and practical access to convenience goods for both residents and visitors. The proposed project will provide a more pedestrian friendly environment, through the reconfiguration of parking, the reduced width of the driveway opening from Estero Blvd., orientation of the building, appropriate setbacks/building location, and potential mural artwork on the east and south walls. Through the implementation of these elements, the development will enhance the public realm of Fort Myers Beach and add to its unique small-town character.

Finally, in an effort to minimize the damage that a future hurricane could inflict, the new building will be built to the current Florida Building Code, FEMA standards, and meet all applicable state and federal regulations.



Policy 4-A-2 The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm.

Located along Estero Blvd., approximately one quarter mile east of Times Square, the proposed project will re-establish a long-standing convenience-based business that has provided goods to both residents and visitors for decades. The previous building was destroyed by Hurricane Ian but was an integral component to the heavily travelled Estero Blvd. and walkable area of the town.

The proposed site configuration will provide a primary façade along Palermo catering to the motorist and improve vehicular access. A secondary facade closer to Estero will provide improved, quick and easy access for the pedestrian, cyclist and beachgoer. The placement of the building closer to Estero Blvd is consistent with the Downtown District build to lines and helps activate the street, create visual interest and encourages bicycle and pedestrian activity. Other site elements provide for appropriately applied setbacks, enhanced buffers/landscaping, more space on the property for bike racks, a connection to the bus/trolley stop, relocation of an existing crosswalk, accessway/driveway width reductions, sidewalks, and an enclosed/shielded dumpster pad. These improvements will create a more inviting, safer, visually attractive development ensuring locational compatibility and improved pedestrian oriented areas consistent with Policy 4-A-2.

POLICY 4-B-6: Pedestrian Commercial: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code.

The project site is located within the Pedestrian Commercial FLUM, and as stated in Policy 4-B-6, commercial activities must contribute to the pedestrian-oriented public realm. The site plan proposes to provide enhancements to the public realm through the improved vehicular patterns on the site, clearly defined pedestrian sidewalks and the proposed mural located on the building to add to the pedestrian experience as people move along Estero Blvd. These proposed enhancements will contribute to the pedestrian-oriented public realm of Fort Myers Beach and is consistent with Policy 4-B-6.

POLICY 4-C-2: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5.

The Comprehensive Plan’s Pedestrian Commercial FLU designation indicates that the maximum Floor Area Ratio (FAR) specified under the Land Development Code (LDC) may be as high as 2.5. With the subject property currently located within the Downtown zoning district, LDC Sec. 34-675(c)(3) allows an FAR up to 1.4.



An FAR of 1.4 would allow approximately 14,947.8 square feet of building. The CPD is proposing a total building area of approximately 3,500 square feet which equals an FAR of approximately 0.33 is well below the potential maximum allowed and thus is consistent with Policy 4-C-2.

POLICY 4-C-3. ii. Where new or expanded commercial uses are encouraged, as in the “Pedestrian Commercial” category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.

The Fort Myers Beach Land Development Code states that the intent of the Commercial Planned Development (CPD) zoning district is to allow a landowner the ability to submit a specific proposal for a land development that is primarily nonresidential and complies with the Fort Myers Beach Comprehensive Plan but does not meet all of the specific requirements of a conventional or redevelopment district. Due to the unique configuration of the subject property and the destruction caused by Hurricane Ian, this application requests a rezoning to CPD so the property can be redeveloped and to remove nonconformities which existed on the site prior to Hurricane Ian.

A proposed convenience retail store use is being requested within this CPD. This use classification is permitted by right within the Downtown zoning district as well as the Pedestrian Commercial category of the Fort Myers Beach Comprehensive Plan. The CPD rezone request is thereby in compliance with Policy 4-C-3.

OBJECTIVE 4-D POST-DISASTER REDEVELOPMENT — Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of floodproofing, by requiring redevelopment activities to meet stricter standards. For flood- and wind-resistance, and by improving the current post-disaster build back policy.

The new commercial building will be more resilient and will comply with the latest and more stringent Florida Building Code. Additionally, state and federal flood regulations will be followed, improving the resiliency of the island's structures.

COASTAL MANAGEMENT ELEMENT:

GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.

POLICY 5-A-1 The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.

The proposed redevelopment of the site will be in compliance with all applicable federal, state and local regulations to develop a resilient commercial property to serve the residents and visitors of Fort Myers Beach.



TRANSPORTATION ELEMENT

GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off-island systems, and parking options matched to road capacity.

POLICY 7-D-3 ALTERNATE TRAVEL MODES

The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas.

To better serve the public, the proposed site design includes a clearly marked parking lot with a reduced entrance width from Estero Blvd., appropriate parking lot lighting, and an unobstructed sidewalk with nearby street crossings. To encourage use of alternate travel modes under Policy 7-D-3 the development will provide bike racks for bicycle parking and will maintain a pedestrian pathway to the existing transit stop located on the property to the east of the subject site.

UTILITIES ELEMENT

GOAL 8: To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

POLICY 8-A-1 Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.

The proposed development will connect to central water and sewer utilities as mandated by the Town of Fort Myers Beach.



D. DESIGN STANDARDS COMPLIANCE

The proposed 7-Eleven convenience store will be consistent with the overall purpose and intent of the commercial design standards provided under LDC Section 34-991. The following outlines compliance with the specified design standards within LDC Sections 34-994 through 34-997:

As depicted in the architectural representations provided (See the required Architectural Elevations included in the submittal documents), the proposed exterior walls will be a combination of stucco and fiber cement panels/boards, which are identified as an appropriate finish material under LDC Section 34-994. The structure will be dry-floodproofed with all fastenings and design to be “visually unobtrusive” and compliant with being located within FIRM Zones: AE 11 and AE 12. The principal façade will be designed to be compliant with the requirements for transparent windows, glazing, and shape.

The proposed building will generally comply with the intent and applicable portions of LDC Section 34-995 related to “Principal Façade Walls” standards. 7-Eleven is proposing to design and install murals on the principal side wall façade facing Estero Blvd (primary street) and the building’s rear wall façade facing the commercial parking lot in order to not have blank walls and to enhance visual interest toward the public realm.

LDC Section 34-996 specifically allows for a variety of roof types. The proposed 7-Eleven is designed with a flat roof and parapet, which is permitted under subsection (b). Above the front entrance facing Palermo Circle, an architectural “entry tower” with a hip roof is proposed. The “entry tower” roof consists of a standing seam metal roof, which is permitted under subsection (c).

Due to the unique configuration and small lot size, the proposed design cannot support plazas and courtyards. The project does generally provide for portions of the building to be located close to and oriented toward the existing public sidewalk along Estero Boulevard. The project also provides for internal pedestrian passages or connections along the primary façade facing Palermo Circle to the existing sidewalk along Estero Boulevard, thus meeting the intent of LDC Section 34-997(d).



E. DECISION-MAKING COMPLIANCE

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

There are no known errors or ambiguity that must be corrected in relation to the requested rezoning from Downtown to CPD. If any exist, they will be discussed and resolved during staff review and public hearings before the Local Planning Agency (LPA) and Town Council. Through the proposed CPD rezone request, reductions in prior existing non-conformities are being corrected specific to accessway widths, amount of open space provided, and development standards.

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

The Town of Fort Myers Beach has been devastated by Hurricane Ian. The proposed rezoning will allow the rebuilding of the pre-storm 7-Eleven convenience store. This building will assist in the Town's redevelopment by bringing back a well-established local business and providing a convenience store that will serve local residents and visitors.

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

The proposed rezoning change to CPD is consistent with the purpose and intent of the zoning chapter of the Land Development Code (LDC). The CPD will encourage and promote the redevelopment of a destroyed convenience store business that is needed in the community, reduce or eliminate prior non-conformities, and provide for a more resilient and improved development within the Pedestrian Commercial FLU designation. Through the rezoning process allowed under this chapter and subsequent development order review and approvals, the new 7-Eleven will not negatively impact the community's health, safety, and general welfare.

(4) The testimony of any applicant.

The professional experts retained to support the petition will provide future testimony during the appropriate public hearings.

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

The petition will be reviewed by staff, expert testimony will be provided during the public hearing process before the Local Planning Agency and a recommendation will be made to the Town Council.

(6) The testimony of the public.

The public will be provided with the opportunity to testify before the LPA and Town Council. Such testimony will be evaluated as applicable and appropriate to the request for the LPA's recommendation and Town Council's decision.



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

Please see Section C above, which explains how the petition is consistent with the town's comprehensive plan.

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

The rezoning request and the proposed redevelopment of a convenience retail store are ideal for the location. The site was previously developed with a convenience store supporting the residents' and visitors' needs. The subject property is located within an urban and commercialized area of the town with limited or no impact to any existing long-term residential uses.

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

All urban services were in place for the previous 7-Eleven and remain in place to adequately serve the subject site.

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

The subject property was previously developed and has been subsequently cleared of all existing natural vegetation due to the catastrophic impacts of Hurricane Ian. No environmentally critical areas and natural resources exist on the site.

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

The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to person or property as the proposed use existed prior to the catastrophic events of Hurricane Ian. There are no known documented code enforcement cases indicating the prior convenience retail use was deemed a nuisance, hazard, or caused detrimental effects to the community. The adjacent surrounding uses consist of public rights-of-way (Estero Boulevard, Palermo Circle, and Santos Road) and a commercial pay to park parking lot. Just beyond the roadways, are vacant or redeveloping commercially zoned lands, which are compatible with the proposed commercial use. All proposed setbacks, buffers, and open space areas are consistent with the standards provided for within the Land Development Code or are suitably proposed and complementary to the highly urbanized development pattern, and unique characteristics of the subject property.



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

Given that this CPD simply replaces the previously existing 7-Eleven, there will be no net changes on public facilities and the proposed request does not create any burden upon existing transportation or other services and facilities. The CPD does improve site design to facilitate and enhance bicycle and pedestrian access.

(13) For planned development rezonings, see § 34-216 for additional considerations.

This request to rezone the subject property from Downtown to Commercial Planned Development (CPD) will be presented at public hearing before the local planning agency and the town council consistent with LDC Section 34-216(a)(1). As demonstrated throughout this narrative, the proposed CPD meets the following criteria under LDC Section 34-216(2):

- a. The proposed convenience retail use, as provided for within the Schedule of Uses is appropriate for the subject location due to the fact that a 7-Eleven previously existed on the property for decades without issue.
- b. Sufficient safeguards are in place to protect the public interest through the proposed CPD and supporting MCP. The design, location and proposed use and development standards are generally consistent with the mixture of uses and pedestrian nature of the area and will meet the needs of the town's residents and visitors. As depicted on the MCP, access and circulation will be safer and more functional, the pedestrian experience will be improved and the site will be rebuilt with a new store, additional open space and improved landscaping.
- c. If recommended special conditions are presented and are deemed reasonable and feasible, the applicant will be willing to accept them to further ensure sufficient safeguards are established.
- d. The proposed rezoning request meets specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
 1. Policy 4-C-3: See Section "C" within the above narrative.
 2. Policies 4-B-6 and 4-C-3: See Section "C" within the above narrative.
 3. Policy 4-C-4: Proposed height of 30 feet is not taller than the standard height limit allowed under the Land Development Code.
 4. Policy 4-C-8: Density transfers. Not applicable.
 5. Policy 4-E-1: The existing development was consistent with and well below the allowed intensity (FAR 1.4) prior to the natural disaster (Hurricane Ian). Any proposed redevelopment will be consistent with the maximum intensity allowed under the comprehensive plan and LDC.
 6. Policy 7-J-2: The proposed rezone request is not a major rezoning as the request applies to a property that is less than one-quarter of an acre in area. Additionally, the proposed future redevelopment of an existing convenience retail store of similar size will render no net increase in traffic and will not adversely impact the surrounding network.



CONCLUSION:

As detailed in the above narrative, supporting application documents, and the proposed MCP, the application demonstrates consistency and compliance with both the Fort Myers Beach Comprehensive Plan and Land Development Code. Addressing the unique characteristics of the subject property through the regulatory flexibility of the CPD process, reduction or elimination of prior non-conformities, and compliance with today's Florida Building Codes and FEMA standards, the developer will provide a project that is more resilient and functional to the public. This rezoning effort will help bring back a much needed convenience store on the island, helping to improve living conditions and supporting the public's overall health, safety and welfare.



PART OF SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST

7-ELEVEN INC
C/O CORP INCOME TAX DEPT
3200 HYACKBERRY RD
IRVING TX 75063

CREIGHTON CONSTRUCTION & MANAGEMENT
2240 W FIRST ST, SUITE 101
FORT MYERS, FLORIDA 33901

PROPERTY INFORMATION

SITE ADDRESS

1301 ESTERO BLVD
FORT MYERS BEACH FL 33931

FOLIO NUMBER

10228074

FLOOD ZONE

ACCORDING TO THE FLOOD INSURANCE RATE
MAP NO. 12071C054G,
EFFECTIVE DATE: NOVEMBER 17, 2022,
THE PROPERTY IS LOCATED IN FLOOD ZONES
"AE-11" AND "AE-12"

CURRENT ZONING

DOWNTOWN
DISTRICT

VICINITY MAP

N.T.S.



LOCATION MAP

N.T.S.

INDEX OF SHEETS

1. COVER SHEET
2. MASTER CONCEPT PLAN

1301 ESTERO BLVD., COMMERCIAL PLANNED DEVELOPMENT

COVER SHEET

[illegible]

DATUM NOTE:

ALL ELEVATIONS REFERENCE NAVD88 VERTICAL DATUM.
APPROXIMATE CONVERSION FOR PROJECT AREA: NAVD88 + 1.18' = NGVD29
ANY DATUM CONVERSIONS SHOULD BE CONFIRMED BY A LICENSED
SURVEYOR PRIOR TO USE.

OPEN SPACE		
	REQUIRED	PROVIDED
MINIMUM PERCENTAGE	50%	25% *
MINIMUM AREA	0.124 AC	0.061 AC



NOT FOR
CONSTRUCTION



1
R001

STREET VIEW - RIGHT (SOUTHWEST)
N.T.S.

REV.#	DATE	DESCRIPTION

PROTO:7043 CST 2022-02

7-ELEVEN #1055525
1301 ESTERO BLVD
FORT MYERS BEACH, FL 33931

CREIGHTON COMMERCIAL DEVELOPMENT
900 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL, FL 33991

3D RENDERINGS

CREIGHTON
COMMERCIAL DEVELOPMENT

BOTI
ARCHITECTURE

504 W. COLLEGE ST.
SPRINGFIELD, MO 65806
TEL: 877.297.2684
www.boti.studio

Drawings and Specifications as Instruments of service are and shall remain the property of the Architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the Architect.

Contractor is responsible for confirming and correcting dimensions at job site. The Architect will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project.

The seal and signature apply only to the document to which they are affixed and we expressly disclaim any responsibility for all other plans, specifications, estimates, reports or other documents or instruments relating to or intended to be used for any part or parts of the project.

NOT FOR
CONSTRUCTION

08/10/2023

JOB#: 23039
DATE: 08/10/2023
SHEET: R001



1 STREET VIEW - REAR (SOUTHEAST)
R003 N.T.S.

REV #	DATE	DESCRIPTION
		PROTO:7043 CST 2022-02
7-ELEVEN #1055525		
1301 ESTERO BLVD.		
FORT MYERS BEACH, FL. 33931		
CREIGHTON COMMERCIAL DEVELOPMENT		
900 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL, FL 33991		
3D RENDERINGS		
		
		
Drawings and Specifications are instruments of service and shall remain the property of the Architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the Architect. Contractor is responsible for confirming and correlating dimensions at job site. The Architect will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project. The seal and signature apply only to the document to which they are affixed and we expressly disclaim any responsibility for all other plans, specifications, estimates, reports or other documents or instruments relating to or intended to be used for any part or parts of the project.		
08/10/2023		
JOBB#: 23039 DATE: 08/10/2023 SHEET: R003		



**1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone**

SCHEDULE OF USES

COMMERCIAL

RETAIL STORE, SMALL TO INCLUDE:

CONVENIENCE STORES, NO FUEL PUMPS (OPEN 24 HRS/7 DAYS)



**Commercial Planned Development (CPD)
Planned Development Rezone**

SECTION F: SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS

DEVIATION #1 seeks relief from LDC Section 34-706(d) which requires that when properties are fronting on Estero Boulevard, existing driveway and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property. The deviation would allow driveways to remain that connect to Estero Boulevard and Palermo Circle.

Justification: The prior site condition provided for existing access points (driveways) both onto Estero Blvd (Primary Street) and Palermo Circle (Secondary Street). Estero Blvd. was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. Due to the unique triangular configuration of the subject property, which has been in place for decades and the need to redevelop the property to bring back the desired commercial convenience store use to the Town, it is necessary to continue to allow for access points from Estero Blvd., and Palermo Circle. Convenience stores rely heavily on customer vehicular traffic and truck deliveries, which require appropriately designed and safe traffic movement. Due to the physical limitations resulting from the triangular shape of the property the site plan continues access from Estero; however, the design has been improved to enhance functionality and safety.

DEVIATION #2 seeks relief from LDC Section 34-2013(a)(3) which states that the maximum width at the property for parking lot access is 25 feet. The deviation would allow for a maximum parking lot access width at the property line of 60 feet along Palermo Circle and 35 feet along Estero Blvd.

Justification: The pre-lan site design had non-conforming access (driveway) widths along Estero Blvd. and Palermo Circle. Estero Blvd. was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. In order to bring back the desired commercial convenience store use to Fort Myers Beach, the odd shaped lot configuration requires the need to maintain an access point wider than 25 feet along both Palermo Circle and Estero Blvd. The proposed MCP reduces the access point widths from over 100 feet to a maximum of 60 feet for Palermo Circle and 80 feet wide down to a maximum of 35 feet. This new configuration will improve circulation patterns, ensure safe and efficient truck maneuverability, and improve overall public safety conditions.

DEVIATION #3 seeks relief from the minimum driveway separation requirements of LDC Section 10-285 along Estero Boulevard and Palermo Circle. The deviation would allow driveway (vehicle access) separation along Estero Boulevard to be a minimum of approximately 141 feet from the adjacent access point to the east and a minimum of approximately 52 feet from the Estero Blvd/Palermo Intersection. The deviation would also allow driveway (vehicle access) separation along Palermo Circle to be a minimum of approximately 52 feet from the Santos Road intersection and approximately 105 feet from the Estero Blvd/Palermo Circle intersection.



Justification: The proposed accessways onto Estero Boulevard and Palermo Circle existed prior to Hurricane Ian and the destruction of the existing convenience store use. Relocation of the existing accessways to meet the distance separation from all surrounding street intersections or other accessways is impossible. Due to the unique triangular configuration of the subject property and the need to manage vehicular traffic and pedestrian connectivity to the site, the proposed site layout as detailed on the Master Concept Plan requires both accessways from Estero Blvd. and Palermo Circle to remain. The two accessways were non-conforming in terms of their location and overall width. The Estero Blvd. accessway was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. Both accessways, pursuant to requested Deviation #2, will be significantly reduced in width. This will improve traffic circulation to and from the adjacent roadways. The proposed configuration, as detailed on the MCP, increases distance separation from all surrounding street intersection and accessways than what previously existed, thus working toward achieving general consistency of the intent of LDC Section 10-285 to provide as much connection separation while keeping the proposed redevelopment feasible.

DEVIATION #4 seeks relief from LDC Section 34-706(a) which requires an off-street parking lot to be placed in the side or rear yards. The deviation would allow the off-street parking to be located and orientated toward the Palermo Circle frontage.

Justification: The requested deviation from LDC Sec. 34-706(a) is to allow for off-street parking to be placed on the west side of the property (Palermo Circle frontage) as depicted on the MCP. Prior to Hurricane Ian the off-street parking for the site was located primarily along Estero Blvd., a major arterial roadway, with additional parking at the western side of the store along Palermo Circle. The parking configuration required vehicles to back into the rights-of-way from several of the parking stalls in order to exit the property. Pedestrians were not able to reach the front entrance of the building without walking through the parking lot, either behind or between vehicles.

The proposed redevelopment of the site has relocated the off-street parking to the western side of the site facing Palermo Circle, which is now the primary frontage and main entrance to the building. Although parking is not located in the side or rear yard, it has been relocated from the Estero Blvd. frontage. The reconfigured accessways into the site from Estero Blvd. and Palermo Circle have been reduced in width, allowing for more controlled vehicular movements in and out of the site. The new configuration removes the prior unsafe and undesirable off-street parking onto Estero Blvd. The closest parking stall proposed is more appropriately orientated parallel to Estero Blvd. and with a 10' separation from the Estero Blvd. This orientation also allows for the addition of an internal sidewalk connecting to the existing sidewalk along Estero Blvd., thus allowing for a safer, more pedestrian friendly site. The new accessways from Estero Blvd. and Palermo Circle will be clearly defined through pavement markings, and as previously stated a sidewalk connecting the store entrance directly to the existing Estero Blvd. sidewalk. The parking stalls will be located at the front of the store along Palermo Circle with adequate space to allow vehicles to exit the site without having to back into the Estero Blvd. right-of-way. The proposed site design, as detailed on the MCP, significantly reduces the nonconformities which existed prior to Hurricane Ian. It also creates a safer, more pedestrian friendly site with enhancements to the pedestrian realm along Estero Blvd. thus achieving general consistency with the intent of LDC Section 34-706(a) while working within the unique triangular configuration of the subject property in order to redevelop the property with a new convenient store use needed in the town.



DEVIATION #5 seeks relief from LDC Section 34-2020(d)(2)i.1 which requires a minimum of four spaces per 1,000 square feet of total floor area or 14 parking spaces for the proposed max. 3,500 square feet of convenience store total floor area. The deviation would allow for a reduction in the minimum required parking spaces to 8 parking spaces.

Justification: Parking requirements for a convenience store are four spaces per 1,000 square feet, which equates to a total of 14 vehicle parking spaces required for the proposed maximum 3,500 square foot convenience store. The site is located within an area of the town (Downtown zoning district) considered a “park-once” district and allows for a reduction of required vehicle parking by a multiplier of 67%. Through this multiplier, the required number of vehicle parking spaces would be reduced to a total of 5 spaces. However, LDC Sec. 34-953 states that requests for a rezoning to a Commercial Planned Development (CPD) zoning district require that building placement, size, design, and all other property development regulations, such as parking, shall be the same as for the CB zoning district. Following this requirement means the proposed convenience store is required to revert to providing a minimum of 14 vehicle parking spaces. This is counterproductive to the desired “park-once” intent the town is seeking for this area. Reverting to the CB requirements results in the applicant’s inability to apply the parking reduction multiplier and burdens the site with excessive off-street parking in this more urbanized area of the town.

The applicant desires to meet the intent of being within the Downton “park-once” district by seeking a reduction in the number of off-street vehicle spaces from 14 to 8. Due to the unique triangular configuration of the subject property, the need to manage vehicular traffic and pedestrian connectivity to the site, and the need to support the proposed convenience store use results in the need to maintain a minimum of 8 parking spaces. The applicant also sees the benefit of and wants to promote the use of alternative modes of transportation to their development. The applicant is accomplishing this by designating an area for 2 bicycle racks, each able to hold 4 bicycles. As stated in LDC Sec. 34-2020(c), commercial buildings may eliminate one required vehicle parking space by providing and maintaining a bicycle rack able to hold four bicycles.

The requested deviation to allow for the reduction to a minimum of 8 vehicle parking spaces for a convenience store is consistent with the intent to reduce off-street parking impacts as allowed within the Downtown zoning district, provides areas for additional bicycle parking, addresses the unique site configuration limitations, and does not negatively impact the health, safety and welfare of the community.

DEVIATION #6 seeks relief from LDC Section 34-705(a)(1) which requires building frontages on Estero Blvd. to be at least 50 percent of the lot frontage. The deviation would allow for the building frontage on Estero Blvd to be at least 43 percent of the lot frontage.

Due to the subject property’s location at the corner of Estero Blvd. and Palermo Circle, LDC Sec. 34-705(a)(1) requires the building to be located within the corner of the lot nearest the street intersections. The unique triangular shape of the lot presents a design challenge when attempting to meet the 50% Estero Blvd. frontage requirement. The requested deviation will allow for the frontage requirement to be reduced to 43% on Estero Blvd.



Prior to Hurricane Ian, the convenience store's primary front façade was at an angle facing Estero Blvd. with off-street parking encompassing the entire frontage area of the property. The proposed building orientation as shown on the MCP has the primary front façade now facing Palermo Circle and moved adjacent to Estero Blvd. property line, resulting in meeting the desired pedestrian friendly "build-to" site orientation than existed prior to Hurricane Ian.

The proposed site configuration locates the building where the property is the widest, removes off-street parking from the Estero Blvd. frontage, reduces the width of the vehicular access points from Estero Blvd. and Palermo Circle, and allows for an internal sidewalk from the entrance of the 7-Eleven to the sidewalk along Estero Blvd. This site configuration also brings the building closer to Estero Blvd., establishes a much safer, more pedestrian friendly environment and encourages pedestrian connectivity in a heavily traveled, walkable area of the island.

The placement of the building helps activate Estero Blvd., creates visual interest, and encourages bicycle and pedestrian activity which supports the goal of the Downtown and CB zoning districts under the proposed CPD rezoning. The proposed site design allows for the redevelopment of a convenience store on the unique triangular site in a manner that provides a much-needed service to the island while enhancing the quality and character of the pedestrian-oriented commercial activities along Estero Blvd. thus meeting the intent of the LDC's building frontage requirement for Estero Blvd. Based on the justifications provided, the granting of this deviation will not negatively impact the health, safety, and welfare of the community.

DEVIATION #7 seeks relief from LDC Section 34-2015(5) which requires sufficient maneuvering room to allow an exiting vehicle to leave the parking lot in a forward motion. The deviation would allow vehicles to leave the most northern parking spaces in a reverse motion into the Palermo Circle right-of-way.

Prior to Hurricane Ian, the convenience store's parking configuration required vehicles to back into the Palermo Circle, a local street, and Estero Boulevard, an arterial roadway, rights-of-ways in order to exit the site. The unique triangular shape of the lot presents a design challenge for access and the required parking of vehicles. The lot and redevelopment of the prior use does not provide sufficient room to allow for all spaces to leave in a forward motion into Palermo Circle right-of-way. The proposed reconfiguration of the site has created a defined two-way access from Estero Boulevard as well as Palermo Circle to improve vehicle maneuvering to and from the property. The site configuration has also allowed for improved pedestrian safety and connectivity from the right-of-way to the use. The proposed parking spaces, which are located on a property within the Pedestrian Commercial future land use category, do not unduly interfere with a critical congested road segment (Estero Boulevard) and do not affect normal usage of any existing or proposed sidewalks along Palermo Circle. The requested deviation to allow vehicles to back out of the most northern parking spaces into Palermo Circle, a local street, will not negatively impact the health, safety, and welfare of the community.

1. **Requested Motion:**

Meeting Date: January 22, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230233, REQUESTING A VARIANCE FROM LDC 34-638(D)(1)G. WHICH REQUIRES NEW AT-GRADE MECHANICAL EQUIPMENT TO NOT ENCROACH INTO A SIDE YARD SETBACK AND TO BE LOCATED ON THE SIDE OF THE PROPERTY WITH THE LARGER SETBACK, WHERE THERE ARE DIFFERING SIDE SETBACK WIDTHS, FOR THE PROPERTY LOCATED AT 11 PALMVIEW BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council decides variance requests.

What the action accomplishes:

Approval of the request will allow new pool equipment to remain within a side yard setback.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

Roby Robinson, the applicant for 11 Palmview Boulevard, is requesting a variance from the Town's Land Development Code (LDC) 34-638(d)(1)g. Mechanical equipment such as air conditioners, generators, service panels, meters, and pool equipment, associated with new homes, may encroach up to three feet into rear and waterbody primary structure setbacks but must meet the same street and side setbacks as the building it serves. 1. On lots where the side setbacks are not equal on both sides, mechanical equipment may not be placed on the side of the house with the smaller setback unless the smaller setback is 20 feet wide or more.

This new pool equipment was constructed at grade and encroaches 3.3 feet into the required setback and is located in the smaller side setback. The Applicant is requesting a variance of 3.3 feet for a side yard setback of 4.2 feet to allow a pool equipment pad in the north side yard of an existing single-family home.

Attachments:

1. Res 24-11- 11 Palmview TC
2. staff report
3. Application packet

Financial Impact:

Unknown

6. **Alternative Action**

RECOMMEND DENIAL

7. **Management Recommendations:**

Approve with conditions.

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning

Frankie Kropacek, Operations & Compliance Director

Nancy Stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 1/10/2024

Approved - 1/10/2024

Approved - 1/16/2024

Approved - 1/16/2024

Final Approval - 1/16/2024

RESOLUTION NUMBER 24-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230233, REQUESTING A VARIANCE FROM LDC 34-638(D)(1)G. WHICH REQUIRES NEW AT-GRADE MECHANICAL EQUIPMENT TO NOT ENCROACH INTO A SIDE YARD SETBACK AND TO BE LOCATED ON THE SIDE OF THE PROPERTY WITH THE LARGER SETBACK, WHERE THERE ARE DIFFERING SIDE SETBACK WIDTHS, FOR THE PROPERTY LOCATED AT 11 PALMVIEW BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Roby Robinson, owner of the property situated at 11 Palmview Boulevard, is requesting a variance from LDC 34-638(d)(1)g. which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W4-00600.0330; and

WHEREAS, the Property is located in the "Low Density Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Residential, Single Family" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on January 9, 2024, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the variance; and

WHEREAS, on January 22, 2024, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

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

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

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES a request for variance from LDC 34-638(d)(1)g. which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths.

Section 3. In approving/ approving with conditions/ denying the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

- A. There are/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/ is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval of the variance are/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/ is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.
- D. The granting of the variance will/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable

requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

B. If the utility provider of the existing 6-feet public utility easement needs access, the equipment within the easement must be moved at homeowner's expense.

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	_____
John R. King, Council Member	_____
Vacant, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of January 2024.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20230233

CASE NAME: 11 Palmview Blvd; requesting relief from LDC 34-638(d)(1)g. which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths.

TOWN COUNCIL HEARING DATE: January 22, 2024

LPA HEARING DATE: January 9, 2024

STAFF RECOMMENDATION: APPROVAL

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

I. APPLICATION SUMMARY

Applicant/Owner: Roby Robinson (Applicant and Owner)

Request: Variance from LDC 34-638(d)(1)g. which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths.

Subject property: See attached site plan

Physical Address: 11 Palmview Blvd

STRAP #: 34-46-24-W4-00600.0330

FLU: Low Density Residential

Zoning: Residential, Single Family

Adjacent zoning and land uses:

North: RESIDENTIAL, SINGLE FAMILY (RS)
Single-Family Residence

South: RESIDENTIAL, SINGLE FAMILY (RS)
Single-Family Residence

East: Water Canal

West: RESIDENTIAL, SINGLE FAMILY (RS)
Single-Family Residence across Palmview Blvd

II. BACKGROUND AND ANALYSIS

Background:

Roby Robinson, the applicant for 11 Palmview Boulevard, is requesting a variance from the Town's Land Development Code (LDC):

34-638(d)(1)g. Mechanical equipment such as air conditioners, generators, service panels, meters, and pool equipment, associated with new homes, may encroach up to three feet into rear and waterbody primary structure setbacks but must meet the same street and side setbacks as the building it serves. 1. On lots where the side setbacks are not equal on both sides, mechanical equipment may not be placed on the side of the house with the smaller setback unless the smaller setback is 20 feet wide or more.

This new pool equipment was constructed at grade and encroaches 3.3 feet into the required setback. The property also has a larger side setback on the opposite side of the house, which was not used for the equipment. The Applicant is requesting a variance of 3.3 feet for a side yard setback of 4.2 feet to allow a pool equipment pad in the north side yard of an existing single-family home.

Analysis:

The property is a 75 feet wide and 110 feet deep conforming lot zoned Single-Family Residential, RS. The purpose of the RS zoning district is to provide stable neighborhoods where single-family detached homes are the predominant land use. The width of the lot and the minimum setbacks in the LDC guide the development of a home and its mechanical equipment.

The subject property currently supports a single-family residence and is a waterbody lot situated along Palmview Blvd. The existing single family home has a north side yard setback of 8.1 feet that contains an AC pad with a side yard setback of 4.1 feet. This AC pad existed before the Applicant bought the subject property.

The Applicant recently built a pool equipment pad with a side setback of 4.1 feet on permit approval and failed final inspection. The Applicant is requesting a variance of 3.4 feet for a side yard setback of 4.1 feet to allow the newly built pool equipment pad in the north side yard of an existing single-family home.

The provided survey indicates a public utility easement along the north side property line. This appears to be an error (the original plat shows the drainage easement on the south side of the property), however staff has recommended and the applicant has agreed to a condition to ensure that if an easement exists in this location and the utility must access the easement, that the equipment in this location will be moved at the owner's expense.

Neighborhood Compatibility:

All properties with 75 feet or lesser width along Palmview Blvd are required to have a minimum of 7.5 feet wide side yard setbacks. Similar to the subject property, several single-family residences along this corridor have a pool in the rear yard and equipment in the side yard. It is unknown whether the equipment was installed original to the home and met the Town's LDC requirements at the time of construction.

Findings and Conclusions:

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

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

The applicant had the equipment installed professionally and it was placed on the wrong side of the house. The Applicant was unaware that the equipment was in the wrong location until the final inspection failed. The applicant has worked with staff to resolve this issue. Moving the equipment and replumbing the pool would be an unnecessary burden, considering the AC pad is already located in this side yard.

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

The homeowner hired a pool company to do this work and believed that it was completed properly. He was not aware of the issue until the final inspection revealed that the equipment was in the incorrect location.

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

This is the minimum variance that would resolve the setback encroachment.

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

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

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

Changes to the code made this variance request necessary and staff is proposing further changes to the code per a request by the LPA.

III. RECOMMENDATION

Staff has reviewed the request for a variance from LDC 34-638(d)(1)g. which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths. Staff found that the variance request does meet the requirements set-forth in sec. 34-87.

At the January 9th LPA hearing the LPA unanimously recommended approval of the request

Therefore, staff recommends **APPROVAL** of VAR20230233, a request for a variance of 3.4 feet for a side yard setback of 4.1 feet to allow a pool equipment pad in the north side yard of an existing single-family home.

IV. CONDITIONS FOR APPROVAL

If the Town's LPA recommends approval for the variance, town's staff recommends the following conditions of approval.

- 1) Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- 2) If the utility provider of the existing 6-foot public utility easement needs access, the equipment within the easement must be moved at homeowner's expense.

V. EXHIBITS

Exhibit A: Complete Application Packet
Exhibit B: Postcards to Adjacent Property Owners



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: 11 Palmview Bl
STRAP Number: 34-46-24-0060010330
Applicant: Roby Robinson Phone: 239-5609287
Contact Name: _____ Phone: _____
Email: Roby5566@aol.com Fax: _____
Current Zoning District: _____
Future Land Use Map (FLUM) Category: _____
FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

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

SUPPLEMENTAL FORM REQUIRED

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

PART I – General Information

A. Applicant*: Roby Robinson Phone: 239-5609287

**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: 11 Palmview Bl Ft. Myers Beach, FL 33931
Email: Roby5566@aol.com Fax: _____
Contact Name: _____ 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: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

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

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34-1174 C17 C07
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☒ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☒ Easement

☐ Other. Please Explain: _____

PART III - Waivers

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

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Roby Robinson Phone: 239-560 9287

Mailing Address: 91 Palmview Bl

Email: Roby5566@AOL.com Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Roby Robinson 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.

Roby Robinson
Signature

Roby Robinson
Printed Name

STATE OF FL 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.

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

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

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

DISCLOSURE OF OWNERSHIP INTEREST

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

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

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

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

_____	_____
Signature	Printed Name

AFFIDAVIT

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

I, _____ (name), as _____ (title)
of _____ (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

Roby Robinson
Name of Entity (corporation, partnership, LLP, LLC, etc)
Roby Robinson
Signature
Roby Robinson
Typed or Printed Name
owner
Title
10-26-23
Date

STATE OF FL COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ___ physical presence OR ☐ online notarization, this ___ day of _____, 20___, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 34-46-24-W4-00600.0330
Property Address: 11 Palmview B1

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) 75 feet
Depth (please provide an average width if irregular in shape) 110 feet
Frontage on street: 75 feet. Frontage on waterbody: 75 feet
Total land area: 8250 ☐ acres ☒ square feet

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

go over Bridge turn left go 4 miles turn
left into Fairview Isles on to Albatross
turn right on Palmetto Bl

☐ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

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

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

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

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

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

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

Explanatory Notes – Part IV & V

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



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

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

Case Number:
Project Name:
Authorized Applicant:
LeePA STRAP Number:

Current Property Status:	
Current Zoning:	
Future Land Use Map (FLUM) Category:	
Comp Plan Density:	Platted Overlay? ☐ Yes ☐ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

34-1174(1)(10)

Complete the narrative statements below for EACH variance requested.



Case # _____

Date Received: _____

PART I
Narrative Statements

Request for variance from _____ (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:

see narrative statement
page #1

Reasons for request

Explain why the variance is needed:

see narrative statement
page #2



Case # _____

Date Received: _____

Explain the possible effect the variance, if granted, would have on surrounding properties:

See narrative statement
page # 3

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

See narrative statement
page # 4.



Case # _____

Date Received: _____

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

See Part II Submittal Requirement
Narrative page # 5, #6, #7



Case # _____

Date Received: _____

PART 2 Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

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

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

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

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

"Variance is requested from..." Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Town of Fort Myers Beach Variance Application

Request for variance (LDC Section number) 34-1174(1)(10)

Explain the specific regulation contained in this section from which relief is sought.

After failing the final inspection, I went to Town Hall to inquire how to solve the issue.

The consensus was that I should apply for a variance because the equipment pad is 4'7" off the property line.

I was advised to move the equipment on the pad as far from the property line as possible. Gulf Coast Pools came and moved the equipment 9" closer to the house and away from the property line.

I am requesting a variance to leave everything where it is, and be granted an exception of 2'2" from said setback.

Town of Fort Myers Beach Variance Application 34-1174 (1)(10)

Reason for Request

Explain why the variance is needed:

I am requesting a variance because the final inspection on my pool failed. Tropical Pools submitted a different survey plan with the equipment pad in a different place than originally drawn. They say I moved the pad and equipment myself. I DID NOT.

LIS Engineering, LLC (Bob) drew the drainage plan. Tropical Pools then submitted that plan to the town. IT PASSED INSPECTION.

Tropical Pools then set the equipment on the pad as the original LIS Engineering plan specified. IT PASSED INSPECTION

I found out that I had an issue when the final inspection failed.

It has been over three years since this project started, so I called Tropical Pools to find out what happened. During the conversation, Ronnie told me he "F'd" up and he would take care of it. He never did. As time passed, he changed his story saying I moved the pad, plumbing, and equipment myself. That is not true.

Fort Myers Beach Variance Application 34-1174 (1)(10)

Explain the possible effect the variance, if granted would have on surrounding properties:

There are no adverse effects.

The abutting neighbor has no problem with the equipment placement as is. Mr. Louis J. Santoro's A/C and pool equipment are likewise near the same property line.

He is more concerned about the noise that will be generated if it is moved where shown on the NEW survey drawing that was submitted with the final paperwork. It places the equipment even with his Lani. It will be in his view. He will have to contend with the noise while relaxing on his Lani.

Explain the hardship (what is unique to the property) that justifies relief from regulation

The equipment was installed three years ago. It has had two inspections. Both passed.

At this point I have paid Tropical Pools in full. (\$34,000.00)

I have paid Diamond Bright Pools to drain, acid wash, and pebble tech pool bottom because Tropical left it stagnant for one and one half years (\$4,500.00).

I spent another (\$1,100.00) after Ian to drain, acid wash it again. And then another refill for (\$550.00)

The cost of this application (\$1,800.00)

Returning to my home post Ian (100,000.00)

Having to move the equipment, plumbing, and the pad will be costly. I estimate \$6,500.00.

That expense on top of everything stated above is just more than I can afford in my retirement.

My neighbor is happy. His view is not obscured, the noise is confined between the two houses where it bothers no one. Our mechanicals run in tandem down the same property line at this time. We would like to keep it that way.

Fort Myers Beach Variance Application 34-1174(1)(10)

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

- 1) As per conversations with the Town Hall I have had the existing equipment moved as close to the house as possible. Placing it 9" further in on the pad, and away from the property line.
I am asking for an exception of 2'2".
- 2) Asking for this variance is not the result of my actions. Tropical Pools placed the equipment on the pad where it was indicated on the water run off survey. The Town approved it.
I was unaware and did not grant permission for the survey schematic to be redone and altered for final inspection.
Tropical Pools (Ronnie) submitted the wrong drawing and refused to revise and send the original one that everyone was working from. Ronnie made the error and at this point is protecting himself and selling me down the river.
- 3) I am asking for 2'2" to close my open permit and finalize the pool that was started over three years ago.
I agreed to make payment in full because Ronnie promised to take care of their errors. Instead Tropical is full of excuses and has changed their attitude. They are not helping, but instead hurting the very situation they created.

- 4) There is no injury or detriment to the neighborhood. The equipment in question runs in tandem with my neighbors. He agrees it is a good spot. It is out of everyone's view and placement buffers the noise when it's running. It is where the original survey shows it placed. (ie...two enclosed notarized letters saying so).
- 5) I believe the nature of this request is reasonable. The circumstances that put us here were not of my doing.
This is my fourth pool on the island with Tropical Pools. I trusted them to get it right and be professional like they had been in the past. Apparently, a change in employees changed their dependability.
They left my pool unfinished and filled with stagnant water for over a year and one half.
This forced me to hire another company to drain, acid wash, and pebble tec the pool to fix the unhealthy situation.
Once Tropical Pools received their final payment with promises of a speedy CO, they were not returning calls and the secretary was full of excuses.
When the final paperwork was submitted to the town the schematics had been changed. These new plans did not match the original site plan/survey drawing.
Without my knowledge or permission, the pad location got moved (on paper).
On top of that, Ronnie from Tropical Pools is saying I physically moved the plumbing, pad, and equipment. I DID NOT.
Enclosed in this application for a variance you will find two notarized letters and copies of the survey.
One letter is from my abutting neighbor, Louis J. Santoro stating the pad was never moved.

The second letter is from the electrician that ran the original ground wire to the only pad that has ever been here. He states the same.

After all that I (we, the residents) have gone through the past few years.....

Hurricane Ian

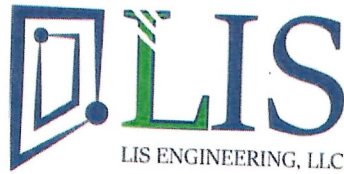
Covid

Supply chain issues

Contractor using supply chain issues to underperform on contracts.

I believe the nature of this request is reasonable. Please grant my variance for a 2'2" exception to close this permit.

Thank you



August 23, 2022

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

Re: Site Address: 11 Palmview Blvd.
Permit No: 201595
LIS Job No: DRAIN20-138

To whom it may concern,

In regard to the above referenced project, I conducted a site inspection of this single-family residence on August 23, 2022. Based on this inspection, it appears, to the best of my knowledge and belief that the site drainage system was constructed in substantial compliance with the site drainage plan and specifications approved by the Town of Fort Myers Beach.

Please do not hesitate to contact me should you have any questions or require any additional information.

Sincerely,

Robert W. Case, P.E.
LIS Engineering, LLC
FL P.E 44643



Digitally
signed by
ROBERT W
CASE
Date:
2022.08.23
16:57:24
-04'00'

• Southwest FL	21430 Palm Beach Blvd. Alva, FL 33920	239-693-9244 Fax: 239-693-9827
• Central FL	2572 W. SR 426 #2064	321-244-0402 Fax: 321-244-9419

Paula Kiker

From: bob C <bobc@lis-e.com>
Sent: Wednesday, February 1, 2023 5:22 PM
To: Paula Kiker
Cc: roby5566@aol.com; Jason Green; Stephen Poposki
Subject: RE: Roby Robinson Pool Issue
Attachments: DRAIN20-138-DRAINAGE(ESIGN).pdf; ENGINEERING LETTER 8-23-22 (ESIGN).pdf

Paula,

Let me clarify. We (LIS Engineering) completed a drainage plan for this property on 11/3/20 (see attached), we also completed an engineering certification letter on 8/23/22, based on an as-built survey, photos, and site observations (see attached). Obviously, this was before the hurricane. I have no idea what it looks like today. Both of these documents would have been transmitted to the owner / contractor. The only time we hear back from the owner or contractor is when there is a problem. Therefore, I am not sure what was given to whom. I also know that many jurisdictions allow some mechanical equipment to be located in side setbacks (within reason). However, it sounds like the best thing to do is apply for a variance at this point.

Thanks,

Bob Case, P.E.
LIS Engineering, LLC

-LIS-

Engineering
21430 Palm Beach Blvd.
Alva, FL 33920
239-693-9244 Fax: 239-693-9828

From: Paula Kiker <Paula@fmb_sun.com>
Sent: Wednesday, February 1, 2023 3:11 PM
To: bob C <bobc@lis-e.com>
Cc: roby5566@aol.com; Jason Green <green@fmbgov.com>; Stephen Poposki <spoposki@fmbgov.com>
Subject: Roby Robinson Pool Issue

Bob,

I have Jason Green and Steve Poposki (Town staff) on this email as well. They have been working with us also to resolve this.

I truly appreciate you helping Roby out with this pool issue... I pulled the following documents off the Permitting site. Roby mentioned you have "proof" of approval of the original location of the equipment? Anything you can forward to me?

From the Permit View – it looks like Carl Bengé approved the zoning back in 2020, not sure that is the time you got approved?

Also on the "stamped" copy with the permit number on it, they have the plan showing the equipment on the side of the home (see page 3 of 33) **AS WELL AS** the "hand drawn" equipment word from Tropical Pools.

Paula Kiker
Broker-Owner, Lahaina Realty
#1 Selling Office of Residential Properties Since 2008
13881 Plantation Rd #11, Fort Myers, FL 33912
6035 Estero Blvd, Fort Myers Beach, FL 33931
Office: 239-463-0000 ext. 128
Cellular: 239-565-1970
Fax: 239-463-5617
Email: paula@fmbsun.com

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RESIDENTIAL SWIMMING POOL



**PROPOSAL DOES NOT
INCLUDE ROCK REMOVAL,
EXCESSIVE DEWATERING,
SPRINKLER SYSTEMS OR
LANDSCAPING**

LOCATION POINTS, DIMENSIONS AND CONSTRUCTION SPECIFICATIONS HAVE BEEN EXPLAINED TO ME AND I APPROVE OF THEM. EVERYTHING WE HAVE DISCUSSED IS SHOWN AND THERE ARE NO VERBAL AGREEMENTS. I UNDERSTAND THAT ANY ALTERATION TO THE PLANS WILL BE BY WRITTEN CHANGE ORDER ONLY. ONLY CHANGES MAY NECESSITATE ADDITIONAL CHARGES.

OWNER	PRICE SHOWN AS OF	\$	34,000	R.R.	DATE	9-23-76
EQUIP PAD	LOCATION/ APPROVED	INT				
SIGN HERE: <i>Relay Polm</i>						
OWNER X						
DIG LAYOUT, STEEL & GUNITE NOTES						

11X23 Pool
POOL WALLS 11" PAST HOUSE
BACKFILL & PLUMBING NOTES
11' NE'S
BRICK AND TILE
PPH WALLS

DECK NOTES
CUSTOMER WILL NOT ALL
2150

SCREEN NOTES

ELECTRIC HEATER, ADV FLOW
5AL

ALPHACORP

ANY REUSE OF THIS PROPOSAL
WILL RESULT IN A
\$375 ARCHITECTURAL FEE.

Sec. 34-1174. - Location and setbacks generally.

Sec. 34-1174(1)(d)

- (a) *Permitted locations.* Except as may be provided elsewhere in this chapter, all accessory uses, buildings and structures must be located on the same premises and must have the same zoning district or zoning classification as the principal use (see also § 34-616(b) of this chapter). For purposes of this section, a zoning classification contains the following groups of zoning districts:
- (1) Residential districts - RS, RC, RM, and Santos - described in article III of this chapter; and
 - (2) Commercial districts - CR, CM, CO, and CB - described in article III of this chapter.
- (b) *Setback from streets.* No accessory use, building or structure shall be located closer to a street right-of-way line or street easement than the principal building, except for:
- (1) Fences and walls as provided for in division 17 of this article;
 - (2) Signs, where permitted by ch. 30 of this LDC and placed in accordance with §§ 30-93 and 30-153 of this LDC;
 - (3) Outdoor display of merchandise, subject to the provisions of division 36 of this article;
 - (4) Garbage enclosures as provided for in § 6-11 of this LDC;
 - (5) A single flagpole on a lot;
 - (6) Swimming pools, tennis courts, shuffleboard courts, and other similar recreation facilities that are accessory to a multiple-family development, or a hotel/motel, provided that they are part of a planned development or a site plan approved in accordance with ch. 10 of this LDC and provided they comply with the minimum setbacks for streets;
 - (7) As provided for in the exceptions to setbacks in § 34-638(d) of this chapter; or
 - (8) On through lots, accessory uses, buildings, and structures may be placed closer to the street opposite the street that provides principal vehicular access than the principal building as long as the minimum setbacks for streets as set forth in § 34-638 of this chapter are maintained.
- (c) *Setback from bodies of water.* No building or structure (except marine structures, which are subject to the setback requirements as set forth in ch. 26, article II of this LDC) may be located closer to a bay, canal, or other body of water than the minimum setbacks required in § 34-638(d)(3) of this chapter.
- (d) *Setbacks from side and rear property lines.* Unless the side or rear property line abuts a body of water (see § 34-638(d) of this chapter), the following setbacks shall apply:



Property Data

STRAP: 34-46-24-W4-00600.0330 Folio ID: 10231279

Generated on 7/26/2023 11:27 AM

Owner Of Record - Sole Owner [\[Change Address\]](#)

 ROBINSON ROBY J
 11 PALMVIEW BLVD
 FORT MYERS BEACH FL 33931

Site Address

 Site Address maintained by **E911 Program Addressing**

 11 PALMVIEW BLVD
 FORT MYERS BEACH FL 33931

Property Description

Do not use for legal documents!

 FAIRVIEW ISLES UNIT 5
 PB 10 PG 125
 LOT 33

[\[Tax Map Viewer\]](#) [\[View Comparables\]](#)

[\[Pictometry Aerial Viewer\]](#)

Current Working Values

[Tax Roll Value Letter](#)
[Tax Refund Status](#)

Just

714,204

Attributes

Land Units Of Measure	Multiple - see Appraisal Details
Units	Multiple - see Appraisal Details
Total Number of Buildings	1
Total Bedrooms / Bathrooms	2 / 2.0
Gross Living Area	1,312
1st Year Building on Tax Roll	1971
Historic Designation	No

Image of Structure


 < Photo Date November of 2021 > ☐ View other photos

Last Inspection Date: 11/22/2021

Exemptions / Classified Use (Current)

Generated on 7/26/2023 11:27 AM

Exemptions / Classified Use (2022 Tax Roll)

Generated on 7/26/2023 11:27 AM


Values (2022 Tax Roll)


Generated on 7/26/2023 11:27 AM

Taxing Authorities

Generated on 7/26/2023 11:27 AM

Louis J. Santoro
9 Palmview Blvd
Ft. Myers Beach, Florida 33931
Cell: (513)-623-1940
l_santoro@msn.com

July 31, 2023

To Whom It May Concern:

Subject: Roby Robinson's Pool Equipment, 11 Palmview Blvd, Fort Myers Beach, Florida

My name is Lou Santoro and I live at 9 Palmview Blvd, Fort Myers Beach, Florida. I am Roby Robinson's neighbor on the left side of the house as you face his house. Roby has asked me to supply information about his pool equipment.

To the best of my knowledge, since it was installed, the equipment in question has always been at the left, rear corner of his house in the same location as it is today. It has never been moved.

Also, if a variance to current FMB code is necessary in order to have that equipment remain in its current location, and my permission is required, please use this letter for that purpose.

Sincerely,


Louis J. Santoro

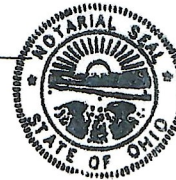
STATE OF Ohio)
COUNTY OF Lucas)

SUBSCRIBED AND SWORN to before me, a Notary Public, in and for said county and state, Louis J. Santoro, acknowledges the foregoing statements.

WITNESS my hand and seal this 1st day of August, 2023.


NOTARY PUBLIC

My Commission Expires: 03/15/2028



JERONICA McFADDEN
Notary Public, State of Ohio
Commission Number
2023-RE-861134
My Commission Expires
March 15, 2028

RCR 29 DX
September 28, 2023

Roby Robinson
11 Palmview Avenue
Fort Myers Beach, FL 33931

In reference to the pool equipment @ 11 Palmview Avenue. There is no evidence that anything has been moved since the original installation.

I ran the original bonding cable from the re-bar and lanai to the pool equipment. There is no evidence of any movement of this equipment whatsoever. There are no drill holes that would indicate a remounting. The pipes and electrical runs have not been altered.

Robert Harrity
Bob's Residential Repair
Lic #L21000138750
113 Andre Mar Drive
Fort Myers Beach, FL 33931
302 250-3294

Sworn before me on this 29th September, 2023

Robert Harrity

Robert Harrity Date 9-29-23

Notary Republic

Teresa Andre Date 9.29.23



DRAINAGE CALCULATIONS

NOTE:
WET SEASON WATER TABLE IS 2' BELOW EXISTING GRADES

-DRAINAGE LEGEND

 DRY DETENTION BOTTOM

PLATTED LINE

NOTE:

NOTE:
THE REAR SWALE IS ONLY FOR CONVEYANCE.

NOTE:

NOTE:
ALL PROPOSED VOLUME AND DEPTHS ARE AFTER SOD.

NOTE:

ALL PROPOSED ELEVATIONS ARE FINISHED GRADE.

NOTE:

ALL SWALES AND GROUND COVER TO BE SOD.

NOTE
EXISTING DOCK
TO BE REMOVED

- WITNESS LINE

- 1.5' CONC SEAWALL

— PLATTED LINE

— HEADWALL
UNDER
CONSTRUCTION

BENCHMARK NOTE
ELEVATIONS ARE BASED OF LEE COUNTY
B.M. AD1367 USC&GS BRASS DISC
ELEV = 2.90' NAVD88

SECTION A-A

SECTION B-B

SECTION C-C

APPROVED

The seal of the Federal Bureau of Investigation (FBI) is located in the top left corner of the document. It features a circular design with the words "DEPARTMENT OF JUSTICE" and "FEDERAL BUREAU OF INVESTIGATION" around the perimeter, and a central shield with various symbols.

This document has been electronically signed and sealed by
ROBERT W. GALT, F.B.I. on the following date:
using a digital signature that meets the Federal
Bureau of Investigation's standards for digital signatures
and is intended to be used as evidence of the original
document.

**Digitally signed
by ROBERT W
GALT
Date:
2020.11.03
1:52:43 -05'00'**

CA NO.: 6053
CA NO.: 29003
COMMERCIAL
IN SERVICES

LIS
LIS ENGINEERING, LLC
RESIDENTIAL & COMMERCIAL
ENGINEERING & DESIGN

5500 Fritchfield, 21420 Johns Road, Auburn, AL 36830
P: 334-821-1414
F: 334-821-1415
E: lis@lis-engineering.com
W: www.lis-engineering.com

ROBINSON RESIDENCE
11 PALMVIEW BOULEVARD FORT MYERS BEACH, FLORIDA, 33931
DRAINAGE PLAN

SCALE:
1" = 20'-0"

DATE:
OCT. 19, 2020

SHEET

DP

Digitally signed
by ROBERT W
CASE
Date:
2020.11.03
15:52:43 -05'00'

Page 241 of 407

1. **Requested Motion:**

Meeting Date: January 22, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230299, A VARIANCE FROM LDC TABLE 34-3 TO DECREASE THE REQUIRED STREET SETBACK BY 11 FEET FROM THE REQUIRED 25 FEET, IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 122 FALKIRK STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council decides variance requests

What the action accomplishes:

Approval of the variance will allow reconstruction of a dwelling unit forward of the existing structure and encroaching into the front setback.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

Prior to Hurricane Ian the primary structure was a duplex, with a unit below and a unit above. The applicant has provided an affidavit from an adjacent property owner and a previous owner and Lee Property Appraiser website indicates that the structure contained two dwelling units. The lower unit was damaged by Hurricane Ian and the applicant is proposing the reconstruction of the lost unit as a separate structure, attached by a deck area. The proposed structure would be forward of the original house on the property, with a primary setback from Falkirk street of 14.1 feet and a deck 11.3 feet from the street property line.

Attachments:

1. Res 24-14 TC
2. Staff Report TC
3. Exhibit A Site plan
4. Exhibit B postcard 122 Falkirk st
5. Exhibit C Complete Application

Financial Impact:

unknown

6. **Alternative Action**

Approve or approve with conditions

7. **Management Recommendations:**

Recommend denial

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/10/2024
Approved - 1/10/2024
Approved - 1/16/2024
Approved - 1/16/2024
Final Approval - 1/16/2024

RESOLUTION NUMBER 24-14

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230299, A VARIANCE FROM LDC TABLE 34-3 TO DECREASE THE REQUIRED STREET SETBACK BY 11 FEET FROM THE REQUIRED 25 FEET, IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 122 FALKIRK STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Heidi Cawood Grottendick, owner of the property situated at 122 Falkirk Street, is requesting a variance of 11 feet from LDC Table 34-3 which requires a street setback of 25 feet in the RS zoning district, for a street setback of 14 feet; and

WHEREAS, the STRAP number for the subject property is 33-46-24-W2-005M0.008A; and

WHEREAS, the Property is located in the "Low Density" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Single Family" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on January 9, 2024, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the variance; and

WHEREAS, on January 22, 2024, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

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

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

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES these two variances from LDC Table 34-3 requires accessory structures including swimming pools associated with a single-family home waterfront lot in the RS zoning district to provide a minimum 25-foot side setback for lots 100 feet wide or greater and 25 foot setback from a waterbody.

Section 3. In approving/ approving with conditions/ denying the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

- A. There are/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/ is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval of the variance are/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/ is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.
- D. The granting of the variance will/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. Should the home be demolished and the site redeveloped, the approved variances will become null and void and the new structure will be expected to meet the codes at the time of review.
- B. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable

requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

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	_____
John R. King, Council Member	_____
Vacant, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of January 2024.



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

TYPE OF CASE: Variance

CASE NUMBER: VAR20230299

CASE NAME: 122 Falkirk St.; requesting a variance from LDC Section 34-638 Table 34-3 Dimensional Regulations in Conventional Zoning Districts for the street setbacks in the RS zoning district.

**COUNCIL
HEARING DATE:** January 22, 2024, at 9 AM

**LPA HEARING
DATE:** January 9, 2024

**STAFF
RECOMMENDATION:** DENIAL

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Heidi Cawood – Owner/ Applicant

Request: The applicant is requesting a front setback variance of 11 feet from the required 25-foot front setback.

Subject property: See attached site plan

Physical Address: 122 Falkirk Street

STRAP #: 33-46-24-W2-005M0.008A

FLU: Low Density

Zoning: Residential Single Family (RS)

Adjacent zoning and land uses:

North: Residential Single Family (RS)
Low Density

South:	Residential Single Family (RS) Low Density
East:	Residential Single Family (RS) Low Density
West:	Residential Single Family (RS) Low Density

II. BACKGROUND AND ANALYSIS

Background:

Heidi Cawood, the owner of 122 Falkirk St., is requesting a variance from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family home in the RS zoning district to provide a minimum street setback of 25 feet from the front property line. The applicant is requesting a variance of 11 feet from the street setback for a front setback of 14.1 feet.

Prior to Hurricane Ian the primary structure was a duplex, with a unit below and a unit above. The applicant has provided an affidavit from an adjacent property owner and the Lee Property Appraiser website indicates that the structure contained two dwelling units. The lower unit was damaged by Hurricane Ian and the applicant is proposing the reconstruction of the lost unit as a separate structure, attached by a deck area. The proposed structure would be forward of the original house on the property, with a primary setback from Falkirk Street of 14.1 feet and a deck 11.3 feet from the street property line. The deck does not require a setback variance, as it encroaches only 2.8 feet further into the requested reduced setback and could encroach up to 7 feet into that reduced setback, by right.

Analysis:

The purpose of the RS zoning district is to provide stable neighborhoods where single-family detached homes are the predominant land use. This oddly shaped lot is approximately 7,400 square feet. The existing structure does meet the code required setbacks.

The lot is not large enough to meet the density standards for the Low Density future land use district, which allows 4 dwelling units per acre. Additionally, the RS zoning district does not allow two dwelling units per lot. Due to these limitations, the applicant is utilizing the post disaster buildback code to reconstruct the second unit.

Neighborhood Compatibility:

The parcel sits within a triangular block with several irregular lots and homes that appear nonconforming for setbacks. The proposed location of the dwelling unit would likely have a minimal impact on adjacent properties.

Findings and Conclusions:

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

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

The ground floor unit was destroyed, and reconstruction of the unit will need to happen above base flood elevation. The parcel is very oddly shaped and although there is room for the structure to the side of the house, that location will have a greater impact on adjacent properties. This is the minimum request, if the unit is to be constructed forward of the existing unit.

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

The subject property survived the storm, with the second floor living area largely intact and the owner would like to rebuild the first floor unit. The unit could be located to the north of the existing structure and meet the required setbacks.

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

The variance request is necessary only if the unit is constructed forward of the house. If the unit were constructed to the side, a variance may not be necessary.

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

The adjacent properties will not likely be impacted by the development of this small unit forward of the existing structure.

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

The conditions or circumstances on this specific property for which a variance is sought are not general in nature and do not warrant a code change.

III. RECOMMENDATION

Staff has reviewed the request for a variance *from LDC Table 34-3 which requires that a lot in the RS zoning district have minimum 25-foot street setback* and found that the variance requested does not meet the requirements set forth in sec. 34-87.

Therefore, staff recommends **DENIAL** of VAR20230299, a request for a variance of 11 feet from the required 25-foot street setback.

At the January 9th LPA hearing the LPA unanimously recommended approval of the request.

IV. CONDITIONS FOR APPROVAL

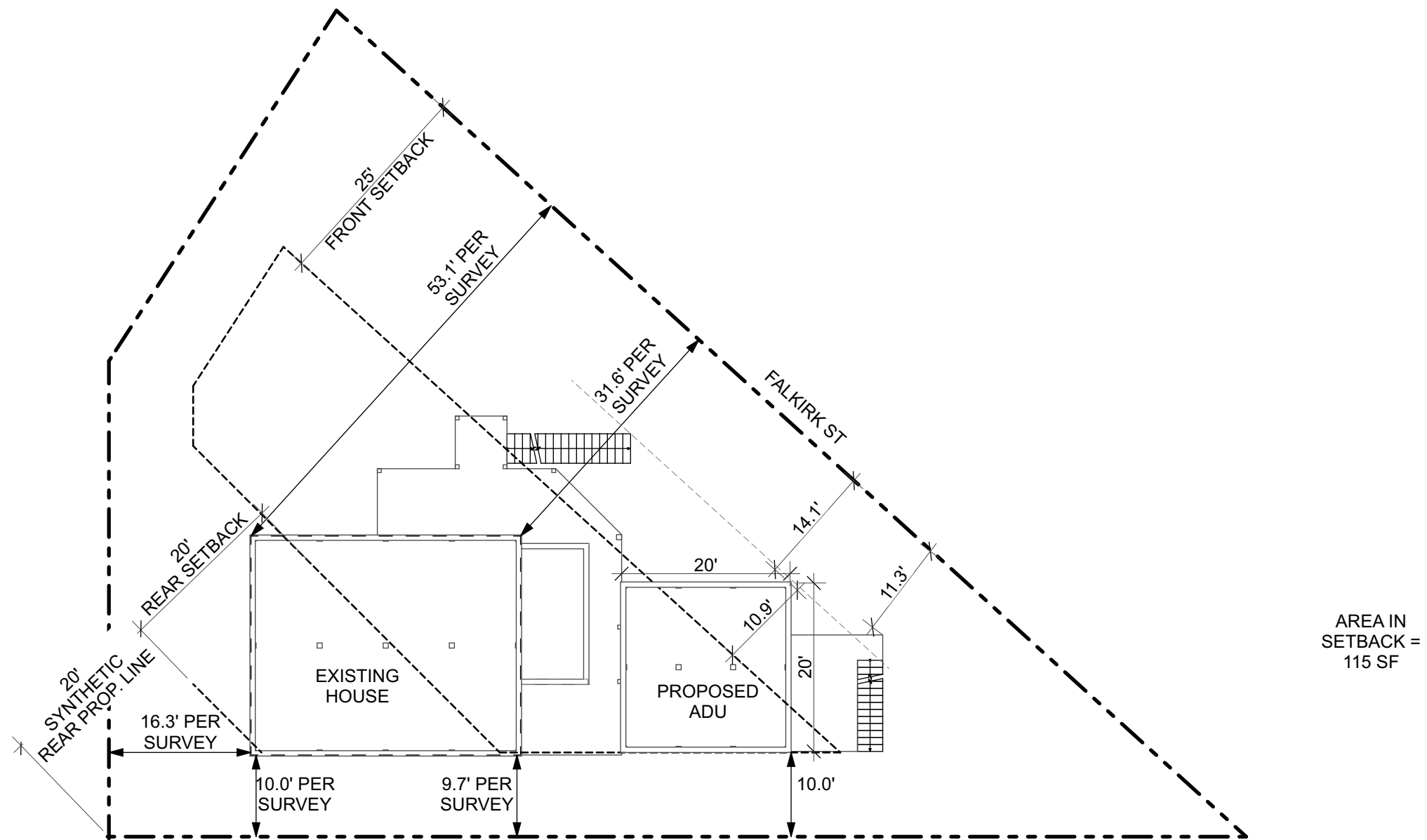
If the Town Council recommends approval for the variance, town's staff recommends the following conditions of approval.

- 1) Should the home be demolished and the site redeveloped, the approved variances will become null and void and the new structure will be expected to meet the codes at the time of review.
- 2) Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

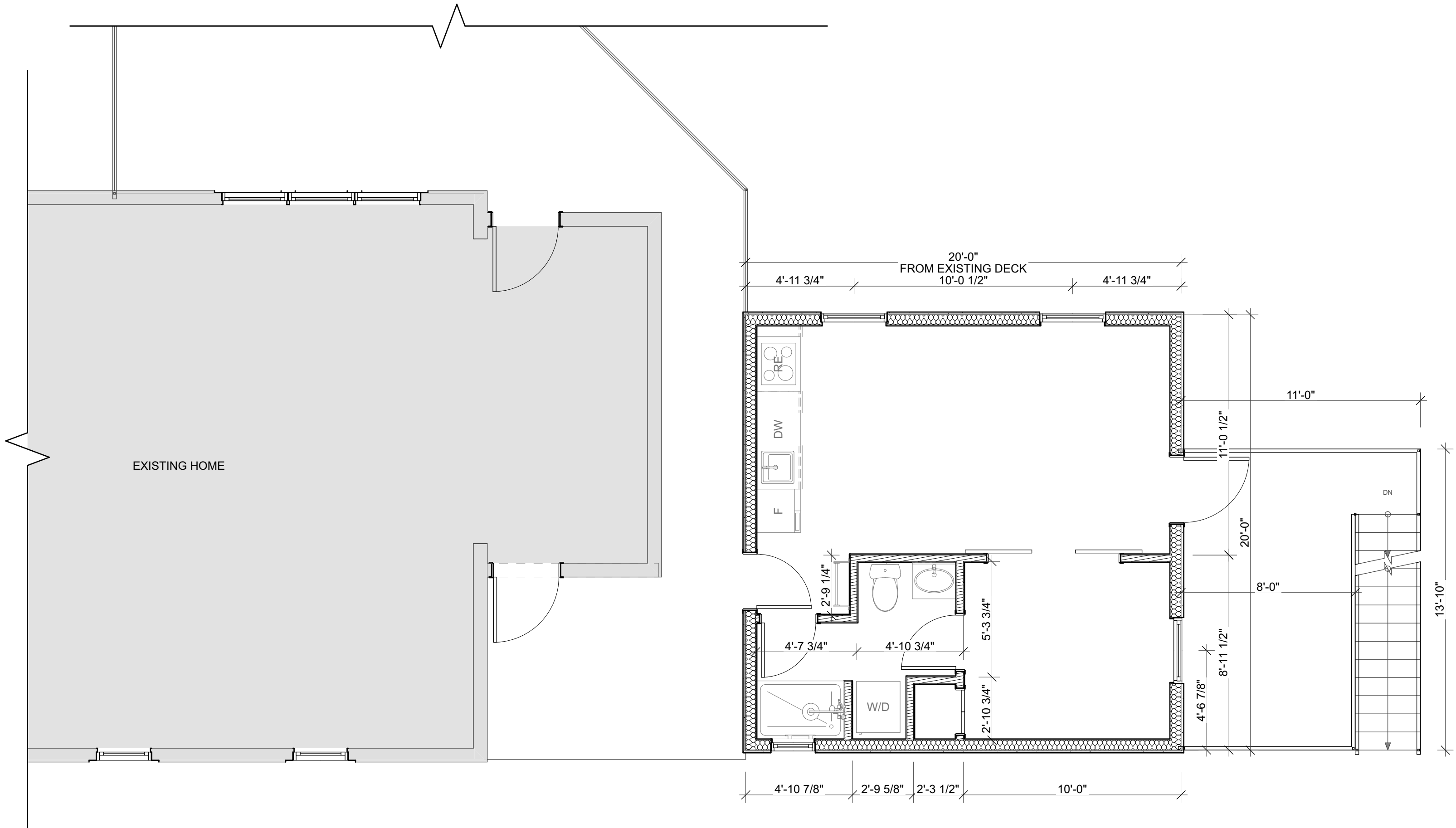
V. EXHIBITS

- A. Site Plan
- B. Postcards
- C. Complete Application

This drawing and its contents are the property of the architect and may not be reproduced or used in any way other than what was originally intended without the architect's written permission.



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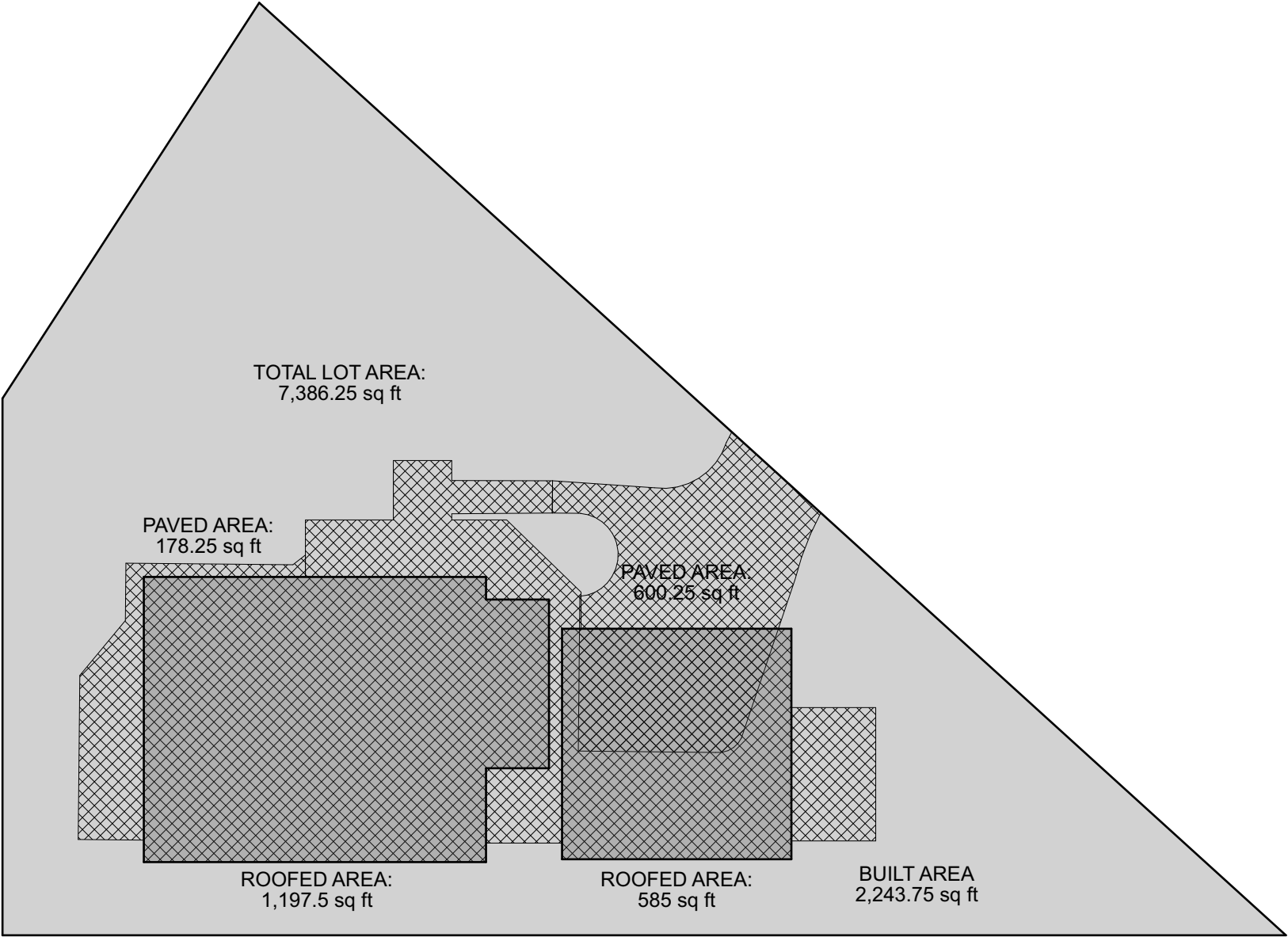
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PERCENTAGE OF ROOFED AREA:

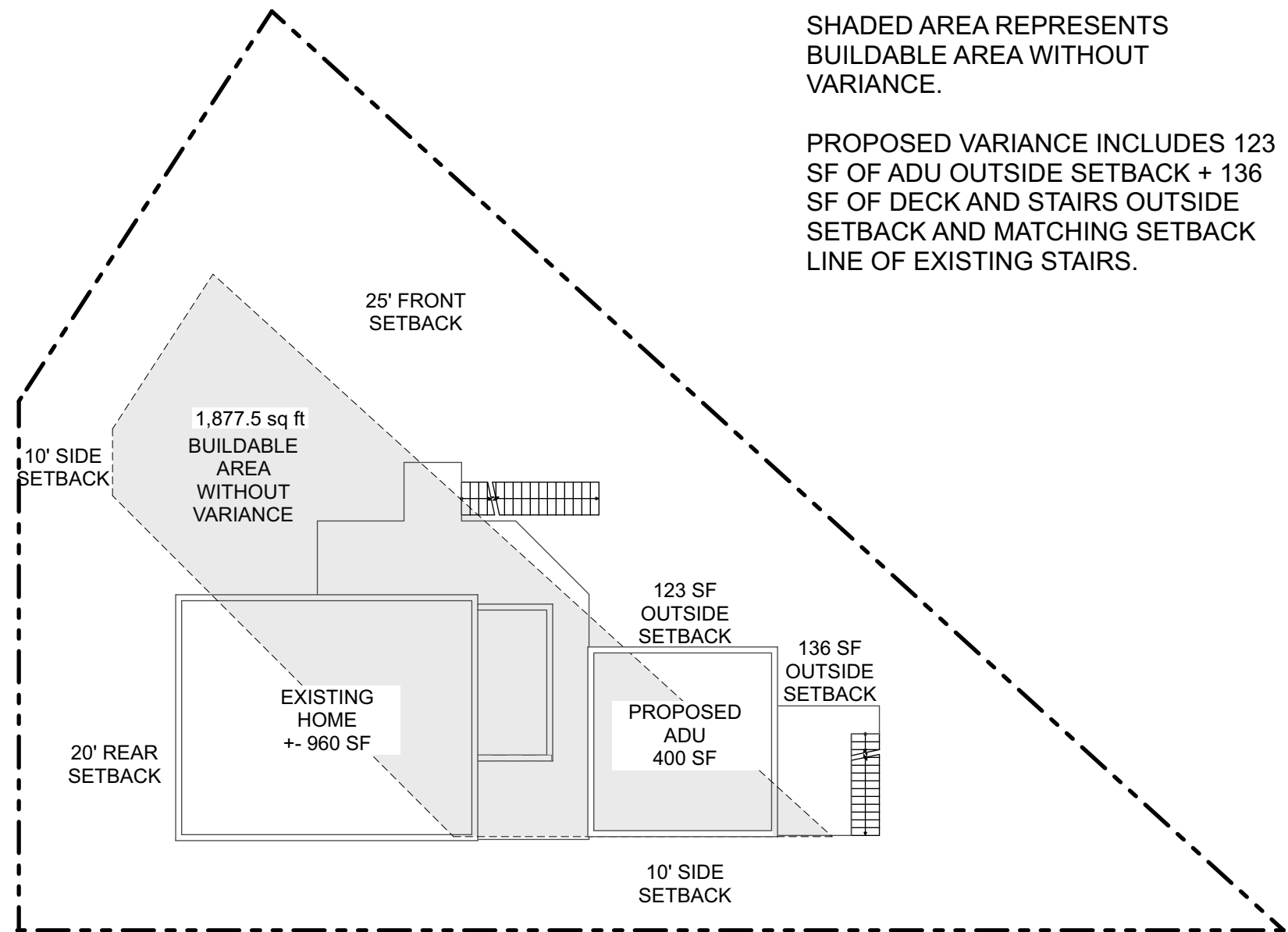
$1197.5 + 585 = 1782.5$
 $1782.5 / 7386.25 \times 100 = 24.13\%$

TOTAL IMPERVIOUS AREA:

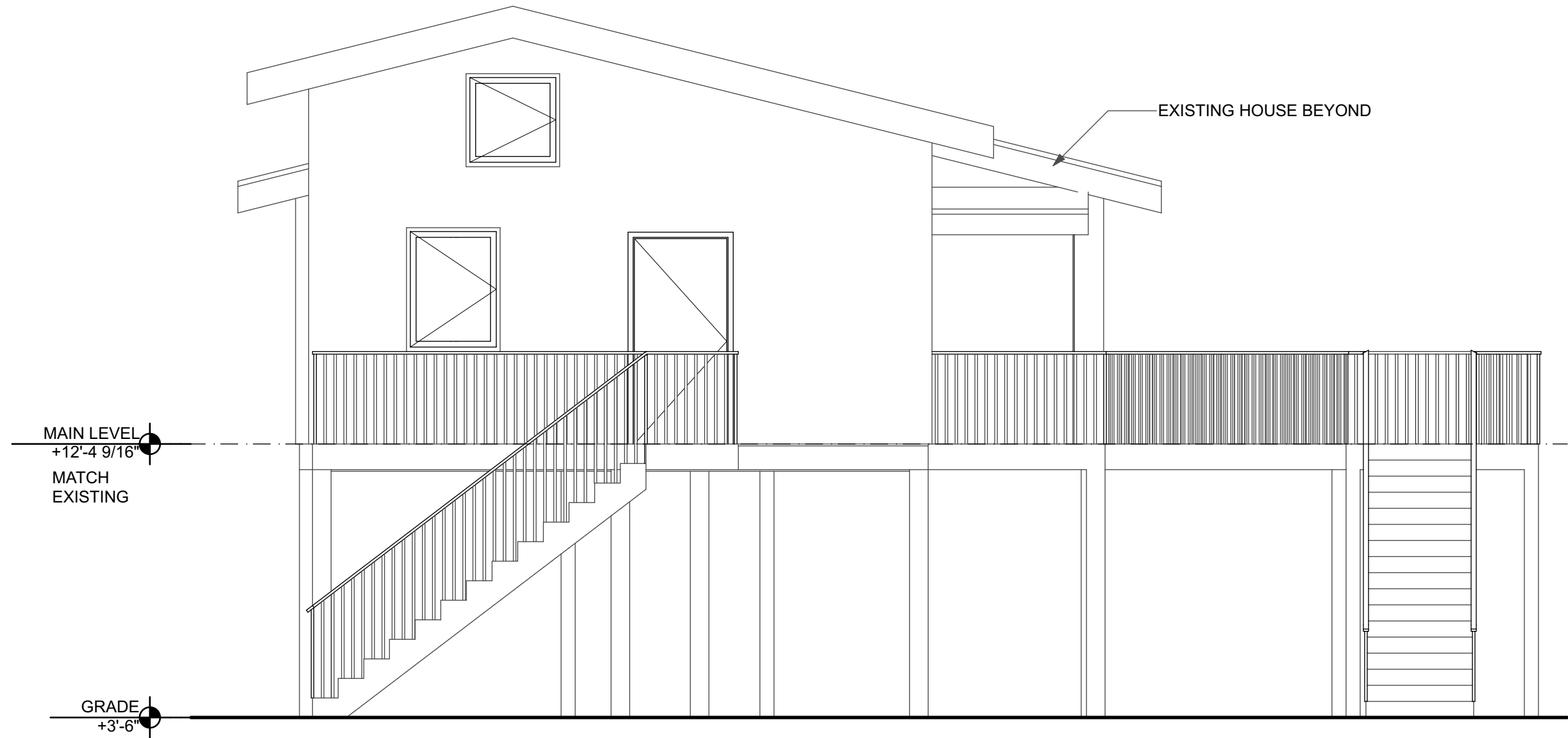
$1782.5 + 600.25 + 2243.75 = 4626.5 \text{ SF}$
 $= 62.6\%$



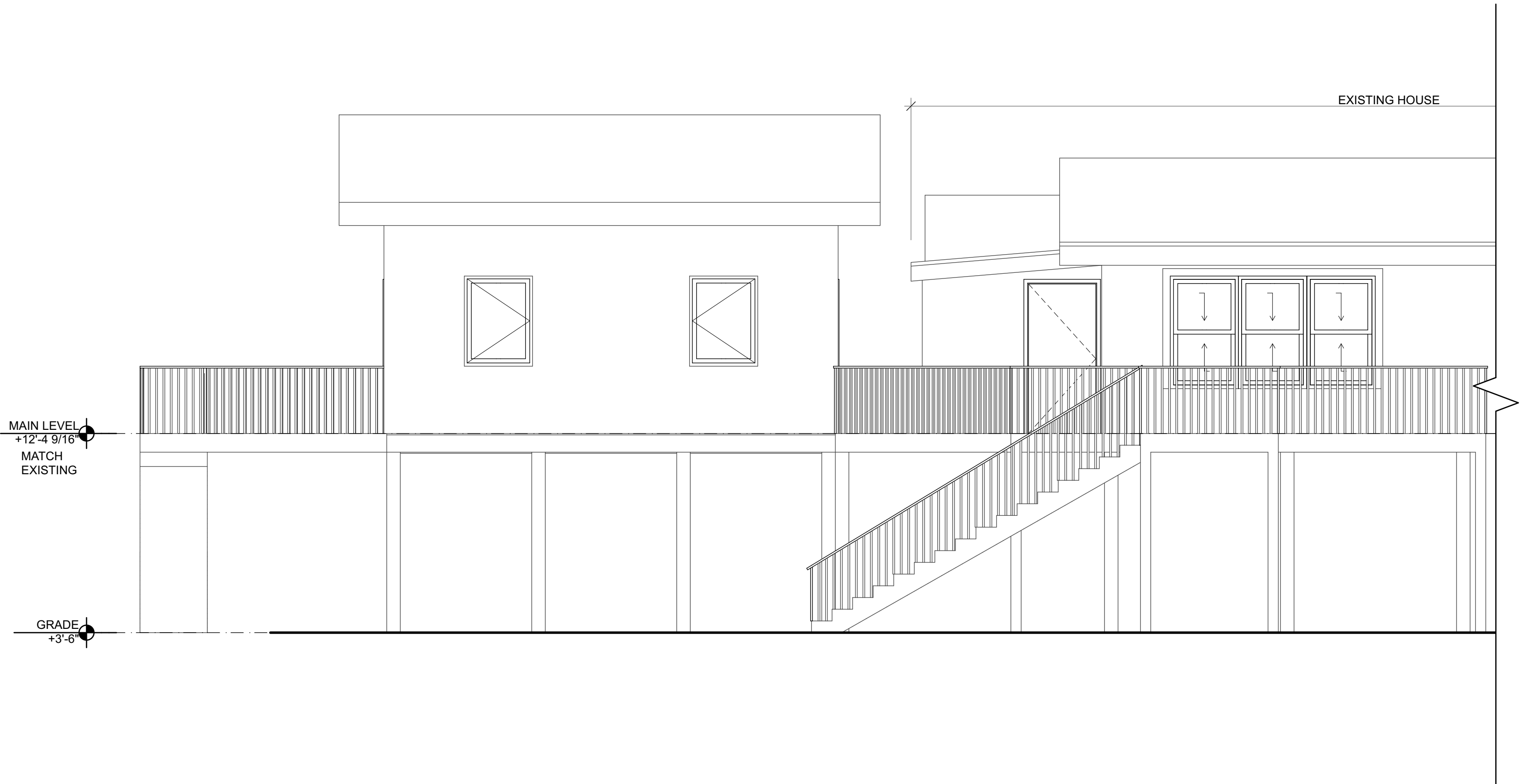
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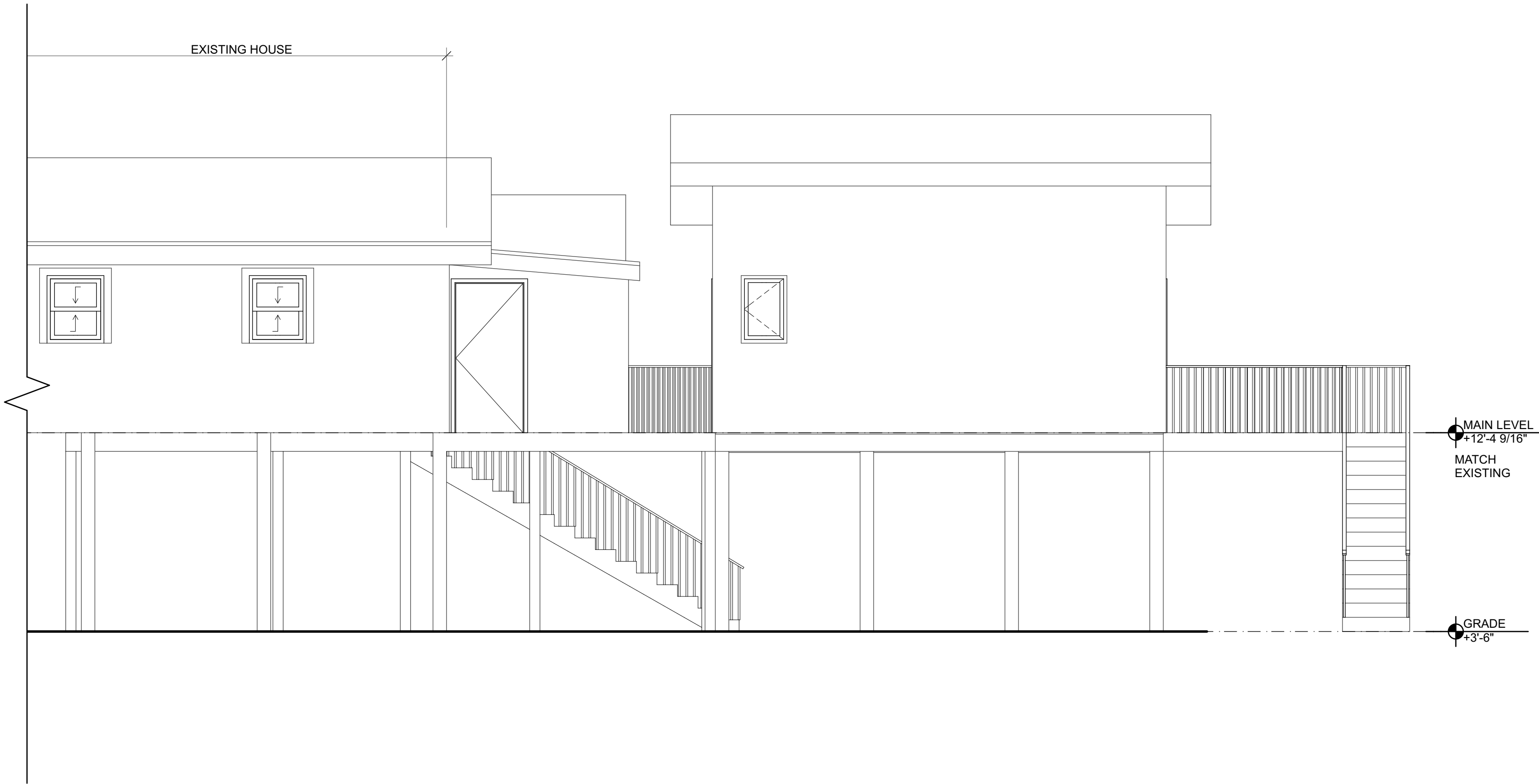
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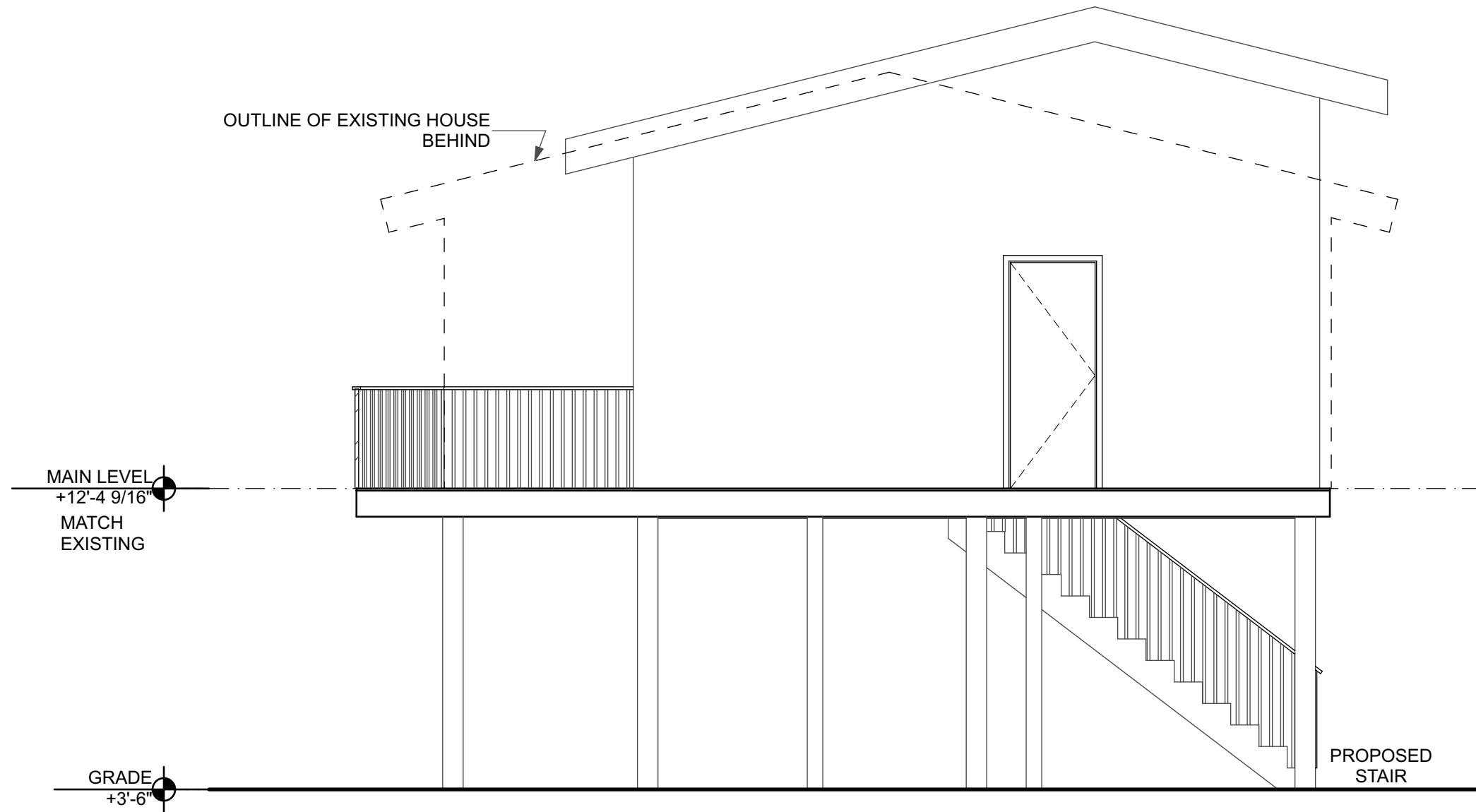
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Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please check for meeting changes on our website WWW.FMBGOV.com.

TIME: 9 AM

DATE: LPA January 9, 2023 and Town Council January 22, 2023

CASE: VAR20230299

ADDRESS: 122 Falkirk St

APPLICANT: Heidi Cawood

REQUEST: The applicant is requesting a variance of 11 feet from the 25' street setback to allow a residential structure 14 feet from the street property line and to allow a deck 11 feet from the street property line.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency** will review the application materials and hear testimony to make a **recommendation**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

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

Town of Fort Myers Beach
2525 Estero Blvd,
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«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»



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: 122 Falkirk St, Fort Myers Beach, FL 33931

STRAP Number: 33-46-24-W2-005M0.008A

Applicant: Heidi Cawood Phone: 423-280-2321

Contact Name: Heidi Cawood Phone: 423-280-2321

Email: heidicawood@hotmail.com Fax: _____

Current Zoning District: RS

Future Land Use Map (FLUM) Category: Low Density

FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

☐ Special Exception

☒ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Heidi Cawood Phone: 423-280-2321

**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: 7006 Ski Club Rd, Harrison, TN 37341

Email: heidicawood@hotmail.com Fax: _____

Contact Name: Heidi Cawood Phone: 423-280-2321



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

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

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

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

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

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

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34 - 638
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

PART III – Waivers

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

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

- ☒ Single Owner (individual or husband and wife)

Name: Heidi Cawood Phone: 423-280-2321

Mailing Address: 7006 Ski Club Rd, Harrison, TN 37341

Email: heidicawood@hotmail.com Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Heidi Cawood 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

Heidi Cawood

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
Heidi Cawood

Percentage Ownership
100%



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

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

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

_____	_____
Signature	Printed Name

AFFIDAVIT

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

I, _____ (name), as _____ (title) of _____ (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

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

Signature

Title

Typed or Printed Name

Date

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 VI- Property Information

A. Legal Description:

STRAP: 33-46-24-W2-005M0.008A

Property Address: 122 Falkirk St., Fort Myers Beach, FL 33931

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

☒ Yes. Property identified in subdivision: MC PHIE PARK UNIT 3

Book: 8 Page: 67 Unit: 3 Block: M Lot(s): 8 + 9

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) _____ feet

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

Frontage on street: _____ feet. Frontage on waterbody: _____ feet

Total land area: 7,386 ☐ acres ☒ square feet

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

From the north end of Big Carlos Pass Bridge, travel 2.5 miles north on Estero Blvd
turn right on Aberdeen Ave. Turn left on Lauder St., turn right on Falkirk St.

122 Falkirk is on the left.

☐ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

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

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

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

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

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

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

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

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

☒ Low Density

☐ Mixed Residential

☐ Boulevard

☐ Pedestrian Commercial

☐ Marina

☐ Recreation

☐ Wetlands

☐ Platted Overlay



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

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

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. **Exhibit 6-2**

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

Explanatory Notes – Part IV & V

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



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

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

Case Number:
Project Name: Elevated accessory unit 122 Falkirk St
Authorized Applicant: Heidi Cawood
LeePA STRAP Number: 33-46-24-W2-005M0.008A

Current Property Status:	
Current Zoning: RS	
Future Land Use Map (FLUM) Category: Low Density	
Comp Plan Density: low density	Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
34-638	Minimum Setbacks

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from **34-638** (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
A variance is requested to change the front street setback from 25'
to 14' to allow an approx 400 sq ft accessory to fit an unusual pie-shaped lot.

Reasons for request

Explain why the variance is needed:
The unusual triangle shaped lot restricts the usability.
The existing house has a 728 sq ft ground level apartment.
The addition will replace the ground level apartment with a smaller
400 sq ft elevated accessory apartment.
One corner of the unit will extend 11' over the setback at the widest point.
There will be only 115 sq feet over the setback.
This is the smallest footprint that allows enough livable space.

Explain the possible effect the variance, if granted, would have on surrounding properties:
No negative affects on the surrounding properties.
Density will not increase.
There is no water view to block.
The driveway has sufficient parking and the addition will add under-house parking.
The property adjoins the neighbors' back yards which provides
a minimum of 30' between any existing or future buildings.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:
--

We wish to eliminate the 40+ year old ground level apartment and convert
the enclosed area to storage. A new build will be FEMA and code compliant.
The lot is pie-shaped, making approximately 1/3 unbuildable without a street
setback variance due to the placement of the existing house.
The top of the driveway is the most visually pleasing location for the neighborhood

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

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

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

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

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

"Variance is requested from..." Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

RESIDENTIAL LEASE

This agreement, made this ____ day of _____, 20__, between **Heidi Cawood**, hereinafter referred to as the LANDLORD, through its agent and **Jamie R. McCloskey and Linda J. McCloskey** hereinafter referred to as the TENANT, concerning the lease of the following described property: **122 Falkirk St., Downstairs Unit, Fort Myers Beach, FL 33931** is agreed to by and shall bind the TENANT, its heirs, estate, or legally appointed representatives. TENANT as herein used shall include all persons to whom this property is leased. LANDLORD as herein used shall include the OWNER(s) of the premises, its heirs, assigns or representatives and/or any AGENT(s) designated by the OWNER(s).

TERM OF LEASE: September 01, 2022 to August 31, 2023.

OCCUPANTS: Only the following individuals shall occupy the premises unless written consent of the LANDLORD is obtained: **Jamie R. McCloskey and Linda J. McCloskey**. A reasonable number of guests may occupy the premises without prior written consent if stay is limited to 72 hours.

ADVANCE RENT: TENANT agrees to pay the sum of **\$18,780.00** as advance rent comprised of two payments as follows:

- First payment in the amount of \$9,390.00 for the months of September 2022 through February 2023 due at lease signing in cleared funds by cashier's check.
- Final payment in the amount of \$9,390.00 for the months of March 2023 through August 2023 due on or before March 1, 2023 in cleared funds by cashier's check.

Advanced rent at the monthly rate of \$1,565.00 shall be disbursed as it becomes due.

RENT: TENANT agrees to pay rent on the **1st** day of each month in advance without demand at **TRIPower Rentals, 2001 Estero Blvd., Fort Myers Beach, FL 33931** Phone number **(239) 463-5887** Emergency phone number **(239) 463-5887**. Rent must be received by LANDLORD or its designated AGENT on or before the due date. A late fee of **\$50.00** plus **\$10.00** per day thereafter shall be due as additional rent if TENANT fails to make rent payments on or before the **2nd** day of each month. At any time prior to or during the lease term, LANDLORD, upon written notice to TENANT by mail, email, or text may change the method in which TENANT is to pay the rent or any other sums owed under the Lease agreement and any addenda, and, TENANT agrees to use the method determined by LANDLORD beginning with the next payment due. TENANT acknowledges in the event electronic payments and/or direct deposits are permitted, LANDLORD reserves the right to suspend or terminate electronic payments and/or direct deposit arrangements in the event of default by TENANT under this lease and to demand payment at a physical address. Cash payments are not accepted. If TENANT'S payment is dishonored, all future payments must be made by money order or cashier's check; dishonored payments will be subject to the greater of 5% of the payment amount or a \$40.00 charge as additional rent. If LANDLORD has actual knowledge that there are insufficient funds to cover a payment, rent will be considered unpaid, LANDLORD may serve TENANT with a Three Day Notice and will not be required to deposit the payment. Third party checks are not permitted. Time is of the essence. The imposition of late fees and/or dishonored payment charges is not a substitution or waiver of available Florida law remedies. If rent is not received by the **1st** day of each month, LANDLORD may serve a Three Day Notice on the next day or any day thereafter as allowed by law, and LANDLORD has the right to demand that late payments shall only be in the form of a money order or a certified check. All signatories to this lease are jointly and severally responsible for the faithful performance of this lease. All payments made shall first be applied to any outstanding balances of any kind including late charges and/or any other charges due under this lease. All notices by TENANT to LANDLORD shall be sent to LANDLORD'S address above.

PETS: TENANT shall not keep any animal or pet in or around the rental premises without LANDLORD'S prior written approval.

SECURITY DEPOSIT: TENANT agrees to pay LANDLORD the sum of **\$1,000.00 (Received)**, as security for faithful performance by TENANT of all terms, covenants and conditions of this lease. This deposit may be applied by the LANDLORD for any monies owed by TENANT under the lease or Florida law, physical damages to the premises, costs, and attorney's fees associated with TENANT'S failure to fulfill the terms of the lease and any monetary damages incurred by LANDLORD due to TENANT'S default. TENANT cannot dictate that this deposit be used for any rent due. If TENANT breaches the lease by abandoning, surrendering or being evicted from the rental premises prior to the lease expiration date (or the expiration of any extension) TENANT will be responsible for unpaid rent, physical damages, future rent due, attorney's fees, costs and any other amounts due under the terms of the tenancy or Florida law. Security deposit refunds or other refunds, if any, are normally made in one payment in the names of all TENANTS, but LANDLORD has the option to divide the refunds, if any, into equal amounts made payable to each individual TENANT. All refunds, if any, shall be made by mail or electronically, at the option of the LANDLORD. The security deposit (and advance rent, if applicable) will be held in the following manner: Deposited in a separate non-interest bearing account with **First Citizens Bank, Fort Myers, FL**.

Your lease requires payment of certain deposits. The LANDLORD may transfer advance rents to the LANDLORD'S account as they are due and without notice. When you move out, you must give the LANDLORD your new address so that the LANDLORD can send you notices regarding your deposit. The LANDLORD must mail you notice, within 30 days after you move out, of the LANDLORD'S intent to impose a claim against the deposit. If you do not reply to the LANDLORD stating your objection to the claim within 15 days after receipt of the LANDLORD'S notice, the LANDLORD will collect the claim and must mail you the remaining deposit, if any. If the LANDLORD fails to timely mail you notice, the LANDLORD must return the deposit but may later file a lawsuit against you for damages. If you fail to timely object to a claim, the LANDLORD may collect from the deposit, but you may later file a lawsuit claiming a refund. You should attempt to informally resolve any dispute before filing a lawsuit. Generally, the party in whose favor a judgment is rendered will be awarded costs and attorney fees payable by the losing party. This disclosure is basic. Please refer to part II of Chapter 83, Florida Statutes, to determine your legal rights and obligations.

Florida statutory law, 83.49(3) provides:

(3)(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the LANDLORD shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the TENANT written notice by certified mail to the TENANT'S last known mailing address of his or her intention to impose a claim on the deposit, and the reason for imposing the claim. The notice shall contain a statement in substantially the following form: This is a notice of my intention to impose a claim for damages in the amount of ----- upon your security deposit, due to ----- . It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (LANDLORD'S address). If the LANDLORD fails to give the required notice within the 30-day period, he or she forfeits his or her right to impose a claim upon the security deposit.

(b) Unless the TENANT objects to the imposition of the LANDLORD'S claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the LANDLORD may then deduct the amount of his or her claim and shall remit the balance of the deposit to the TENANT within 30 days after the date of the notice of intention to impose a claim for damages.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate his or her right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

(d) Compliance with this subsection by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and salespersons, shall constitute compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this subsection to determine compliance. This subsection prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes.

ASSIGNMENTS/SUBLETTING: TENANT shall not assign this lease, transfer any interest, advertise or solicit any third parties to advertise any rental or use of the premises, rent to another or sublet the premises or any part thereof for any period of time. Airbnb or similar types of renting, subletting, room rentals, couch surfing, advertising to rent or use, or home exchanging is expressly prohibited and shall be a material breach of the lease agreement.

APPLICATION: If TENANT has filled out a rental application, any misrepresentation made by the TENANT in same will be a breach of this agreement and LANDLORD may terminate the tenancy. Lease may be contingent upon association approval of tenancy; when applicable, TENANT agrees to make good faith effort in diligently complying with association approval process.

FIXTURES AND ALTERATIONS: TENANT must obtain prior written consent from LANDLORD before painting, installing fixtures, making alterations, additions or improvements and if permission granted, same shall become LANDLORD'S property and shall remain on the premises at the termination of the tenancy.

USE OF PREMISES: TENANT shall maintain the premises in a clean and sanitary condition and not disturb surrounding residents or the peaceful and quiet enjoyment of the premises or surrounding premises. TENANT shall install window shades or draperies (no foil, sheets, paper etc. allowed) within 15 days of taking occupancy if not already provided. Premises are to be used and occupied by the TENANT for only residential, non-business, private housing purposes only. TENANT shall not operate any type of day care or child sitting service on the premises. TENANT shall secure insurance immediately for any water filled devices with a loss payable clause to LANDLORD. No trampolines, athletic equipment, recreational equipment, or any items or activities which can cause interference with the insurance coverage on the premises will be permitted. TENANT is strictly prohibited from installing or using a permanent or portable fire pit anywhere on the premises, and may not otherwise light exterior fires. TENANT acknowledges burning of candles or incense is NOT permitted on the premises. TENANT is prohibited from storing or using on or near the premises a gasoline, diesel, LP, natural gas, or propane powered electric generator without prior written approval by LANDLORD and a Generator Use Addendum signed by all parties. TENANT shall not place or use any above ground pools of any size on the premises without LANDLORD'S approval. TENANT is not permitted to access, enter or store any items in any crawl spaces, attics or any locked areas on the premises without prior written permission from LANDLORD. No aquariums are allowed without LANDLORD'S prior written consent.

SMOKING: Smoking or vaping of any substance is NOT permitted on the premises by TENANT, guests or invitees. TENANT understands that smoking or vaping on the premises shall be considered a material default under this lease agreement. In the event the premises are damaged in any way due to smoking or vaping on the premises, TENANT will be fully responsible for eradication of smoke related or vaping related odors and repair of any damage due to the smoking or vaping. TENANT agrees that smoke or vaping related damages will in no way be considered ordinary wear and tear.

RISK OF LOSS: All TENANTS' personal property in and on the premises including but not limited to vehicles shall be at the risk of the TENANT, and LANDLORD shall not be liable for any damage to said personal property of the TENANT arising from criminal acts, fire, storm, trees and branches, flood, rain or wind damage, electrical surges, acts of negligence of any person whomsoever, or from the bursting or leaking of water pipes. LANDLORD shall not be responsible for the loss of any food in the event of a refrigerator or freezer failure, defect or electrical failure. **TENANT is strongly urged to secure insurance for personal property.**

DEFAULT: (1) Failure of TENANT to pay rent or any additional rent when due, or (2) TENANT'S or guest(s) violation of any other term, condition or covenant of this lease (and if applicable, attached rules and regulations), condominium or HOA rules regulations, restrictions, by-laws or neighborhood deed restrictions or (3) failure of TENANT or guest to comply with any federal, state and/or local laws, rules and ordinances, or (4) TENANT'S failure to move into the premises or TENANT'S abandonment of the premises, shall constitute a default by TENANT. Upon default, TENANT shall owe LANDLORD rent and all sums as they become due under the terms of this lease and any addenda attached hereto and any and all amounts owed to LANDLORD as permitted by Florida law. If the TENANT abandons or surrenders possession of the premises during the lease term or any renewals, or is evicted by the LANDLORD, LANDLORD may retake possession of the premises and make a good faith effort to re-rent it for the TENANT account. Retaking of possession shall not constitute a rescission of this lease nor a surrender of the leasehold estate. If TENANT(s) breach this lease agreement, in addition to any other remedies available by law and this lease agreement, TENANT(s) shall be responsible for any leasing fee or commission charge which OWNER may incur in attempting to re-lease the premises through a licensed real estate company. If TENANT'S or guest(s) actions or inactions result in any fines, attorney's fees, costs or charges from or imposed by a condo association or homeowners association if in place, or governmental agency, TENANT shall be in default of this lease and shall be immediately required to pay such sums as additional rent.

ATTORNEY'S FEES: The prevailing party in any litigation between LANDLORD and TENANT concerning enforcement of the terms and conditions of the lease shall be entitled to reasonable attorney's fees and court costs. LANDLORD and TENANT waive the right to demand a jury trial concerning any litigation between LANDLORD and TENANT regarding enforcement of the terms and conditions of this lease.

UTILITIES: LANDLORD is responsible for providing the following utilities only: **WATER, ELECTRIC, GARBAGE, BASIC CABLE and INTERNET.** The TENANT agrees to pay all charges and deposits for **all** other utilities and TENANT agrees to have all accounts for utilities immediately placed in TENANT name with accounts kept current throughout occupancy. Garbage and or trash removal is considered a utility under this lease. If the utilities which TENANT is responsible for are still in LANDLORD'S name at the time TENANT takes occupancy, TENANT agrees that LANDLORD shall order such utilities to be terminated. In the event a condominium association or homeowners association is currently providing any services to the unit such as cable, satellite TV, alarm monitoring, internet, water, sewer, trash, guarded security gate or other services and the association decides these services will no longer be provided, TENANT agrees and understands that LANDLORD shall not be required to replace, provide or pay for these removed services for TENANT. TENANT may opt to pay for non-essential services but shall be required to pay for essential services including but not limited to water, sewer and trash if the association no longer provides these services. The discontinuation of any such services by the association shall not be construed as a prohibited practice by LANDLORD nor shall it constitute a default under the lease. The failure of TENANT to retain and pay for essential services upon notice and demand by the LANDLORD shall constitute a material breach of the lease. In the event the premises is currently on well water, if the municipality or county decides to connect the premises to city/municipality water, TENANT agrees that TENANT shall be responsible for paying for the monthly water bill and monthly sewer bill if no longer on septic and shall place the water/sewer utility in TENANT'S name unless prohibited by the municipality to avoid any interruption in service. If TENANT surrenders the premises early, abandons the premises, or is evicted, TENANT shall remain responsible for all accruing utility charges otherwise the responsibility of the TENANT under the lease. TENANT is responsible for any cost related to the installation and/or maintenance of phone lines, cable lines, outlets and/or jacks, if TENANT chooses to have phone land line service and/or cable service.

VEHICLES: Vehicle(s) must be currently licensed, owned by TENANT, registered, operational and properly parked. TENANT agrees to abide by all parking rules established now or in the future by LANDLORD or condo /homeowner association's rules, if applicable. No trailers, campers, vehicles on blocks, motorcycles, boats or commercial vehicles are allowed on or about the premises without LANDLORD'S prior written approval. TENANT is not to repair or disassemble vehicles on the premises. Vehicles not meeting the above requirements and additional rules of LANDLORD are

unauthorized vehicles subject to being towed at TENANT expense. Parking on the grass is prohibited. TENANT agrees to indemnify LANDLORD for any expenses incurred due to the towing of any vehicle belonging to the guest or invitee of TENANT. TENANT agrees that only the following vehicles will be parked on the premises: **2007 Blue Nissan.**

MAINTENANCE/INSPECTION: TENANT agrees that they have fully inspected the premises and accepts the condition of the premises in 'as is' condition with no warranties or promises express or implied. TENANT shall maintain the premises in good, clean and tenantable condition throughout the tenancy, keep all plumbing fixtures in good repair, use all electrical, plumbing, heating, cooling, appliances and other equipment in a reasonable manner, removing all garbage in a clean and sanitary manner. In the event TENANT or TENANT'S guests or invitees cause any damage to the premises, LANDLORD may at its option repair same and TENANT shall pay for the expenses of same on demand or LANDLORD may require TENANT repair same, all charges incurred as additional rent. TENANT is responsible for the expense of any service calls requested by or due to the TENANT deemed to be unwarranted or unnecessary by the service technician or vendor, or, if the service technician deems the service call need is due to the TENANT'S misuse, negligence or intentional acts, or, if the service technician is unable to gain access due to TENANT'S actions or inactions, even if the other terms of this lease would ordinarily make the LANDLORD responsible for such a service call and/or repair charge. **TENANT shall also be fully responsible for, and agrees to maintain and repair at TENANT'S expense, the following: A/C FILTERS, LIGHT BULBS and SMOKE ALARM BATTERIES.** Unless otherwise stated in the lease, LANDLORD shall not be responsible for any exterior extermination. In the event a major repair to the premises must be made which will necessitate the TENANT'S vacating the premises, LANDLORD may at its option terminate this agreement and TENANT agrees to vacate the premises holding LANDLORD harmless for any damages suffered if any. TENANT shall notify LANDLORD immediately of any maintenance need or repair in writing. Unauthorized repairs or other work or services conducted by or through TENANT on the premises will constitute a default under this lease, and TENANT will not be compensated by LANDLORD for any unauthorized repairs or other work or services conducted on the premises by or through TENANT. TENANT agrees that they shall immediately test each smoke detector and shall maintain same. In the event there is a garbage disposal on the premises, LANDLORD has the option to remove the garbage disposal if it fails and re-plumb accordingly. TENANT is responsible for replacing dead light bulbs. In the event the light bulbs cannot be replaced with the same type of bulb due to law changes and lack of availability, TENANT agrees to replace the bulbs with an equivalent wattage CFL or LED bulb. In the event the refrigerator has a water filter, TENANT shall be responsible for purchasing and changing the water filter, as needed. In the event the TENANT is responsible for paying for LP/Propane gas, TENANT shall pay the fees and costs associated with the rental of the tank. If any plumbing issues result from TENANT and/or guests flushing anything into the toilet other than human waste and toilet paper, TENANT shall be responsible for any costs or charges incurred. Examples of items that should not be flushed down the toilet(s) or sent down other plumbing drains, include, but are not limited to, wipes, "flushable" wipes, sanitary napkins, feminine products, diapers, refuse, dental floss, grease, coffee grounds, or paper towels.

VACATING: At the expiration of this agreement or any extension, TENANT shall peaceably surrender the premises and turn in all keys and any other property owned by LANDLORD leaving the premises in good, clean condition, ordinary wear and tear excepted. In the event all keys are not returned upon move-out, there will be a minimum charge to be deducted from the security deposit in the amount of Market Rate. In addition to any cleaning charges or any other charges due under the terms of this lease, TENANT agrees to a mandatory minimum unit cleaning charge to be deducted from the security deposit at Market Rate (Fee will be waived, if cleaned to LANDLORD'S satisfaction).

RENEWAL: LANDLORD or TENANT shall have 30 days to notify each other in writing prior to the lease expiration date of an intent not to renew the lease. If the required notice is not given by LANDLORD or TENANT, and TENANT vacates as of the lease expiration date, TENANT shall owe an additional month's rent. If the required notice is not given by LANDLORD or TENANT, and no new lease is signed, the tenancy shall become a month-to-month tenancy, which may be terminated by TENANT or LANDLORD giving written notice not less than 15 days prior to the end of some monthly payment period. All other conditions of the lease shall remain in effect. Upon receiving proper notice from LANDLORD, if TENANT fails to vacate as of the lease expiration date or the end of any consensual period, TENANT shall additionally be held liable for holdover (double) rent thereafter.

RIGHT OF ENTRY: LANDLORD, upon reasonable notice by telephone, hand-delivery or posting to TENANT, has the right of entry to the premises for showings, repairs, appraisals, inspections, or any other reason. LANDLORD has immediate right of entry in cases of emergency, or to protect or preserve the premises. TENANT shall not alter or add locks without prior written consent. If consent is given, TENANT must provide LANDLORD with a key to all locks. LANDLORD may place "For Sale" or "For Rent" signs on the premises at any time.

CONDEMNATION, DAMAGE TO PREMISES, ACTS OF GOD and TERMINATION: If for any reason the premises are condemned by any governmental authority, destroyed, rendered uninhabitable, rendered dangerous to persons or property, and/or damaged through fire, water, smoke, wind, flood, act of God, nature or accident, or, if it becomes necessary, in the opinion of LANDLORD or its AGENT, that TENANT must vacate the premises in order for repairs to the premises to be undertaken, this lease shall, at LANDLORD'S option and upon 7 days written notice to TENANT, cease

and shall terminate, TENANT agrees to and shall vacate and TENANT, if not in default of the lease, shall owe no further rent due under the terms of the lease. In such case, TENANT hereby waives all claims against LANDLORD for any damages suffered by such condemnation, damage, destruction or lease termination. In the event of any vandalism or other intentional damage on the premises, LANDLORD is not responsible for the replacement or repair of any damaged items, including but not limited to windows, screens, doors or locks. TENANT agrees that in the event there are hurricane or storm shutters on the premises, TENANT shall both install and take down same in the event there is a hurricane or tropical storm watch or warning in effect and/or at the request of the LANDLORD. If TENANT is unable to perform this task for any reason, TENANT agrees to notify LANDLORD as soon as any storm watch or warning is placed into effect; LANDLORD has the right, but not the obligation, to install shutters or take other protective actions.

MOLD: LANDLORD reserves the right to terminate the tenancy and TENANT(s) agree to vacate the premises in the event a licensed mold inspector believes that there is mold or mildew present in the dwelling unit which may pose a safety or health hazard to TENANT(s) or other persons, or if it is determined by an HVAC professional or air quality specialist that TENANT is failing to use the air conditioning adequately or causing other conditions conducive to mold or mildew growth. LANDLORD shall have the right to terminate the lease agreement by giving the TENANT no less than 7 days' written notice and hold TENANT responsible for any damages caused by mold or mildew.

WAIVERS: The rights of the LANDLORD under this lease shall be cumulative, and failure on the part of the LANDLORD to exercise promptly any rights given hereunder shall not operate to forfeit any other rights allowed by this lease or by law.

INDEMNIFICATION: TENANT agrees to reimburse LANDLORD upon demand in the amount of the loss, property damage, or cost of repairs or service (including plumbing trouble) caused by the negligence or improper use by TENANT, or TENANT'S agents, family or guests. TENANT at all times, will indemnify and hold harmless LANDLORD from all losses, damages, liabilities and expenses which can be claimed against LANDLORD for any injuries or damages to the person or property of any persons, caused by the acts, omissions, neglect or fault of TENANT, or TENANT'S agents, family or guests, or arising from TENANT'S failure to comply with any applicable laws, statutes, ordinances or regulations.

DISPUTES AND LITIGATION: In the event of a dispute concerning the tenancy created by this agreement, TENANT agrees that whether or not the premises are being actively managed by an AGENT for the record OWNER, TENANT agrees to hold AGENT, its heirs, employees and assigns harmless and shall look solely to the record OWNER of the premises in the event of a legal dispute.

INTEGRATION: This lease and exhibits and attachments, if any, set forth the entire agreement between LANDLORD and TENANT concerning the premises, and there are no covenants, promises, agreements, conditions, or understandings, oral or written between them other than those herein set forth. If any provision in this agreement is illegal, invalid or unenforceable, that provision shall be void but all other terms and conditions of the agreement shall be in effect.

MODIFICATIONS: No subsequent alteration, amendment, change or addition to this lease shall be binding upon LANDLORD unless reduced to writing and signed by the parties.

RADON GAS: State law requires the following notice to be given: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

ABANDONED PROPERTY: BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.

ADDITIONAL STIPULATIONS:
None.

ACCEPTANCE BY FACSIMILE AND/OR BY ELECTRONIC SIGNATURE BY ANY OF THE PARTIES SHALL CONSTITUTE VALID BINDING ACCEPTANCE OF THIS LEASE AGREEMENT AND ITS ADDENDA:
MOLD ADDENDUM

SIGNATURE PAGE

Jamie R. McCloskey

TENANT

Linda J. McCloskey

TENANT

AGENT FOR OWNER

**This lease has been drafted by the Law Offices of Heist, Weisse & Wolk, P.A. 1 800 253 8428
Reference #1015988**

MOLD ADDENDUM TO LEASE

THIS ADDENDUM IS AGREED TO AND SHALL BE MADE PART OF THE LEASE AGREEMENT BETWEEN Heidi Cawood (LANDLORD) AND Jamie R. McCloskey and Linda J. McCloskey (TENANTS) FOR THE PREMISES LOCATED AT 122 Falkirk St., Downstairs Unit, Fort Myers Beach, FL 33931.

MOLD: Mold consists of naturally occurring microscopic organisms which reproduce by spores. Mold breaks down and feeds on organic matter in the environment. The mold spores spread through the air and the combination of excessive moisture and organic matter allows for mold growth. Not all, but certain types and amounts of mold can lead to adverse health effects and/or allergic reactions. Not all mold is readily visible, but when it is, can often be seen in the form of discoloration, ranging from white to orange and from green to brown and black, and often there is a musty odor present. Reducing moisture and proper housekeeping significantly reduces the chance of mold and mold growth.

CLIMATE CONTROL: TENANT(s) agree to use all air-conditioning, if provided, in a reasonable manner and use heating systems in moderation and to keep the premises properly ventilated by periodically opening windows to allow circulation of fresh air during dry weather only. LANDLORD RECOMMENDS THAT AIR CONDITIONING IS USED AT ALL TIMES IF UNIT HAS AIR CONDITIONING.

TENANT(S) AGREE TO:

- KEEP THE PREMISES CLEAN AND REGULARLY DUST, VACUUM AND MOP
- USE HOOD VENTS WHEN COOKING, CLEANING AND DISHWASHING
- KEEP CLOSET DOORS AJAR
- AVOID EXCESSIVE INDOOR PLANTS
- USE EXHAUST FANS WHEN BATHING/SHOWERING AND LEAVE ON FOR A SUFFICIENT AMOUNT OF TIME TO REMOVE MOISTURE
- USE CEILING FANS IF PRESENT
- WATER ALL INDOOR PLANTS OUTDOORS
- WIPE DOWN ANY MOISTURE AND/OR SPILLAGE
- WIPE DOWN BATHROOM WALLS AND FIXTURES AFTER BATHING/SHOWERING
- WIPE DOWN ANY VANITIES/SINK TOPS
- AVOID AIR DRYING DISHES
- NOT DRY CLOTHES BY HANG DRYING INDOORS
- REGULARLY EMPTY DEHUMIDIFIER IF USED
- OPEN BLINDS/CURTAINS TO ALLOW LIGHT INTO PREMISES
- WIPE DOWN FLOORS IF ANY WATER SPILLAGE
- SECURELY CLOSE SHOWER DOORS IF PRESENT
- LEAVE BATHROOM AND SHOWER DOORS OPEN AFTER USE
- WIPE DOWN WINDOWS AND SILLS IF MOISTURE PRESENT
- USE DRYER IF PRESENT FOR WET TOWELS
- USE HOUSEHOLD CLEANERS ON ANY HARD SURFACES
- REMOVE ANY MOLDY OR ROTTING FOOD
- REMOVE GARBAGE REGULARLY
- WIPE DOWN ANY AND ALL VISIBLE MOISTURE
- INSPECT FOR LEAKS UNDER SINKS
- CHECK ALL WASHER HOSES IF APPLICABLE

TENANT(S) AGREE TO REPORT IN WRITING:

- VISIBLE OR SUSPECTED MOLD
- ALL A/C OR HEATING PROBLEMS OR ABNORMALITIES
- LEAKS, MOISTURE ACCUMULATIONS, MAJOR SPILLAGE
- PLANT WATERING OVERFLOWS
- SHOWER/BATH/SINK/TOILET OVERFLOWS
- LEAKY FAUCETS, PLUMBING, PET URINE ACCIDENTS
- ANY AND ALL MOISTURE AND MUSTY ODORS
- DISCOLORATION OF WALLS, BASEBOARDS, DOORS, WINDOW FRAMES, CEILINGS
- MOLDY CLOTHING, REFRIGERATOR AND A/C DRIP PAN OVERFLOWS
- MOISTURE DRIPPING FROM OR AROUND ANY VENTS, A/C CONDENSER LINES
- LOOSE, MISSING OR FAILING GROUT OR CAULK AROUND TUBS, SHOWERS, SINKS, FAUCETS, COUNTERTOPS, CLOTHES DRYER VENT LEAKS

SMALL AREAS OF MOLD: If mold has occurred on a small non-porous surface such as ceramic tile, formica, vinyl flooring, metal, or plastic and the mold is not due to an ongoing leak or moisture problem, TENANT(s) agree to clean the areas with soap (or detergent) and a small amount of water, let the surface dry, and then, within 24 hours apply a non-staining cleaner such as Lysol Disinfectant, Pine-Sol Disinfectant (original pine-scented), Tilex Mildew Remover, or Clorox Cleanup.

TERMINATION OF TENANCY: LANDLORD reserves the right to terminate the tenancy and TENANT(s) agree to vacate the premises in the event a licensed mold inspector believes that there is mold or mildew present in the dwelling unit which may pose a safety or health hazard to TENANT(s) or other persons and/or if an HVAC professional or air quality specialist determines that TENANT(S)' actions or inactions are causing a condition which is conducive to mold growth.

INSPECTIONS: TENANT(S) agree that LANDLORD may conduct inspections of the unit at any time with reasonable notice.

VIOLATION OF ADDENDUM: IF TENANT(S) FAIL TO COMPLY WITH THIS ADDENDUM, TENANT(s) will be held responsible for property damage to the dwelling and any health problems that may result. Noncompliance includes but is not limited to TENANT(s) failure to notify LANDLORD of any mold, mildew or moisture problems immediately IN WRITING. Violation shall be deemed a material violation under the terms of the Lease, and LANDLORD shall be entitled to exercise all rights and remedies it possesses against TENANT(S) at law or in equity and TENANT(S) shall be liable to OWNER for damages sustained to the Leased Premises. TENANT(S) shall hold OWNER and AGENT harmless for damage or injury to person or property as a result of TENANT(S) failure to comply with the terms of this Addendum.

HOLD HARMLESS: If the premises is or was managed by an AGENT of the OWNER, TENANT(S) shall hold AGENT harmless and shall look solely to the property OWNER in the event of any litigation or claims concerning injury, damage or harm suffered due to mold.

PARTIES: THIS ADDENDUM IS BETWEEN THE TENANT(S) AND OWNER AND/OR AGENT MANAGING THE PREMISES. THIS ADDENDUM IS IN ADDITION TO AND MADE PART OF THE LEASE AGREEMENT AND IN THE EVENT THERE IS ANY CONFLICT BETWEEN THE LEASE AND THIS ADDENDUM, THE PROVISIONS OF THIS ADDENDUM SHALL GOVERN.

This lease has been drafted by the Law Offices of Heist, Weisse & Wolk, P.A. 1 800 253 8428
Reference #1015988



Sterling

220

Falkirk St

5711

5731

5741

Falkirk St

Google

FORT MYERS BEACH WOMANS CLUB I
PO BOX 2786
FORT MYERS BEACH FL 33932

FORT MYERS BEACH MOSQUITO CONT
PO BOX 2837
FORT MYERS BEACH FL 33932

MID ISLAND PROPERTY LLC
5557 ESTERO BLVD
FORT MYERS BEACH FL 33931

MID ISLAND PROPERTY LLC
8605 BIA RT 10
MANDAREE ND 58757

BOESE RICHARD E & CYNTHIA G
164 STERLING AVE
FORT MYERS BEACH FL 33931

FESTE DAVID A & PATRICIA W
5700 LAUDER ST
FORT MYERS BEACH FL 33931

KOSSAK AMANDA A
802 S RIDGE LN
APPLETON WI 54914

CORREA HERCILIO &
PO BOX 651
NORTH READING MA 01864

MCCARTHY WENDY L +
5740 LAUDER ST
FORT MYERS BEACH FL 33931

ERICKSON J B & CHERYL
5760 LAUDER ST
FORT MYERS BEACH FL 33931

LAZY ISLAND LLC
241 MENTOR DR
NAPLES FL 34110

MARRETT SCOTT & KATIE
311 WESTVIEW DR
MISSOULA MT 59803

ANDERSON JOHN & GERALDINE B
5790 LAUDER ST
FORT MYERS BEACH FL 33931

MONTERREY LEONARDO A &
54 VALLEY ESTATES CT
LITTLE ROCK AR 72212

5709 ESTERO BLVD LLC
1605 W UNIVERSITY PKWY
SARASOTA FL 34243

VIDALIN JOHN A & CAROL T
5719 ESTERO BLVD
FORT MYERS BEACH FL 33931

CHILDS MICHAEL JAMES TR
5731 ESTERO BLVD
FORT MYERS BEACH FL 33931

CHILDS MICHAEL JAMES TR
5731 ESTERO BLVD
FORT MYERS BEACH FL 33931

WORNOCK FRED TR
5755 ESTERO BLVD
FORT MYERS BEACH FL 33931

5771 HOLDING LLC
2083 W 76TH ST
HIALEAH FL 33016

SOLIS DAVID & AGUAS JULIA M
14550 SW 81ST AVE
PALMETTO BAY FL 33158

RONALD WILLIAM HEMSTREET TRUST
1111 S LAKESIDE DR
LAKE WORTH BEACH FL 33460

JGJ FLORIDA LLC
17 RIDGEWOOD CT
NORTHFIELD NJ 08225

RONALD WILLIAM HEMSTREET TRUST
1111 S LAKESIDE DR
LAKE WORTH BEACH FL 33460

DAVID MARTIN R &
305 LAKEWOOD DR
BLOOMFIELD HILLS MI 48304

CHOCOLE JOSEPH F SR TR
185 DUNDEE RD
FORT MYERS BEACH FL 33931

VAUGHAN JAMES P & MARY E
198 HUNTERS LN
WILLIAMSVILLE NY 14221

GANZE PHILLIP & JEAN +
2581 E 369TH RD
OGLESBY IL 61348

DEROBBIO CHARLES J &
241 DUNDEE RD
FORT MYERS BEACH FL 33931

CLOSSON ROBERT GEORGE JR &
251 DUNDEE RD
FORT MYERS BEACH FL 33931

HOLLAN DEBORAH L TR
285 DUNDEE RD
FORT MYERS BEACH FL 33931

PARKER DANIEL J & LOIS A
9646 RT 240
WEST VALLEY NY 14171

NEWSAM CAROLE ANN &
290 STERLING AV
FORT MYERS BEACH FL 33931

OAKLEY MATTHEW B & TRISIA O
280 STERLING AVE
FORT MYERS BEACH FL 33931

TRENDA ADAM J +
412 BRIDGE WATER AVE
CHIPPEWA FALLS WI 54729

WISE KIM E +
1414 HERR LANE
LOUISVILLE KY 40222

SALYERS DEBRA A
5801 LAUDER ST
FORT MYERS BEACH FL 33931

HARVEY CBP LLC
2212 160TH ST
FORT DODGE IA 50501

WILDER WILLIAM & TERESA K
6354 DEERSTAND RD
GREENWOOD IN 46143

ISLER WILLIAM E TR
240 DUNDEE RD
FORT MYERS BEACH FL 33931

OXENDER DORIN L & SHEILA A
244 DUNDEE RD
FORT MYERS BEACH FL 33931

LAZZELL ROBERT E II & AMY M
248 DUNDEE RD
FORT MYERS BEACH FL 33931

SLAGEL MARC TYLER
260 DUNDEE RD
FORT MYERS BEACH FL 33931

ORYAN PROPERTIES LLC
4200 CANTERA DR # 208
WARRENVILLE IL 60555

BARKER HAROLD D &
139 PARK LEDGE LN
PENINSULA OH 44264

KAISER RAMONA
260 STERLING AVE
FORT MYERS BEACH FL 33931

KUHLMEY MICHAEL & SUSAN
LINDENALLEE 72
NEURUPPIN 16816
GERMANY

TISONE ROBERT G &
244 STERLING AVE
FORT MYERS BEACH FL 33931

BALDRIDGE ROBERT A &
131 FALKIRK ST
FORT MYERS BEACH FL 33931

BROWN DAVID MICHAEL TR
5 CORNWALL ST NW
LEESBURG VA 20176

MITKUS RAYMOND & LESLIE
PO BOX 263
CHATHAM MA 02633

SEAL KERRY
4450 CHICKEE HUT CT #303
BONITA SPRINGS FL 34134

ELORDI MARGARITA
1610 SW 14TH ST
MIAMI FL 33145

HARKINS SCOTT ALAN
1165 MANITOU AVE
STEAMBOAT SPRINGS CO 80487

DRAKE WILLIAM C
117 FALKIRK ST
FORT MYERS BEACH FL 33931

RODRIGUEZ JOHN +
111 FALKIRK ST
FORT MYERS BEACH FL 33931

DAVIES ROBERT D & MARILYN M
5775 LAUDER ST
FORT MYERS BEACH FL 33931

RODRIGUEZ WILFREDO
8880 NW 2ND ST
CORAL SPRINGS FL 33071

TURNER CHARLES H &
5741 LAUDER ST
FORT MYERS BEACH FL 33931

MILLER MICHAEL
5731 LAUDER ST
FORT MYERS BEACH FL 33931

VANASSE PATRICK +
5711 LAUDER ST
FORT MYERS BEACH FL 33931

BENAK RONALD J & GRACIE N
210 STERLING AVE
FORT MYERS BEACH FL 33931

CECE DOMINIC J JR TR
220 STERLING AV
FORT MYERS BEACH FL 33931

NIENHAUS LAURIE SUSAN &
124 FALKIRK ST
FORT MYERS BEACH FL 33931

BENZI DENNIS & SUZANNE
301 SEMINOLE WAY
FORT MYERS BEACH FL 33931

FISCHER THOMAS & SHERYL
291 SEMINOLE WAY
FORT MYERS BEACH FL 33931

KING KENNETH E & NINA MARIE
271 STERLING AVE
FORT MYERS BEACH FL 33931

VIOLA JOHN T & ALLISON
235 STERLING AVE
FORT MYERS BEACH FL 33931

HARRIS STEVEN G & CARIE ANN
231 STERLING AVE
FORT MYERS BEACH FL 33931

MURPHY FREDERICK J &
65 MURPHY WAY
AUBURN NY 13021

STEWART ROBERT K & SHERRY L
745 INDIANAPOLIS RD
MOORESVILLE IN 46158

CAINE DEBRA D L/E
211 STERLING AVE
FORT MYERS BEACH FL 33931

DIBIASI LEO J TR
12071 MCGREGOR BLVD
FORT MYERS FL 33919

COATES PAUL W TR
PO BOX 306
GLENDALE MA 01229

BOUGOULAS JAMES &
APT 1707
16170 BAYSIDE POINTE E
FORT MYERS FL 33908

FLOYD MELISSA A TR
189 TOPANGA DR
BONITA SPRINGS FL 34134

GAYLORD HENDRIX + GLORIA HENDR
877 N 400 EAST RD
MILMINE IL 61855

MEZESKE PHILIP J &
10 PEPITA ST
FORT MYERS BEACH FL 33931

SULLIVAN MARK J
PO BOX 770
SUFFIELD CT 06078

GONZALEZ MARIO & LEON OLGA
11020 SW 55TH ST
MIAMI FL 33165

1. **Requested Motion:**

Meeting Date: January 22, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230278 TO ALLOW RECONSTRUCTION OF A POOL DECK, WALKWAYS, AND FENCE, IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 7400 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council decides Special Exception requests

What the action accomplishes:

Approval of the special exception will allow the condominium to rebuild the pool deck, pool fence and walkway that is within the EC zoning district.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

resolutions

4. **Submitter of Information:**

5. **Background:**

The applicant is proposing the repair/replacement of a pool deck, walkways, and fence partially or fully within the Environmentally Critical (EC) zoning district, seaward of the Coastal Construction Control Line (CCCL). The pool is also being replaced however, it is landward of the 1978 CCCL. All of these features are part of the common element for the Leonardo Arms Condominium and were in existence in the proposed locations, prior to Hurricane Ian.

Attachments:

1. Resolution 24-12 TC
2. Staff Report TC
3. Exhibit B Owner Acknowledgements
4. Exhibit A Complete Application
5. Postcard 7400 Estero blvd

Financial Impact:

unknown

6. **Alternative Action**

Deny request

7. **Management Recommendations:**

Recommend approval of SEZ20230278

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 1/10/2024
Approved - 1/12/2024
Approved - 1/16/2024
Approved - 1/16/2024

RESOLUTION NUMBER 24-12

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230278 TO ALLOW RECONSTRUCTION OF A POOL DECK, WALKWAYS, AND FENCE, IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 7400 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, 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, applicant Leonardo Arms Beach Club 1 is requesting a special exception for the reconstruction of major accessory structures that were destroyed during hurricane Ian, including a pool deck, walkways, and a fence in the Environmentally Critical zoning district; and

WHEREAS, the STRAP number for the subject property is 03-47-24-W4-02000.00CE;

WHEREAS, the Property is located in the “Recreation” category of the Future Land Use Map of the Comprehensive Plan and the “Environmentally Critical” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on January 9, 2024, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the variance; and

WHEREAS, on January 22, 2024 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the LDC; and

WHEREAS, the Town Council determined it **is** in the best interest of the Town to approve/approve with conditions/deny the request.

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

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

Section 2. The Town Council determines the Applicant **did** meet its burden of proof that the requested Special Exception **does** meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the special exception for the reconstruction of a pool deck, walkways and a fence in the Environmentally Critical zoning district.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval 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 all performance and locational standards 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 the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; and

In accordance with the additional regulations and considerations found in Section 6-366 of the LDC:

- A. Any repairs must comply with all relevant local and state floodplain regulations.
- B. Repairs may not damage existing dunes or dune vegetation.
- C. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.
- D. A new special exception must be applied for each time the structure is repaired.

Section 4. If the Town Council approves/denies the requested special exception and the following conditions of approval are imposed on the Applicant and the Property:

- A. Additional repairs to major structures in the EC zoning district will require a new special exception.
- B. Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply

with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

- C. The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.
- D. Any violation of the conditions of approval shall render the special exception null and void.

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

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King	_____
Karen Woodson	_____
Vacant, Bill Veach	_____

ADOPTED this ____ day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of January 2024.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20230278

CASE NAME: Special Exception for the replacement/repair of a pool deck, fence, and walkway fully or partially in the EC zoning district.

TOWN COUNCIL HEARING DATE: January 22, 2024 at 9:00 AM

LPA HEARING DATE: January 9, 2024 at 9:00 AM

STAFF RECOMMENDATION: Approve Special Exception request with conditions

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

I. APPLICATION SUMMARY

Applicant/Owner: Timothy Bagget/Leonardo Arms Beach Club Condominium Association

Requests: To repair the existing pool deck, fence, and walkway which are located seaward of the 1978 Coastal Construction Control Line.

Physical Address: 7400 Estero Blvd

STRAP #: 03-47-24-W4-02000.00CE

FLU: Recreation

Zoning: Environmentally Critical

Adjacent zoning and land uses:

North: Residential Multifamily (RM)
Mixed Residential

South:	Environmentally Critical (EC) Recreation
East:	Residential Multifamily (RM) Mixed Residential
West:	Residential Multifamily (RM) Mixed Residential

II. BACKGROUND AND ANALYSIS

Background:

The applicant is proposing the repair/replacement of a pool deck, walkways, and fence partially or fully within the Environmentally Critical (EC) zoning district, seaward of the Coastal Construction Control Line (CCCL). The pool is also being replaced however, it is landward of the 1978 CCCL. All of these features are part of the common element for the Leonardo Arms Condominium and were in existence in the proposed locations, prior to Hurricane Ian.

These structures are considered major accessory structures and can be replaced in the EC zoning district with approval of a special exception, per Section 34-652 (e) of the land development code. The EC zoning district starts at the 1978 Coastal Construction Control Line (CCCL) and extends seaward to the water. The attached site plan indicates the CCCL as the dashed line running through the Leonardo Arms Beach Club Condominium Unit II building and through the pool deck.

With the reconstruction, the applicant will remove a wall that was at the edge of the pool deck and replace it with vegetation.

Analysis:

The condominium structure was built in 1969, per Lee Property Appraiser. Staff does not have a copy of the original development order to verify that the pool was built at the same time as the condominium, however it likely was part of the original design and therefore built prior to the creation of the 1978 CCCL.

The condominium has met the application criteria of providing notice to the condominium ownership of this special exception application and staff has received a list of the unit numbers which have acknowledged from more than the code required 75% of owners.

The LDC was recently updated to allow major primary and accessory structures to be repaired in the EC zoning district with the approval of a special exception. Prior to the code change, only single-family residences could be repaired in the EC zoning district.

Neighborhood Compatibility:

A review of the aerials up and down the beach indicate that there are several primary and accessory structure that extend over the 1978 CCCL. The aerials are not precise so that may be an over or under estimate of the number. These developments may request to repair the primary and accessory structure in the same location or may choose to move the structures landward of the CCCL. Repairs to the portions of the Leonardo Arms buildings that extend over the CCCL will require special exceptions for repairs also.

Findings and Conclusions:

Section 6-366(b)(3) Regulations and Considerations

LDC Section 6-366 includes additional regulations and considerations for special exception approval of repairs in the EC zoning district:

- a. *Any repairs must comply with all relevant local and state floodplain regulations.*

The development must comply with local and state floodplain requirements.

- b. *Repairs may not damage existing dunes or dune vegetation.*

The repairs are proposed landward of the dune. No dunes or native vegetation will be impacted.

- c. *Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*

Sea turtle nesting season ended on October 31st.

- d. *A new special exception must be applied for each time the structure is repaired.*

This will be a condition of the special exception approval.

Special Exception Findings

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

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

The pool and all facilities in the EC were destroyed or severely damaged during Ian. Construction seaward of the EC is likely to be damaged by storm surge in the future. However, additionally dune are being constructed to provide additional protection.

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

Policy 5-D-1 states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

This proposed redevelopment does not create any new development or change the location from what previously existed on the site. Therefore staff believes that this proposed request does not fall within the definition of development in the Town's code of ordinance:

- The LDC defines *Development* as (1) A subdivision, as defined in this chapter; or (2) Any improvement to land, as defined in this chapter.
- The LDC defines *Improvement* to land as any change to land or to any structure on the land, and shall include any movement or grading of land, except grading which is incidental to the removal of exotic vegetation and which is not prohibited by ch. 22 of this LDC; clearing of indigenous plant communities; and the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; provided, however, that any change to a building which does not involve a change in the building floor area shall not be deemed an improvement to land.

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

The request will comply with local, state, and federal air, noise and water pollution standards. It will not adversely affect water quality and it will not create a nuisance to adjacent properties.

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

The request will maintain what was previously constructed on this property. It will not have an additional negative impact.

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

There is no anticipated negative impact or injury to surrounding properties.

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

The EC zoning district allows only passive, movable structures, no new major structures of any kind are allowed, other than dune walkovers through a special exception. Prior to the recent code change, only repairs to primary structures were permitted through a special exception. The recent code amendment allows replacement of major accessory structures also.

III. RECOMMENDATION

Staff finds that the special exception for reconstruction of major accessory structures in the EC zoning district is in compliance with item Sec. 34-88(b)(1). Therefore, staff recommends **APPROVAL** of SEZ20230189 for the reconstruction of a pool deck, walkways, and fence seaward of the 1978 CCCL.

At the January 9th LPA hearing, the LPA voted unanimously to recommend approval of the request, with conditions.

IV. CONDITIONS OF APPROVAL

1. A new special exception must be applied for each time the structures are reconstructed.
2. Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
3. The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.
4. Any violation of the conditions of approval shall render the special exception null and void.

Staff Report Exhibits:

- A – Complete Application
- B – Property Owner Acknowledgement List
- C – Postcards to adjacent properties

From: [timothy baggett](#)
To: [timothy baggett](#)
Subject: Leonardo Pool special exception notice urgent response required
Date: Friday, December 29, 2023 9:02:10 AM

Good morning Leonardo Arms Building One

Please respond with the acknowledgement of receiving this email as we are required to prove that all owners are aware that we have applied for an special exception to build back the pool and the pool deck prior to hurricane Ian

You will need you to reply to this email with your unit number and confirmation that you received this notice/email

Leonardo Arms has a special hearing scheduled on January 9th because the pool deck and pool fence is located beyond the CCL which is the 1978 Coastal control line which calls for a special exemption to put it back as it was.

We will not be replacing the knee walls that separated the pool deck from the beach as this would cause delays and potential problems obtaining the pool permit

Please respond as soon as possible in this email chain with unit number and acknowledgement of this notice

We will need 75% of the unit owner acknowledgement to continue with this special exception process

Kind regards

Tim

--

Timothy Baggett
Property Manager
Leonardo Arms Beach Club
Condominium Association
LCAM #46059
M (239)-878-3010 timothyabaggett@gmail.com

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

From: [timothy baggett](#)
To: [Sarah Propst](#)
Cc: [South Shore Construction LLC](#)
Subject: Re: Special exception notice Leonardo arms
Date: Tuesday, January 2, 2024 10:58:16 AM
Attachments: [image001.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)

These are in the order received

507, 510, 504, 204, 211, 602, 601, 205, 502, 304, 410, 210, 505, 312, 609, 406, 412, 308, 404, 403, 605, 603, 111, 105, 512, 610, 606, 207, 206, 611, 303, 109, 301, 604, 203, 102, 612, 106, 508, 101, 110,
503, 401, 405, 409, 608, 212, 209, 509, 107, 305, 309, 112, 411,

On Tue, Jan 2, 2024 at 10:49 AM Sarah Propst <sarah.propst@fmbgov.com> wrote:

Great, thank you so much. Please send me a list of the unit numbers who have acknowledged receipt of the information.



Sarah Propst, AICP, PMP

Community Development, Planning Manager

Town of Fort Myers Beach

2525 Estero Boulevard

Fort Myers Beach, FL. 33931

Cell: (757) 269-1203

FMBgov.com



Think Green. Please print this e-mail only if necessary.

Please Note: Florida has very broad public records laws. Most written communications to and from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications may be subject to public disclosure.

From: timothy baggett <timothyabaggett@gmail.com>
Sent: Tuesday, January 2, 2024 10:48 AM
To: South Shore Construction LLC <myles@ssc.bz>; Sarah Propst

<sarah.propst@fmbgov.com>

Subject: Special exception notice Leonardo arms

Good morning

I have 55 out of 72 owners acknowledge the email below

I can provide the unit numbers if needed

Kind regards

Tim

Good morning Leonardo Arms Building One

Please respond with the acknowledgement of receiving this email as we are required to prove that all owners are aware that we have applied for an special exception to build back the pool and the pool deck prior to hurricane Ian

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Timothy Baggett

Property Manager

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M (239)-878-3010 timothyabaggett@gmail.com

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**Timothy Baggett
Property Manager
Leonardo Arms Beach Club
Condominium Association
LCAM #46059
M (239)-878-3010 timothyabaggett@gmail.com**

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Case# _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

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

Project Name: Leonardo Beach Club
Authorized Applicant: Timothy Baggett
LEOPA STRAP Number(s): 03-47-24-W4-02000.00CE

Current Property Status:
Current Zoning: Residential Multifamily (RM)
Future Land Use Map (FLUM) Category: Mixed Residential
Platted Overlay? ☐ yes ☒ no FLUM Density Range: 6 Dwelling Units per acre

Requested Action:

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

PART I

Narrative Statements

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

We are in permitting to repair the exsisting pool and pool deck. The exsiting deck
was built prior to the "1978 Lee County Line", therefore reparing what was existing
Requires a Special Exception

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

The property qualifies for a Special Exception because:
We are requesting this special exemption because the pool and pool deck was constructed in 1969-1970 prior
to the existence of the 1978 coastal construction control line and repairing the pool and pool deck to its pre-
Hurricane Ian condition will not have any impact to surrounding separate properties (the Associations of
Leonardo Ams Building II Condominium and Leonardo Arms Building III). In addition, the pool and pool deck is
not located in, nor will it adversely impact any critical wildlife area, nor will they interfere with, encroach on, or
limit bird or turtle nesting areas.
Building I's Condominium Association is the sole owner of the pool and pool deck property and through its
Declaration allows the use of the pool and pool deck to the immediately adjacent north Leonardo Arms
buildings II and III Condominium Associations under the agreement that the Associations of Building II and III
share in the operation and maintenance of the pool and pool deck. As a result, Leobardo Arms Associations
Building II and III, the two properties immediately adjacent to the pool will not be adversely impacted but rather
positively impacted by the repair of the pool and pool deck to its continued pre-Hurrican Ian condition.

Granting the requested Special Exception could impact surrounding properties as follows:

~~As mentioned above, granting the requested Special Exception does in adversely impact any properties adjacent to the pool and pool deck. The only two properties within 100 feet of the pool and pool deck are separate properties of Leonardo Arms Building II and Leonardo Ams Building III. In addition, the pool and the pool deck are not located in, nor will it adversely impact, any critical wildlife area and does not interfere with, encroach on, or limit bird or turtle nesting areas. These two properties use the pool at Leonardo Arms Building II because they do not have a pool; these two associations do share the maintenance cost of the pool. This has been the understanding between these three associations for over 50 years. As a result, the two immediately adjacent properties (Buildings of Leobardo Arms Building II and Leonardo Arms Building III) to Building I's pool and pool deck, will be positively impacted when the pool and pool deck are repaired to their pre-Hurricane Ian Condition.~~

PART 2
Submittal Requirements

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

Required Items

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

For New Communication Towers:

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

For Consumption of Alcoholic Beverages (COP) license approval:

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

For transit terminals:

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

For use of the EC zoning district:

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

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

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

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

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

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

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

Part 1 Narrative Statements:

“Request for...”

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

“The property qualifies for a special exception because...”

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

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

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

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

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

Submittal Requirements Check List and Filing Guide

☐

A completed Public Hearing Application Form.

☐

A completed Supplemental form PH-A.

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

Guide to Filing Supplement PH-A for Special Exceptions

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

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

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

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

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

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

Explanatory Notes – Part IV & V

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



COMMUNITY DEVELOPMENT DEPARTMENT 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: 7400 Estero Blvd Ft Myers Beach 33931

STRAP Number: 03-47-24-W4-02000.00CE

Applicant: Lenardo Arms Beach Club 1 Phone: (239) 878-3010

Contact Name: Timothy Baggett Phone: (239) 878-3010

Email: timothyabaggett@gmail.com Fax: N/A

Current Zoning District: 4

Future Land Use Map (FLUM) Category: _____

FLUM Density Range: _____ Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☒ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Timohty Baggett Phone: (239) 878-3010

**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: 7400 Estero Blvd Ft Myers Beach Fl 33931

Email: timothyabaggett@gmail.com Fax: N/A

Contact Name: Timohty Baggett Phone: (239) 878-3010



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) <u>Authorized Contractor Working On Pool Area</u> | |

**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: Myles La Garde Phone: (813) 503-9424
Address: 240 Apollo Beach Blvd Apollo Beach Fl 33572
Email: Myles@ssc.bz Fax: (813) 200-3887

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

Name: Timothy Baggett (Property Manager) Phone: (239) 878-3010
Address: 7400 Estrero Blvd Ft Myers Beach Fl 33931
Email: timothyabaggett@gmail.com Fax: N/A

Name: Brett Moore Phone: (239) 825-6518
Address: _____
Email: bdm@humistonandmoore.com Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

PART III – Waivers

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

Code Section: _____ 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]
Signature

Louis Luddecke
Printed Name

STATE OF NS COUNTY OF Ocean

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

presence OR online notarization, this 14th day of November, 2023

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

by **ANGELINA POLITO**
NOTARY PUBLIC OF NEW JERSEY
Commission # 50126226
My Commission Expires 04/27/2025

DL as identification.

(SEAL)

[Signature]
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



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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

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

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

_____	_____
Signature	Printed Name

AFFIDAVIT

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

I, _____ (name), as _____ (title) of _____ (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.



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Leonardo Arms Beach Club I

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

[Signature]

Signature

President

Title

Louis Luddecke

Typed or Printed Name

Date

STATE OF NS COUNTY OF Ocean

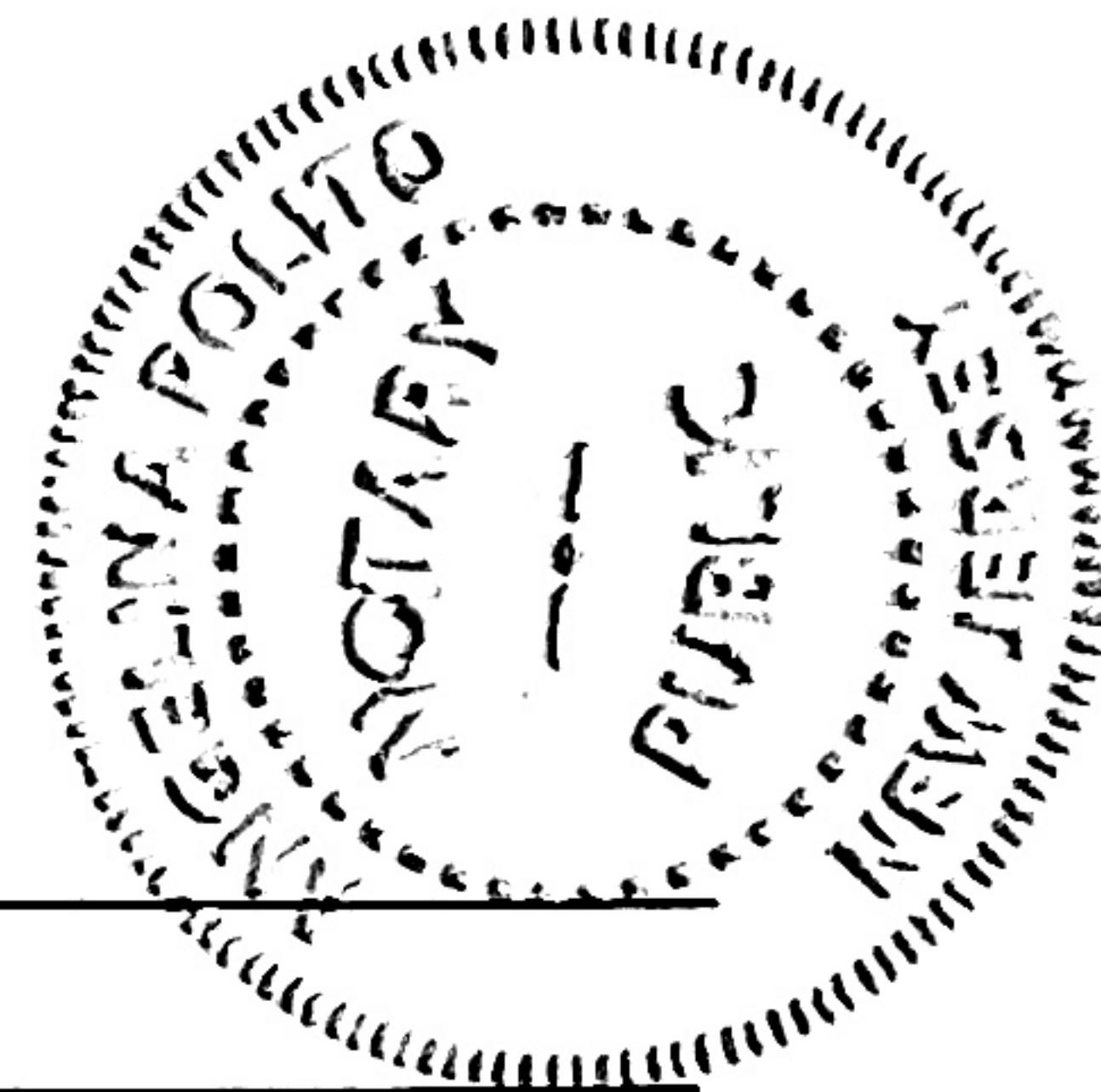
The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 14th day of November, 2023, by DL ☐ who is personally known to me OR ☒ who has produced DL as identification.

Seal

ANGELINA POLITO
NOTARY PUBLIC OF NEW JERSEY
Commission # 50126226
My Commission Expires 04/27/2025

Notary Public Signature

[Signature]



PART VI- Property Information

A. Legal Description:

STRAP: 03-47-24-W4-02000.00CE

Property Address: 7400 Estero Blvd Ft Myers Beach

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.



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C. Property Dimensions:

Width (please provide an average width if irregular in shape) ±466 feet feet

Depth (please provide an average width if irregular in shape) ±573 feet feet

Frontage on street: ±254 feet feet. Frontage on waterbody: ±568 feet feet

Total land area: ± 6.0 acres ☒ acres ☐ square feet

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

Property is located approx 2 mile North of Big Carlos Pass Bridge

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

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

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

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

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

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

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

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

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

☐ Low Density

☐ Marina

☒ Mixed Residential

☐ Recreation

☐ Boulevard

☐ Wetlands

☐ Pedestrian Commercial

☐ Platted Overlay



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

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

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

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

Explanatory Notes – Part IV & V

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

GeoView Map



November 30, 2023

Air Photos: 2023 Hi-Res (3 inch)



Hospital Locations



Library Locations



School Locations



CCC_Parks

School Locations



County Boundary

Major Roads Medium

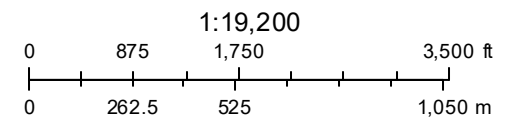


I - 75

US 41

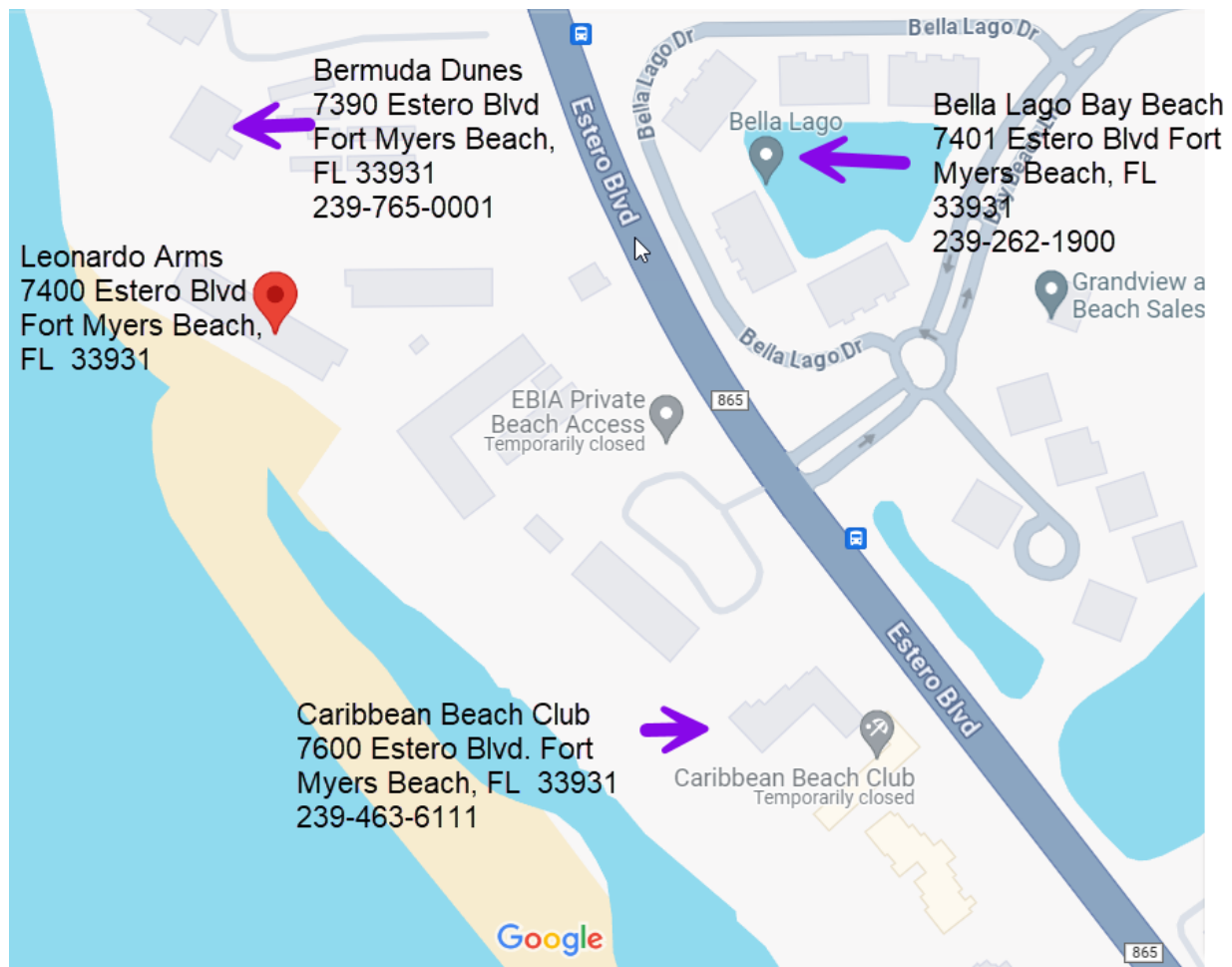
Other Highways

Other Roads



This map is NOT a legal land survey and should not be used or relied upon as such. No warranties, express or implied, are provided with the data, use, accuracy, or completeness of this map.

Map of places within 500ft of Leonardo Arms 7400 Estero Blvd. Fort Myers Beach, FL 33931



LEGEND

- ⬮ = BENCHMARK, SET PK NAIL AND DISK - "LB 6886"
- ⊙ = SET 5/8" REBAR AND CAP - "CHW INC LB 5075"
- ⊗ = FOUND 1" SIGN POST - CRITICAL WILDLIFE AREA POINT
- ⦿ = FOUND 3" ROUND CONCRETE MONUMENT - AS NOTED
- ▣ = FOUND FLORIDA DEPARTMENT OF NATURAL RESOURCES CONCRETE MONUMENT
- = FOUND 6"x6" CONCRETE STATE ROAD RIGHT-OF-WAY MONUMENT
- (C) = CALCULATED DATA
- (D) = LEGAL DESCRIPTION DATA
- (M) = FIELD MEASURED DATA
- (P) = RECORD PLAT DATA
- MES = MITERED END SECTION
- PVC = POLYVINYL CHLORIDE PIPE
- RCP = REINFORCED CONCRETE PIPE
- INV = INVERT
- ⊙ = SPOT ELEVATION, NAVD 1988
- ⊙ = LIGHT POLE
- ⊕ = ELECTRIC BOX
- ⊙ = GAS VALVE
- ⬮ = 4" BOLLARD
- ⬮ = CONCRETE UTILITY POLE
- = GUY ANCHOR
- ⬮ = WATER VALVE
- = BACKFLOW PREVENTER
- ⊕ = WATER METER
- ⬮ = FIRE HYDRANT
- ⬮ = FIRE DEPARTMENT CONNECTION
- ⊕ = WELL
- ⊕ = CATCH BASIN WITH GRATE INLET
- ⬮ = SANITARY SEWER CLEAN-OUT
- ⊕ = SANITARY SEWER MANHOLE
- ⊕ = STORM SEWER MANHOLE
- ⊕ = TELEPHONE PEDESTAL
- ⊕ = CABLE PEDESTAL
- ⬮ = IRRIGATION VALVE OR METER
- ⬮ = COCONUT PALM
- ⬮ = DATE PALM
- ⬮ = ROYAL PALM
- ⬮ = SABAL PALM
- ⬮ = HARDWOOD TREES WITH TRUNK DIAMETER

SURVEYOR'S NOTES

1. COORDINATES AND BEARINGS SHOWN HEREON REFER TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NORTH AMERICAN DATUM OF 1983 ADJUSTMENT OF 1999 (NAD 83/99), BASED UPON LEE COUNTY GPS CONTROL POINT 224 AS A BASE STATION AND A CHECK TO USCGS CONTROL MONUMENT "BOOB 2".
2. NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.
3. THIS PARCEL LIES IN FLOOD ZONE AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP PANEL 12071C0567G, DATED NOVEMBER 17, 2022, AND HAVING BASE FLOOD ELEVATIONS AS SHOWN. FLOOD ZONE LINES SHOWN WERE SCALED FROM THE INDICATED FIRM PANEL.
4. BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION. NO SEARCH OF THE PUBLIC RECORD WAS DONE BY THIS SURVEYOR.
5. THE STREET ADDRESS OF UNIT I IS:
7404 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
- THE STREET ADDRESS OF UNIT II IS:
LEONARDO ARMS CONDO C/E
FORT MYERS BEACH, FLORIDA 33931
- THE STREET ADDRESS OF UNIT III IS:
7402 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
6. THERE MAY BE OTHER BUILDING SETBACK LINES AND EASEMENT LINES OTHER THAN THOSE SHOWN. ONLY SETBACKS AND EASEMENTS KNOWN TO, OR PROVIDED TO THIS SURVEYOR ARE SHOWN.
7. ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988). ELEVATIONS ARE BASED UPON TIES TO THE FLORIDA DEPARTMENT OF TRANSPORTATION PERMANENT REFERENCE NETWORK REAL-TIME KINEMATIC (RTK) GLOBAL POSITIONING SYSTEM (GPS) CONTROL NETWORK.
8. MEAN HIGH WATER ELEVATION OF 0.28' (NAVD 1988) IS BASED ON A DETERMINATION BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION BY AN EXTENSION OF TIDE INTERPOLATION POINT NUMBER 100230.
9. THE 1991 COASTAL CONSTRUCTION CONTROL LINE SHOWN HEREON IS AS RECORDED IN PLAT BOOK 48, PAGES 15, AND FILED IN OFFICIAL RECORDS BOOK 2224, PAGES 1010 THROUGH 1041 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA ON MAY 30, 1991.
10. THE 1978 COASTAL CONSTRUCTION SETBACK LINE SHOWN HEREON IS AS RECORDED BY ORDINANCE 76-3 RECORDED APRIL 17, 1978 IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
11. THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.

LEGAL DESCRIPTION UNIT I

A TRACT OR PARCEL OF LAND LYING IN GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, ESTERO ISLAND, LEE COUNTY, FLORIDA, WHICH TRACT OR PARCEL IS DESCRIBED AS FOLLOWS:

FROM THE MOST SOUTHERLY CORNER OF BLOCK 3A OF UNIT NO. 1 OF LAGUNA SHORES, ACCORDING TO THE MAP OR PLAT RECORDED IN PLAT BOOK 9 AT PAGES 29 AND 30 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, RUN SOUTH 48°23'00" WEST ALONG A PROLONGATION OF THE NORTHWESTERLY LINE OF PARK PLACE (NOW PART OF BUCCANEER DRIVE) AS SHOWN ON SAID PLAT FOR 70.02 FEET TO A POINT ON THE FORMER SOUTHWESTERLY LINE OF ESTERO BOULEVARD AS DESCRIBED IN COUNTY COMMISSIONER'S MINUTE BOOK 11 AT PAGE 97 OF SAID PUBLIC RECORDS; THENCE RUN NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE, ALONG THE ARC OF A CURVE TO THE RIGHT OF A RADIUS OF 2899.79 FEET FOR 147.39 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 37°43'00" WEST ALONG SAID SOUTHWESTERLY LINE FOR 944.00 FEET TO A POINT OF CURVATURE; THENCE RUN NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE, ALONG THE ARC OF A CURVE TO THE RIGHT OF RADIUS 2326.83 FEET FOR 283.68 FEET; THENCE RUN SOUTH 52°17'00" WEST FOR 7.46 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF STATE ROAD NO. S-865 AND THE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING RUN NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF SAID STATE ROAD, ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2331.83 FEET (CHORD BEARING NORTH 28°39'47" WEST) FOR 180.72 FEET TO A CHANGE IN RIGHT-OF-WAY; THENCE SOUTH 63°33'26" WEST ALONG SAID RIGHT-OF-WAY FOR 5.0 FEET; THENCE SOUTH 72°11'08" WEST FOR 295.26 FEET; THENCE SOUTH 52°17'00" WEST FOR 215 FEET, MORE OR LESS, TO THE WATERS OF THE GULF OF MEXICO; THENCE SOUTHEASTERLY ALONG SAID WATERS TO AN INTERSECTION WITH A LINE BEARING SOUTH 52°17'00" WEST FROM THE POINT OF BEGINNING; THENCE NORTH 52°17'00" EAST ALONG SAID LINE FOR 417 FEET MORE OR LESS, TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION UNIT II

LEONARDO ARMS BEACH CLUB CONDOMINIUM UNIT II, AS PER THE RECORD PLAT THEREOF RECORDED IN CONDOMINIUM BOOK 1, PAGE 243, AS REFERENCED BY THE DECLARATION OF CONDOMINIUM RECORDED IN OFFICIAL RECORDS BOOK 603, PAGE 862 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; SAID CONDOMINIUM BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS ON SAID RECORD PLAT:

A TRACT OR PARCEL OF LAND LYING IN GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, ESTERO ISLAND, LEE COUNTY, FLORIDA, WHICH TRACT OR PARCEL IS DESCRIBED AS FOLLOWS:

FROM THE MOST SOUTHERLY CORNER OF BLOCK 3A OF UNIT NO. 1 OF LAGUNA SHORES, ACCORDING TO A PLAT RECORDED IN PLAT BOOK 9, AT PAGES 29 & 30 OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA, RUN S 48°23'00" W ALONG A PROLONGATION OF THE NORTHWESTERLY LINE OF PARK PLACE (NOW PART OF BUCCANEER DRIVE) AS SHOWN ON SAID PLAT FOR 70.02 FEET TO A POINT ON THE FORMERLY SOUTHWESTERLY LINE OF ESTERO BOULEVARD AS DESCRIBED IN COUNTY COMMISSIONER'S MINUTE BOOK 11 AT PAGE 97 OF SAID PUBLIC RECORDS; THENCE RUN NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE, ALONG THE ARC OF A CURVE TO THE RIGHT OF RADIUS 2899.79 FEET FOR 147.39 FEET TO A POINT OF TANGENCY; THENCE RUN N 37°43'00" W ALONG SAID SOUTHWESTERLY LINE FOR 944.00 TO A POINT OF CURVATURE; THENCE RUN NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE, ALONG THE ARC OF A CURVE TO THE RIGHT OF RADIUS 2326.83 FEET FOR 283.68 FEET; THENCE RUN S 72°17'00" W FOR 7.46 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF STATE ROAD NO. S-865 (40' FROM CENTERLINE); THENCE RUN NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF SAID STATE ROAD, ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2331.83 FEET (CHORD BEARING N 28°39'47" W FOR 180.72 FEET TO A CHANGE IN RIGHT-OF-WAY; THENCE S 63°33'26" W ALONG SAID RIGHT-OF-WAY FOR 5.0 FEET; THENCE S 72°17'08" W FOR 295.26 FEET; THENCE S 52°17' W FOR 93.95 FEET TO THE POINT OF BEGINNING; THENCE N 37°43' W 55.31 FEET; THENCE N 0°49' W FOR 165.16 FEET TO AN INTERSECTION WITH A LINE PARALLEL WITH AND 30.0 FEET (AS MEASURED PERPENDICULAR) SOUTHERLY FROM THE NORTH LINE OF GOVERNMENT LOT 3; THENCE S 89°11' 00" W, ALONG SAID PARALLEL LINE, FOR 480 FEET MORE OR LESS TO THE WATERS OF THE GULF OF MEXICO; THENCE SOUTHEASTERLY ALONG SAID WATERS FOR 480 FEET MORE OR LESS TO AN INTERSECTION WITH A LINE BEARING S 52°17'00" W PASSING THROUGH THE POINT OF BEGINNING; THENCE NORTH 52°17'00" EAST ALONG SAID LINE FOR 121 FEET MORE OR LESS TO THE POINT OF BEGINNING. BEARINGS HEREINAFOVE MENTIONED ARE PLANE COORDINATES FOR THE FLORIDA WEST ZONE, SUBJECT TO A DRAINAGE AND WALKWAY EASEMENT OVER THE SOUTHERLY 10 FEET OF THE NORTHERLY 35 FEET OF SAID PARCEL INCLUDING RIGHT OF INGRESS AND EGRESS OVER AND ACROSS THE SOUTHERLY 20 FEET OF THE NORTHERLY 340 FEET OF THAT PORTION OF GOVERNMENT LOT 3 LYING WEST OF SAID STATE ROAD NO. S-865.

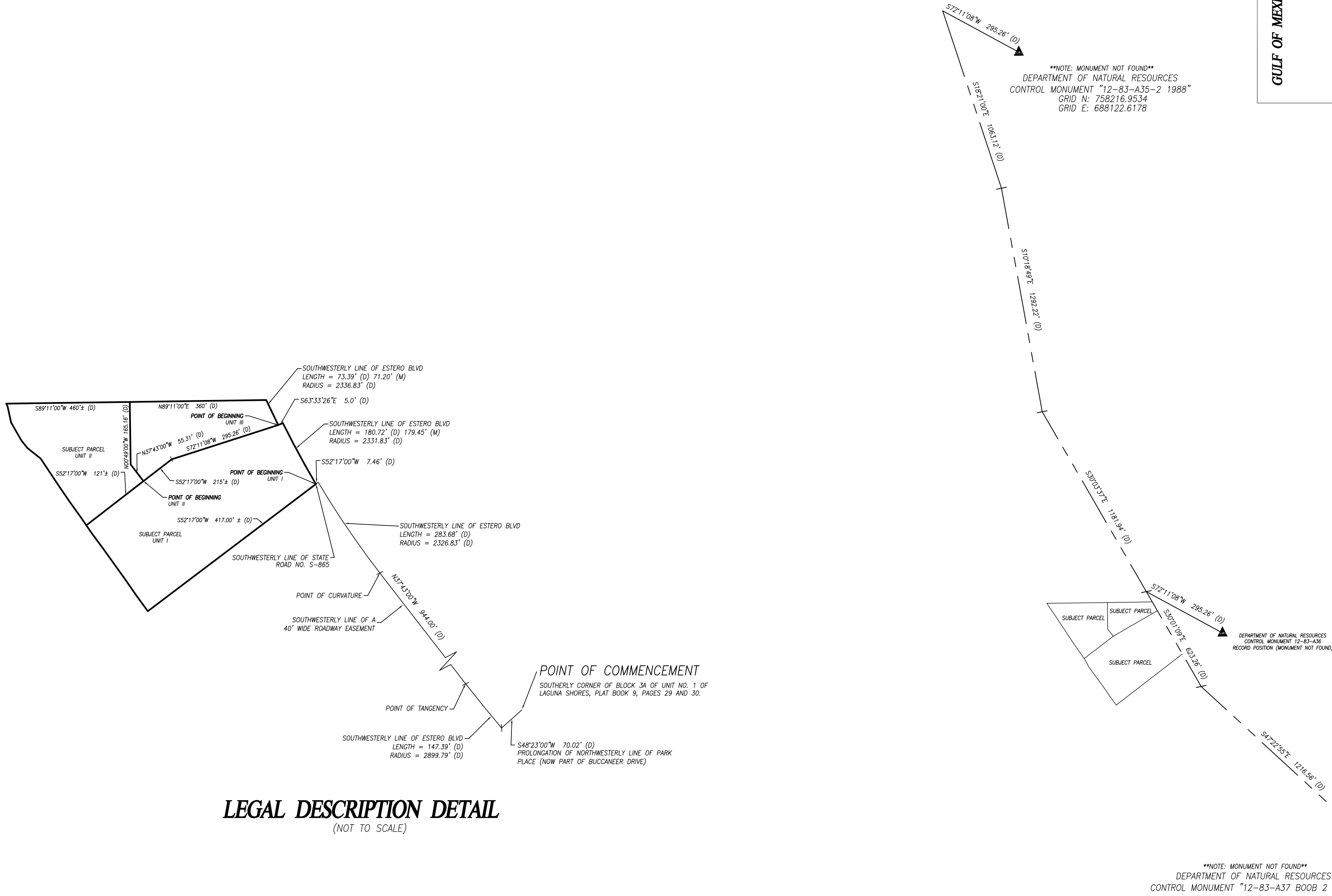
LEGAL DESCRIPTION UNIT III

A TRACT OR PARCEL OF LAND LYING IN GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, ESTERO ISLAND, LEE COUNTY, FLORIDA, WHICH TRACT OR LAND IS DESCRIBED AS FOLLOWS:

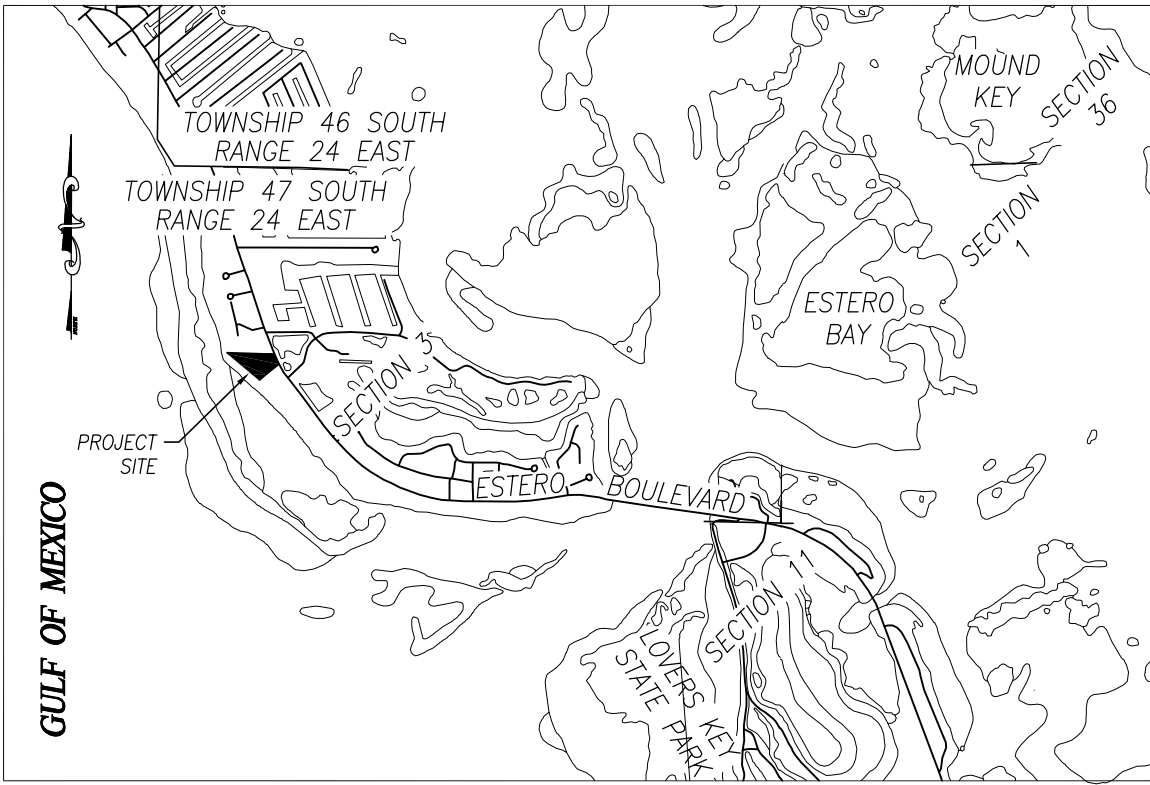
FROM THE MOST SOUTHERLY CORNER OF BLOCK 3A OF UNIT NO. 1 OF LAGUNA SHORES, ACCORDING TO PLAT RECORDED IN PLAT BOOK 9 AT PAGES 29 AND 30 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, RUN SOUTH 48°23'00" WEST ALONG A PROLONGATION OF THE NORTHWESTERLY LINE OF PARK PLACE (NOW PART OF BUCCANEER DRIVE) AS SHOWN ON SAID PLAT FOR 70.02 FEET TO A POINT ON THE FORMER SOUTHWESTERLY LINE OF ESTERO BOULEVARD AS DESCRIBED IN COUNTY COMMISSIONER'S MINUTE BOOK 11 AT PAGE 97 OF SAID PUBLIC RECORDS; THENCE RUN NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE, ALONG THE ARC OF A CURVE TO THE RIGHT OF A RADIUS 2899.79 FEET FOR 147.39 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 37°43'00" WEST ALONG SAID SOUTHWESTERLY LINE FOR 944.00 FEET TO A POINT OF CURVATURE; THENCE RUN NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE, ALONG THE ARC OF A CURVE TO THE RIGHT OF RADIUS 2326.83 FEET FOR 283.68 FEET; THENCE RUN SOUTH 52°17'00" WEST FOR 7.46 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF STATE ROAD NO. S-865; (40 FEET FROM CENTERLINE); THENCE RUN NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF SAID STATE ROAD, ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2331.83 FEET (CHORD BEARING NORTH 28°39'47" WEST) FOR 180.72 FEET TO A CHANGE IN RIGHT OF WAY; THENCE SOUTH 63°33'26" WEST ALONG SAID RIGHT OF WAY FOR 5.0 FEET TO THE POINT OF BEGINNING; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF SAID STATE ROAD, (45 FEET FROM CENTERLINE), ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2336.83 FEET (CHORD BEARING NORTH 25°32'55" WEST FOR 73.39 FEET TO AN INTERSECTION WITH A LINE PARALLEL WITH AND 300 FEET (AS MEASURED ON A PERPENDICULAR) SOUTHERLY FROM THE NORTH LINE OF SAID GOVERNMENT LOT 3; THENCE RUN SOUTH 89°11'00" WEST ALONG SAID PARALLEL LINE FOR 360.0 FEET; THENCE SOUTH 0°49' EAST FOR 165.16 FEET; THENCE SOUTH 37°43' EAST FOR 55.31 FEET; THENCE NORTH 52°17' EAST FOR 93.95 FEET; THENCE NORTH 72°11'08" EAST FOR 295.26 FEET TO THE POINT OF BEGINNING.

BEARINGS HEREIN ABOVE MENTIONED ARE PLANE COORDINATE FOR THE FLORIDA WEST ZONE, TOGETHER WITH A DRAINAGE AND WALKWAY EASEMENT OVER THAT PART OF THE SOUTHERLY 10 FEET OF THE NORTHERLY 355 FEET OF SAID GOVERNMENT LOT 3 LYING WEST OF THIS UNIT III PARCEL AND SUBJECT TO THE RIGHT OF INGRESS AND EGRESS OVER AND ACROSS THE SOUTHERLY 20 FEET OF THE NORTHERLY 340 FEET OF THAT PORTION OF GOVERNMENT LOT 3 LYING WEST OF SAID STATE ROAD #5-865 AND EAST OF UNIT II PARCEL.

MAP OF BOUNDARY AND TIDAL WATER SURVEY
LEONARDO ARMS BEACH CLUB CONDOMINIUM UNIT I, II, AND III LYING IN
GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA



TIES TO DEPARTMENT OF NATURAL
RESOURCES REFERENCE MONUMENTS
A 35-2 & A 3-BOOB2
(NOT TO SCALE)



LOCATION MAP
NOT TO SCALE

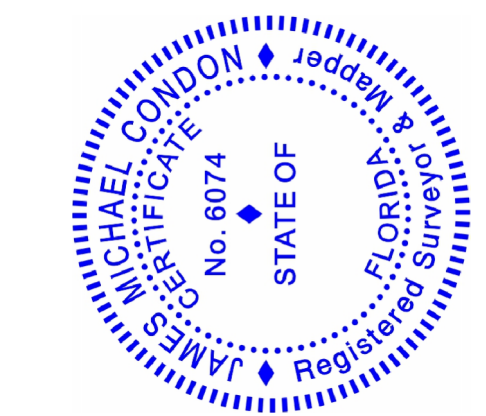
MAP OF BOUNDARY AND TIDAL WATER SURVEY
LEONARDO ARMS BEACH CLUB CONDOMINIUM UNIT I, II, III, LYING IN
GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

- LEGEND**
- BENCHMARK, SET PK NAL AND DISK - "LB 6896"
 - SET 5/8" REBAR AND CAP - "CHW INC LB 5075"
 - FOUND 1" SIGN POST - CRITICAL WILDLIFE AREA POINT
 - FOUND 3" ROUND CONCRETE MONUMENT - AS NOTED
 - FOUND FLORIDA DEPARTMENT OF NATURAL RESOURCES CONCRETE MONUMENT
 - FOUND 6"x6" CONCRETE STATE ROAD RIGHT-OF-WAY MONUMENT
 - (C) = CALCULATED DATA
 - (D) = LEGAL DESCRIPTION DATA
 - (M) = FIELD MEASURED DATA
 - (P) = RECORD PLAT DATA
 - MES = MITERED END SECTION
 - PVC = POLYVINYL CHLORIDE PIPE
 - RCP = REINFORCED CONCRETE PIPE
 - INV = INVERT
 - SPOT ELEVATION, NAVD 1988
 - LIGHT POLE
 - ELECTRIC BOX
 - GAS VALVE
 - 4" BOLLARD
 - CONCRETE UTILITY POLE
 - GUY ANCHOR
 - WATER VALVE
 - BACKFLOW PREVENTER
 - WATER METER
 - FIRE HYDRANT
 - FIRE DEPARTMENT CONNECTION
 - WELL
 - CATCH BASIN WITH GRATE INLET
 - SANITARY SEWER CLEAN-OUT
 - SANITARY SEWER MANHOLE
 - STORM SEWER MANHOLE
 - TELEPHONE PEDESTAL
 - CABLE PEDESTAL
 - IRRIGATION VALVE OR METER
 - COCONUT PALM
 - DATE PALM
 - ROYAL PALM
 - SABAL PALM
 - HARDWOOD TREES WITH TRUNK DIAMETER

LINE TABLE		
LINE	BEARING (M)	DISTANCE (M)
L1	N36°02'49"W	50.25'
L2	N34°50'51"W	49.54'
L3	N35°36'07"W	50.28'
L4	N35°32'35"W	51.60'
L5	N36°39'27"W	49.14'
L6	N34°37'58"W	28.12'
L7	N34°37'58"W	22.98'
L8	N35°24'06"W	50.75'
L9	N34°28'11"W	49.28'
L10	N33°45'01"W	90.37'
L11	N51°08'32"W	44.18'
L12	N39°08'57"W	25.19'
L13	N29°47'26"W	55.12'
L14	N12°15'34"W	44.64'
L15	N29°36'33"W	7.21'
L16	N00°49'00"W	165.16'
L17	S37°43'00"E	55.31'
L18	N52°17'00"E	93.95'
L19	S64°47'26"E	5.34'

CURVE TABLE		
CURVE	DELTA (M)	RADIUS (M)
C1	4°24'33"	2331.83'
C2	1°44'45"	2336.83'

CURVE TABLE				
CURVE	DELTA (D)	RADIUS (D)	ARC (D)	CHORD BEARING (D)
C1	4°26'26"	2331.83'	180.72'	N28°39'47"W
C2	1°47'56"	2336.83'	73.39'	N25°32'35"W



10881 Bonto Beach Road SE
Bonto Springs, FL 33428
www.chw-inc.com
est. 1988

CHW
Professional Consultants

DESIGNED BY: JVN
CHECKED BY: TLR
FIELD BOOK: 207/71

DRAWING SCALE: 1" = 40'
REVISION DATE:
REVISION BY:

COMPUTER FILE: 230546
SURVEY DATE: 08/07/2023
SIGNATURE DATE: 09/27/2023

CERTIFIED TO: PARAGON FINANCIAL SERVICES

THIS MAP PREPARED BY: JES M. CONDON, PSM
LICENSED SURVEYOR AND MAPPER

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Page 330 of 407

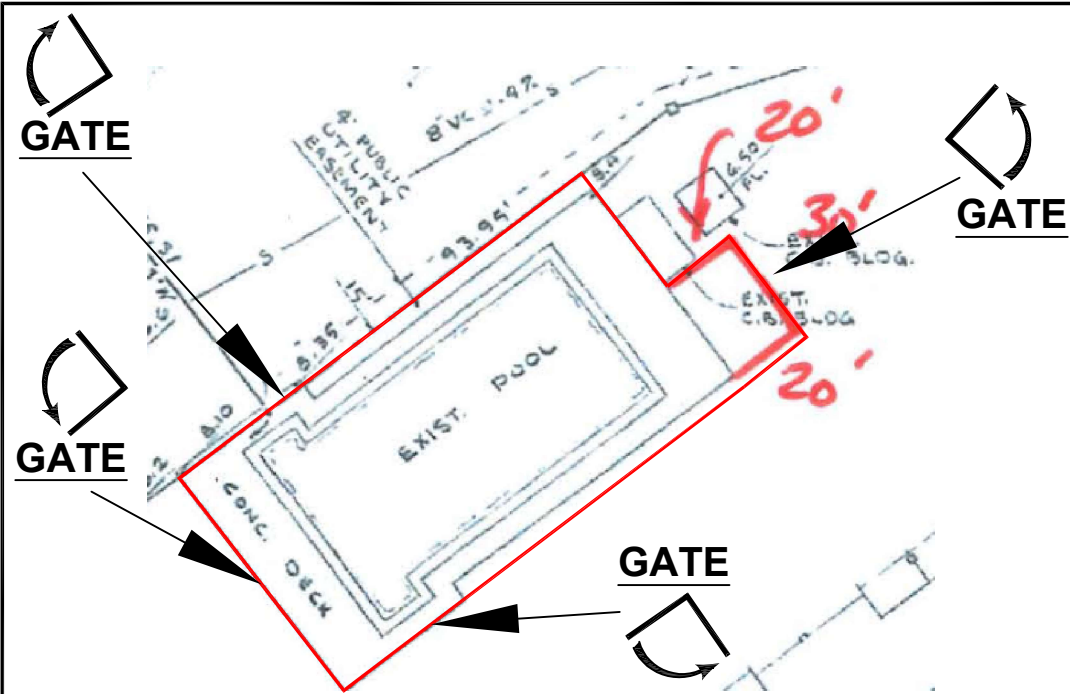
2 LINE POOL FENCE AND GATE- DESIGN & DIMENSIONS ARE BASED ON ARCHITECTURAL PLANS AND SALES DEPARTMENT TAKE-OFF'S . THESE DETAILS MAY BE ADJUSTED TO SUIT ACTUAL ON-SITE MEASUREMENTS AND CONDITIONS

- DESIGN STATEMENT:
- APPLICABLE CODES, REGULATIONS & STANDARDS:
1. THE 2020 FLORIDA BUILDING , 7TH EDITION SPECIFICALLY
 2. ASCE/ SEI 7-16: MINIMUM DESIGN LOADS ON BUILDERS AND OTHER STRUCTURES
 3. ACI 318-14 BUILDING CODE REQUIREMENTS FOR STRUCTURAL CONCRETE
 4. ALUMINUM DESIGN MANUAL 2015 WIND LOADS
-
1. BUILDING RISK CATEGORY = II
 2. BASIC WIND SPEED = 160 MPH
 3. EXPOSURE CATEGORY = D

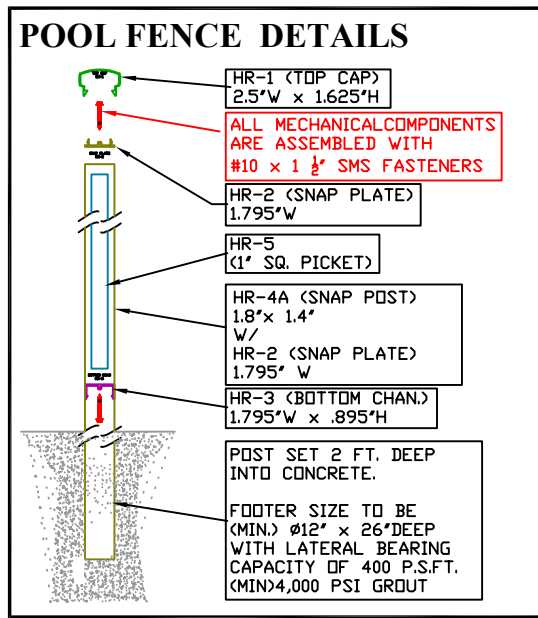
PROJECT ADDRESS

LEONARDO ARMS
7400 ESTERO BLVD.
FORT MYERS BEACH, FL 33931

SITE PLAN



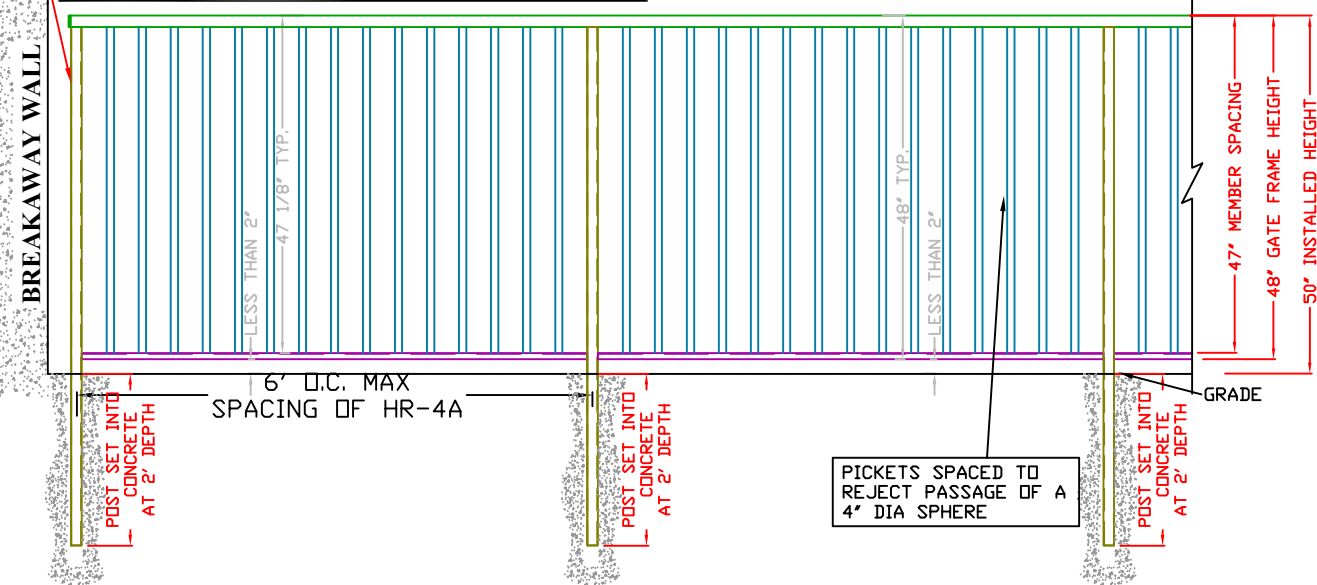
APPROX. 370 FT. TOTAL OF FENCE AND GATES



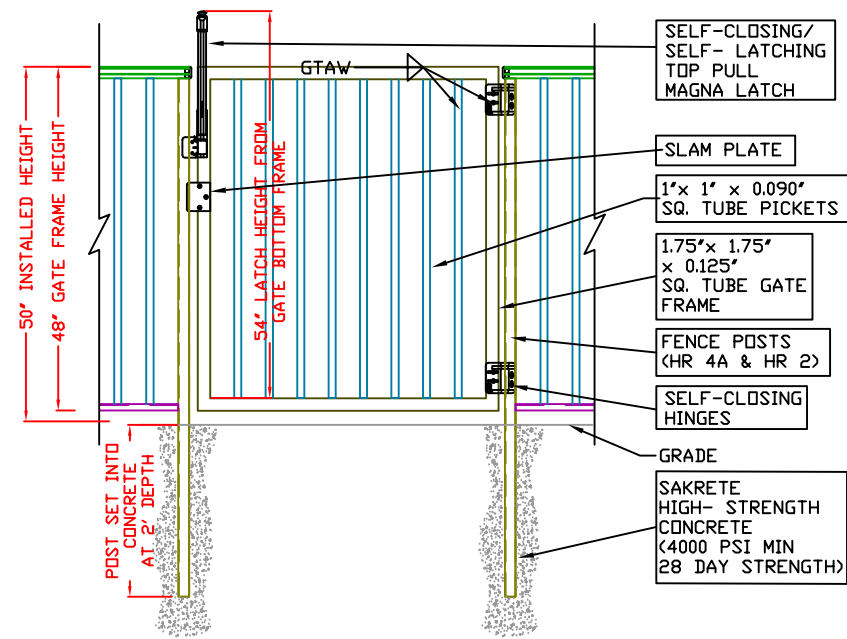
FREE STANDING FENCE TERMINATES AT POST. FENCE MAKES NO CONTACT WITH BREAKAWAY WALL

FE FLORIDA ENGINEERING LLC
4161 TAMiami TRAIL, UNIT 101
PORT CHARLOTTE, FLORIDA 33952
(941) 391-5980
www.flengineeringllc.com
PROJECT NO. 2324025 CA CERT. #30782

48 1/2 " HIGH 2 LINE POOL FENCE



QT. 4 42 "W x 48 1/2 "H GATE(S)



~~Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold and disburse them as provided in Paragraph 9, next following.~~

9. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE - If any part of the common elements or units shall be damaged or destroyed by casualty, the same shall be repaired or replaced unless such damage rendered 80% or more of the units in the Condominium untenable, and 80% of the owners' condominium vote against repair or replacement, in which event the proceeds shall be distributed to the unit owners and their mortgagees, as their interests may appear, and the condominium shall be terminated as provided in Paragraph 14 following.

9.1. ANY SUCH RECONSTRUCTION OR REPAIR shall be substantially in accordance with the as-built plans and specifications.

~~9.2. CERTIFICATE --- The Insurance Trustee may rely upon a Certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver this certificate as soon as practical.~~

9.3. ESTIMATE OF COSTS - Immediately after a casualty causing damage to property which the Association under Paragraph 8 has the responsibility to insure, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property insofar as reasonably possible in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

9.4. ASSESSMENTS - If the proceeds of insurance will not be sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any) assessment or charge shall be made against the unit owners in the Condominium who own the affected property in proportion to the damage suffered by such units in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair such funds are insufficient, special assessment or charge shall be made against such unit owners in the same fashion in sufficient amounts to provide funds for the payment of such costs.

OFF 996P50351

It is specifically provided that those units which have suffered damage which is covered by insurance shall pay the insurance deductible amount, if any.

9.5. CONSTRUCTION FUNDS - The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance ~~held by the Insurance Trustee~~ and funds collected by the Association from assessments and charges against unit owners, shall be disbursed in payment of such costs ~~by the Insurance Trustee and the Association, upon the written request of the Association, signed by an Officer of the Association and by the Architect or Contractor in charge of the work who shall be selected by the Association, setting forth the sum then requested either has been paid by the Association or is justly due to persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials and the amounts so paid or now due.~~

11.1. NO OWNER may sell, lease, give or dispose of a unit or any interest therein in any manner without the written approval of the Association except to another unit owner. No lease may be for less than four consecutive weeks. Only entire units may be leased. ~~All leases must expressly state that the lessee will abide by all of the condominium documents and that failure to do so is a material breach of the lease which will be a cause for forfeiture of the lease.~~

~~The owner of each unit, by this Declaration, grants to the Condominium Association the authority to act and to bring proceedings against lessees or tenants in the owner's name for violations of the documents, including eviction and termination.~~

All leases must contain the agreement of the lessee(s) to abide by all the covenants of the condominium documents and must provide that a violation of the documents is a breach and event of default of the lease and grounds for termination and that the lessee agrees that the Association may proceed directly against such lessee(s) and that the lessee(s) shall be responsible for the Association's costs and expenses, including attorney's fees, at all trial and appellate levels. That if such costs and fees are not paid by the lessee(s), that the Unit Owner agrees to pay them. Each Unit Owner by acceptance of the deed to a unit and by the terms of this declaration appoints the Association as owner's agent to bring actions in owner's name and at owner's expense including damages, termination and eviction. The rules and

lent
?

regulations must be provided to the lessee(s) by the owner or rental agent to read.

11.2. NO OWNER MAY MORTGAGE his unit without the written approval of the Association except to an institutional lender regularly engaged in the business of making residential first mortgage loans, provided that a unit owner who sells his unit needs no approval to take back a purchase money mortgage.

11.3. THE APPROVAL OF THE ASSOCIATION SHALL be obtained as follows:

11.4. WRITTEN NOTICE SHALL BE GIVEN the Association by the owner of his intention to sell, lease, transfer in any fashion or encumber his interest. The notice shall include the name and address of the proposed lessee acquirer or lender and a correct and complete copy of the proposed documents to be executed to effectuate the transaction. The Association may require such other and further information as it deems reasonably necessary and may impose a charge not to exceed an amount permitted by law. No charge shall be made in connection with the extension or renewal of a lease. The Association may require pursuant to F.S. 718.112(2)(i) as a condition to permitting the rental of a unit that a security deposit in an amount determined by the Board of Directors, based on a percentage of the monthly rent be deposited into an escrow account to be maintained by the Association to protect against damages to the common elements, areas or Association property. Within 15 days after a tenant vacates the premises, the Association shall refund the full security deposit or give written notice to the tenant of its claim made against the security. Disputes under this paragraph shall be handled in the same fashion as disputes concerning security deposits under F. S. 83.49.

AMENDMENT TO BY-LAWS

1.2. FISCAL YEAR - The fiscal year of the Association commences on ~~November 1st~~ April 1st and ends ~~October 31st~~ March 31st each year.

24.00

2470828

OFF 996 PG 0349

C E R T I F I C A T E

THE UNDERSIGNED being President and Secretary of LEONARDO ARMS BEACH CLUB CONDOMINIUM ASSOCIATION UNIT 1, INC., a Florida non-profit corporation, do hereby certify that the attached Amendment to Declaration and By-Laws was duly adopted and ratified at the Annual meeting of the Association members and Directors held on the 9th day of February, 1988, by the required vote of the owners and Board of Directors of Leonardo Arms Beach Club Condominium Association Unit 1, Inc.

WITNESSES

LEONARDO ARMS BEACH CLUB
CONDOMINIUM ASSOCIATION
UNIT 1, INC.

By

President

ATTEST:

Secretary

STATE OF FLORIDA

COUNTY OF LEE

I HEREBY CERTIFY that on this 3rd day of June, 1988, before me personally appeared B. Rogers and K. Jones, President and Secretary, respectively of Leonardo Arms Beach Club Condominium Association Unit 1, Inc., to me known to be the persons who signed the foregoing instrument as such individuals and acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned and that the said instrument is the act and deed of said Association.

WITNESS my signature and official seal the day and year last aforesaid.

MY COMMISSION EXPIRES

NOTARY PUBLIC

NOTARY PUBLIC STATE OF FLORIDA
AT COMMISSION EXP. MAY 24, 1991
BONDED THRU GENERAL INS. UMO.

This instrument prepared by:

Robert J. Grogan

President

7400 Estero Blvd. #406

Ft. Myers Bch, Florida 33931

RECORD VERIFIED - CHARLIE GREEN, CLERK

BY M. J. ROBINSON, D.C.

LEONARDO ARMS
CONDOMINIUM ASSOCIATION

7400 Estero Boulevard
Fort Myers Beach, Florida
33931

15 May 1984

To: Unit Owners
Unit 1
Leonardo Arms Beach Club and Condominium

Subjects: Semi-Annual Report
Amended Documents
John Carl

Dear Unit Owners,

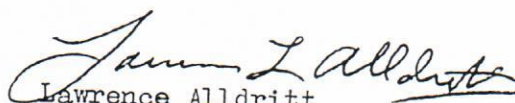
1. Attached hereto is the Semi-Annual Financial Report for Leonardo Arms, Unit 1.

2. This is to advise that the Amended Declaration of Condominium together with the Amended By-Laws have been duly recorded in O. R. Book 1717, Page 3727 thru 3758, Public Records of Lee County, Florida. Your copy of this letter should be attached to the proposed amended documents which were mailed to you for approval in January.

3. As you may know, John Carl, our maintenance man for the past eleven years retired on 12 May 1984. It was considered prudent to give John a retirement gift on behalf of the entire association, Unit 1, rather than trying to inform each owner of the event and soliciting funds on such short notice. John was given a check for \$500 for his years of devoted service and has acknowledged this gift with a "Thank You" card on our bulletin board.

This amounts to approximately \$7.00 per apartment and unit owners who desire to participate should please send a separate check for this amount, indicating "Retirement Fund", to our association.

Wishing you the best of health and happiness,


Lawrence Alldritt
President, Unit 1

January 13, 1984

TO ALL APARTMENT OWNERS OF LEONARDO ARMS UNIT I:

Here are the amended documents that you have read about in the minutes for the last eighteen months. It has taken more work and more time to complete these than was anticipated, but we feel that they are very much needed and that the job has been well done in bringing our documents up to date with the Florida Condominium Law and the other Florida Statutes that govern us. There have been many changes in these laws since our documents were written over fourteen years ago.

Please read them thoroughly as soon as possible and submit any questions in writing to Annetta Hale, Apt. 303 referring to the document and paragraph by number. This will enable us to give you accurate and complete answers in a minimum of time at the annual meeting before the votes are cast.

These amended documents should be kept along with the parts of the original documents mentioned in the Amended Declaration, paragraph 4.11, will compose your complete set of documents which should be passed on to future owners.

Please bring your ballot to the meeting or send your proxy indicating how you wish to vote.

BOARD OF ADMINISTRATORS
LEONARDO ARMS UNIT I

Annetta Hale

Annetta Hale
Vice President

M. F. Ebeling
7400 Estero Boulevard
Fort Myers Beach, Fla. 33931

THIS AMEND. DECLARATION OF CONDOMINIUM and attachments hereto made and entered into this _____ day of _____, 19____.

WITNESSES:

LEONARDO ARMS BEACH CLUB CONDOMINIUM ASSOCIATION, UNIT 1, INC., a Florida corporation

BY: _____ (SEAL)
PRESIDENT

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this _____ day of _____, 19____, by _____ as President of LEONARDO ARMS BEACH CLUB CONDOMINIUM ASSOCIATION, UNIT 1, INC., a Florida corporation, on behalf of said corporation.

NOTARY PUBLIC

My Commission Expires:

(SEAL)

ALLEN, KNUDSEN,
SWARTZ,
DIERCKST, PHOADS
& EDWARDS, P.A.
ATTORNEYS AT LAW
2112 FIRST STREET
P.O. BOX 1000
FORT MYERS, FLORIDA

AMENDED BY-LAWS
OF
LEONARDO ARMS BEACH CLUB CONDOMINIUM
ASSOCIATION, UNIT I, INC.

1. IDENTITY - These are the By-Laws of Leonardo Arms Beach Club Condominium Association, Unit I, Inc., a nonprofit Florida corporation formed for the purpose of administering Leonardo Arms Beach Club Condominium, Unit I, which is located at Fort Myers Beach, Florida, upon the lands described in the original Declaration of Condominium. (The corporation shall hereafter be referred to as the Association.)

1.1. OFFICE - The office of the Association shall be at Fort Myers Beach, Florida.

1.2. FISCAL YEAR - The fiscal year of the Association commence on November 1st and end October 31st each year.

1.3. SEAL - The seal of the Association shall bear the name of the Association, the word "Florida," and the year of establishment.

2. MEMBERS' MEETINGS

2.1. ANNUAL MEMBERS' MEETINGS shall be held at the Condominium or at such other convenient location as may be determined by the Board of Directors, at 8:00 p.m. the second Tuesday in February each year, for the purpose of electing Directors and of transacting any business authorized to be transacted by the members.

2.2. SPECIAL MEMBERS' MEETINGS shall be held whenever called by the President, Vice President or by a majority of the Board of Directors and when called by written notice from 10% of the Association voting interests.

2.3. NOTICE OF MEMBERS' MEETINGS - Notice of the annual meeting shall be sent to each unit owner by United States mail, unless waived in writing, at least 30 days prior to the annual meeting. A post office certificate of mailing shall be obtained and retained as proof of such mailing. Written notice of the meeting shall also be posted in a conspicuous place on the condominium property at least 14 days prior to the annual meeting.

2.4. The Board of Administration shall also mail copies of the proposed annual budget of common expenses to the unit owners not less than 30 days prior to the meeting at which the budget will be considered.

2.5. Unit owners may waive notice of specific meetings and may take action by written agreement without meetings, including the use of paper ballots, provided that no such practice may preclude nominations from the floor for the election of Directors per Chapter 718, Florida Statutes.

2.6. Notice of a special meeting called by the Board at the written request of 10% of the owners because of a budget exceeding 115% of that of the preceding year requires not less than 10 days' written notice to each unit owner.

2.7. Notice of other special meetings not covered above shall be in writing and delivered or mailed to each member first class, postage prepaid not less than 10 days prior to the meeting.

2.8. All notices of meetings shall state clearly and particularly the purpose or purposes of the meeting.

2.9. A QUORUM at members' meetings shall consist of persons entitled to cast a majority of the voting interests of the entire membership. Decisions made by owners of a majority of the units represented at a meeting at which a quorum is present shall be binding and sufficient for all purposes except such

decision as may by law or the documents require a larger percentage in which case the percentage required in the Documents or law shall govern.

2.10. EACH UNIT SHALL have one indivisible vote. If multiple owners of a unit cannot agree on the vote, it will not be counted.

2.11. PROXIES - Votes may be cast in person or by proxy. Proxies shall be in writing, signed and dated and shall be valid only for the particular meeting designated therein and must be filed with the Secretary before or at the meeting. Restricted proxies may be used which direct the proxyholder how to vote on issues.

2.12. APPROVAL OR DISAPPROVAL of a unit upon any matter, whether or not the subject of any Association meeting, shall be subject to 2.10. above.

2.13. If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present. The members may also act by written agreement without meetings when desired.

2.14. THE ORDER OF BUSINESS AT ANNUAL MEMBERS' MEETINGS and, as far as applicable at all other members' meetings, shall be:

- (a) Election of a Chairman of the meeting, unless the President or Vice President of the Association is present when he (or she) shall preside.
- (b) Calling of the roll and certifying of proxies.
- (c) Proof of Notice of meeting or waiver of notice.
- (d) Reading and disposal of any unapproved minutes.
- (e) Reports of Directors.
- (f) Reports of Committees.
- (g) Election of Directors.
- (h) Unfinished business.
- (i) New business.
- (j) Adjournment.

3. BOARD OF DIRECTORS

3.1. MEMBERSHIP - The affairs of the Association shall be managed by a Board of Directors. Boards shall be composed of any odd number from three to nine that the owners may decide. Each Director shall be a person entitled to cast a vote in the meetings of the Association.

3.2. DESIGNATION OF DIRECTORS shall be in the following manner:

3.3. Members of the Board of Directors shall be elected by a majority of those present and voting in person or by proxy at the annual meeting of the members of the Association.

3.4. Except as to vacancies provided by removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by a majority vote of the remaining Directors.

3.5. The Board of Directors, in order to permit the orderly transaction of business of the Condominium during the summer months and at other times when a majority of the Board cannot participate, may appoint an executive committee of at least two Directors which shall have the same authority as a majority of the full Board.

3.6. THE TERM OF EACH DIRECTOR'S SERVICE shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

3.7. THE ORGANIZATION MEETING of the newly elected Board of Directors shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present. Unless otherwise noticed, it shall be presumed to immediately follow the annual meeting.

3.8. REGULAR MEETINGS OF THE BOARD OF DIRECTORS may be held at such time and place as shall be determined from time to time by a majority of the

Directors. Notice of regular meetings shall be given to each Director personally or by mail, telephone or telegraph at least two days prior to the day named for such meeting.

3.9. SPECIAL MEETINGS OF THE DIRECTORS may be called by the President and must be called by the Secretary at the written request of 1/3 of the Directors. Not less than three days' notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, except in an emergency.

3.10. WAIVER OF NOTICE - Any Director may waive notice of a meeting before, at or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

3.11. MEETINGS OF THE BOARD OF DIRECTORS shall be open to all unit owners to attend and listen but not be heard or participate (unless a majority of the Directors consent thereto) and notice of meetings shall be posted conspicuously on the condominium property 48 hours in advance for the attention of unit owners, except in an emergency.

3.12. A QUORUM AT DIRECTORS' MEETINGS shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

3.13. THE PRESIDING OFFICER at Directors' meetings shall be the President of the Board if such an officer has been elected; and if none, then the Vice President shall preside. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

3.14. DIRECTORS SHALL SERVE WITHOUT PAY but shall be entitled to reimbursement for expenses reasonably incurred.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS - All of the powers and duties of the Association existing under the Condominium Act, Amended Declaration of Condominium and these Amended By-laws shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees subject only to the approval by unit owners when such is specifically required. Such powers and duties of the Directors shall include, but shall not be limited to, the following;

4.1. TO MAKE AND COLLECT ASSESSMENTS AGAINST members to defray the costs of the Condominium.

4.2. TO USE THE PROCEEDS OF ASSESSMENTS in the exercise of its powers and duties.

4.3. THE MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION of the condominium property.

4.4. THE RECONSTRUCTION OF IMPROVEMENTS AFTER CASUALTY and the further improvement of the property.

4.5. TO APPROVE OR DISAPPROVE PROPOSED TRANSACTIONS in the manner provided by the Condominium Declaration.

4.6. TO ENFORCE by legal means the provisions of applicable laws and the condominium documents.

4.7. TO CONTRACT FOR MANAGEMENT of the Condominium.

4.8. TO PAY TAXES AND ASSESSMENTS which are liens against any part of the Condominium other than individual units and the appurtenances thereto, and to assess the same against the unit subject to such liens.

4.9. TO CARRY INSURANCE for the protection of the unit owners and the Association against casualty and liabilities.

4.10. TO PAY THE COST OF ALL UTILITY SERVICES rendered to the Condominium and not billed to owners of individual units.

4.11. TO EMPLOY PERSONNEL and designate other officers for reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

4.12. TO BRING AND DEFEND SUITS, MAKE AND EXECUTE CONTRACTS, DEEDS, MORTGAGES, LEASES and other instruments by its officers and to own, lease, convey and encumber real and personal property. To grant easements and licenses over the condominium property necessary or desirable for proper operation of the project.

4.13. THE DIRECTORS MAY, pursuant to F.S. 617.10(3), impose fines in such reasonable sums as they deem appropriate, not to exceed \$150.00, against unit owners for violations of the condominium documents, including the Rules and Regulations, by owners or their guests or lessees and to be secured and collect the fine in the same manner as an assessment for common expenses. Each day of violation shall be a separate violation. No fine shall be imposed until the owner(s) has been given an opportunity to be heard before the Board.

4.14. TO APPOINT COMMITTEES including nominating and executive. All committees and members shall serve at the pleasure of the Board.

5. OFFICERS

5.1. THE EXECUTIVE OFFICERS of the Association shall be the President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected annually by and from the Board of Directors and who may be peremptorily removed by a majority vote of the Directors at any meetings. Any person may hold two or more offices except that the President shall not also be the Secretary or Assistant Secretary.

5.2. THE PRESIDENT shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of a corporation.

5.3. THE VICE PRESIDENT shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

5.4. THE SECRETARY shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep and have custody of the records of the Association, except those of the Treasurer and shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President. The Assistant Secretary will perform the duties of the Secretary when the Secretary is absent.

5.5. THE TREASURER shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of the Treasurer of a corporation.

5.6. THE COMPENSATION of all officers and employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association.

5.7. INDEMNIFICATION - Every Director of the Association shall be indemnified by the Association against all expenses and liabilities including counsel fees reasonably incurred or imposed upon him in connection with any

proceedings to which he may be a party, or in which he may become involved by reason of his being or having been a Director of the Association or any settlement thereof, whether or not he is a Director at the time such expenses are incurred, except in cases wherein the Director is adjudged guilty of nonfeasance, misfeasance or malfeasance in the performance of his duties or shall have breached his fiduciary duty to the members of the Association. Provided, however, that the Association shall not be liable for payment of a voluntary settlement unless it is first approved by the Board of Directors.

6. MINUTES OF ALL MEETINGS OF UNIT OWNERS and of the Board of Directors shall be kept in a businesslike manner and these, plus records of all receipts and expenditures and all other records, shall be available for inspection by unit owners and Board members at all reasonable times.

7. FISCAL MANAGEMENT - Shall be in accordance with the following provisions:

7.1. BUDGET - A proposed annual budget of common expenses shall be prepared by the Board of Directors which shall include all anticipated expenses for operation, maintenance and administration of the Condominium including insurance, management fees, if any, and which shall accrue a reserve for deferred maintenance per F.S. 718.112 unless waived by the owners. It will contain a reasonable allowance for contingencies and provide funds for all unpaid operating expense previously incurred.

7.2. A copy of the proposed annual budget shall be mailed to the unit owners not less than 30 days prior to a meeting of the owners at which the budget will be considered together with a notice of the meeting. Should a quorum fail to be present or represented at the meeting or fail to adopt the budget presented or a revised budget then, and in that event, the Directors shall have the authority to adopt a budget.

7.3. ASSESSMENTS - The shares of the unit owners of the common expenses shall be made payable for three months in advance and shall become due on the first day of each such period. The amounts shall be no less than are required to provide funds in advance for payment of all the anticipated operating expenses, the reserves, unless waived, and for all of the unpaid operating expense previously incurred.

7.4. EMERGENCY ASSESSMENT - Assessments for the expenses of emergencies which cannot be paid from the contingency account shall be made only by the Board of Directors, and the time of payment shall likewise be determined by them.

7.5. ASSESSMENT ROLL - The assessments for common expenses according to the budget shall be set forth upon a roll of the units which shall be available for inspection at all reasonable times by unit owners. Such roll shall indicate for each unit the name and address of the owner, the assessments paid and unpaid. A certificate made by a duly authorized representative or the Directors as to the status of a unit's account may be relied upon for all purposes for any person for whom made other than the unit owner.

7.6. LIABILITY FOR ASSESSMENTS - A unit owner shall be liable for all assessments coming due while he is the owner of a unit, and such owner and his grantees after a voluntary conveyance shall be jointly and severally liable for all unpaid assessments due and payable up to the time of such voluntary conveyance. Provided, however, that a first mortgagee who acquires title by foreclosure or deed in lieu of foreclosure shall not be liable for unpaid assessments of prior owners unless they are evidenced by a lien recorded prior to the mortgage. Such liability may not be avoided by waiver of the use or enjoyment of any common elements or by abandonment of the unit for which the assessments are made.

7.7. LIEN FOR ASSESSMENTS - The unpaid portion of an assessment which is due, together with late charges, costs, interest and reasonable attorneys' fees for collection, shall be secured by a lien upon:

7.8. THE UNIT and all appurtenances thereto when a notice claiming the lien has been recorded by the Association in accordance with the requirements of Florida Statute 718.116. Such lien shall be subordinate to any prior recorded mortgage on the unit.

7.9. ALL TANGIBLE PERSONAL PROPERTY located in the unit except that such lien shall be subordinate to prior liens and security interests of record.

7.10. COLLECTION -- INTEREST -- LATE CHARGES: APPLICATION OF PAYMENTS
Assessments paid on or before ten days after the date due shall not bear interest, but all sums not paid on or before ten days may bear interest at the rate of 18% per annum for the date due until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due. All interest collected shall be credited to the common expense account. Assessments paid from 10 to 30 days late are subject to a late charge of \$5.00; from 30 to 59 days late to a late charge of \$25.00; from the 60th day a late charge of \$50.00.

7.11. COLLECTION -- SUIT - The Association, at its option, may enforce collection of delinquent assessment accounts by suit at law or by foreclosure of the lien securing the assessments, or by any other remedy available under the laws of the State of Florida, and in any event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment or decree, together with interest thereon at the rate of 18% per annum and all costs incident to the collection and the proceedings, including reasonable attorneys' fees. Per F.S. 718.116, the Association must deliver or mail by certified mail to the unit owner a written notice of its intention to foreclose the lien 30 days before commencing foreclosure.

7.12. ACCOUNTS - All sums collected from assessments may be mingled in a single fund, but they shall be held in trust for the unit owners in the respective shares set forth in the Condominium documents and shall be credited to accounts from which shall be paid the expenses for which the respective assessments are made. These accounts shall be as follows:

7.13. COMMON EXPENSE ACCOUNT - to which shall be credited collections of assessments for all common expenses.

7.14. THE DEPOSITORY of the Association shall be such bank or banks or federal savings and loan associations in Florida as shall be designated from time to time by the Directors and in which the monies for the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

7.15. A REPORT of the accounts of the Association shall be made annually including, but not limited to, a complete financial report of actual receipts and expenditures for the previous 12 months. It shall comply with F.S. 718.111(13). A copy of the report shall be furnished to each member within 30 days after its completion and delivery to the Directors or at the annual meeting.

7.16. FIDELITY BONDS shall be required by the Board of Directors from all Officers and Directors of the Association who control or disburse Association funds. The amount of such bonds shall be determined by the Directors and shall be not less than required by law. The premiums on such bonds shall be paid by the Association.

8. PARLIAMENTARY RULES - Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Declaration, the By-Laws of the Association or with the laws of the State of Florida.

9. AMENDMENTS - Amendments to the By-Laws shall be proposed in the following manner:

9.1. NOTICE of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

9.2. A RESOLUTION adopting a proposed amendment must receive approval of a majority of the voting interests of the Association. Members may express their approval in writing.

9.3. INITIATION - An amendment may be proposed by either a majority of the Directors or by 10% of the membership of the Association.

9.4. EFFECTIVE DATE - An amendment when adopted shall become effective only after being recorded as an attachment to an amendment to the Declaration according to law.

9.5. THESE BY-LAWS shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium, or the Condominium Act.

9.6. PROPOSAL TO AMEND EXISTING BY-LAWS shall contain the full text of the By-Laws to be amended. New words shall be underlined and words to be deleted shall be lined through with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF BY-LAW. SEE BY-LAW NUMBER _____ FOR PRESENT TEXT."

The foregoing were adopted as the Amended By-Laws on this _____ day of _____, 19____.

PRESIDENT

EXHIBIT "C"

AMENDED RULES AND REGULATIONS

LEONARDO ARMS BEACH CLUB CONDOMINIUM, UNIT I

1. Only passenger automobiles may be parked in the areas provided for that purpose. Vehicles other than passenger automobiles shall not remain longer than overnight. Boats shall not be maintained in the automobile parking area nor in the common area. Bicycles shall be parked only in the areas provided for that purpose. Vehicles illegally parked may be towed away pursuant to Florida Statutes, Chapter 715.

2. Use of the recreational facilities will be in a manner to respect the rights of others. Use will be controlled by regulations issued from time to time, but in general, such use will be prohibited between the hours of 11:00 p.m. and 8:00 a.m. Children under the age of eighteen (18) are barred from the swimming pool area from 4:00 p.m. to 5:00 p.m. daily.

3. No radio or television antenna or wiring for any purpose may be installed on the exterior of the building without the written consent of the Association.

4. No sign, advertisement, notice or other lettering other than nameplates on unit doors shall be exhibited, inscribed, painted or affixed that is visible from the exterior of a unit without the prior written consent of the Association.

5. Common areas must not be obstructed or encumbered or used for improper purposes.

6. No owner may operate or keep washers or dryers within his unit, and no washlines of any kind will be maintained so as to be visible from the common areas. No one shall throw or let fall any items from the windows.

7. Servants and domestic help of apartment owners shall not gather or lounge in the common areas.

8. All apartments shall be used for single family residential purposes only as defined in the Amended Declaration.

9. All apartments, except ground floor units, shall be carpeted except in entryways, bathrooms and kitchens. All carpets shall be medium to heavy carpet and pad.

10. Disposition of garbage and trash shall be only by the use of garbage disposal units or by use of receptacles approved by the Association.

11. No animals shall be allowed in the Condominium except for original owners existing dogs and cats at the time the unit was purchased by them which may not be replaced after they die and which must be kept on a leash when outside a unit. Birds and tropical fish are permitted. Birds must be kept caged when outside a unit. If the Association shall determine that any pet shall become a nuisance to others, the pet shall be removed from the premises.

12. No occupant may make or permit any disturbing noises in the building whether made by himself, his family, friends or servants, nor do or permit anything to be done by such persons that will interfere with the rights, comforts and conveniences of other occupants. No one may play or suffer to be played any musical instrument, phonograph, radio or television set in his unit between the hours of 11:00 p.m. and the following 8:00 a.m. at a level which disturbs or annoys other occupants of the Condominium.

13. No child under the age of thirteen (13) years shall be allowed as a permanent resident in the Condominium. Children should be supervised by an adult to prevent unsafe, noisy or destructive behavior. Children under the age of twelve (12) must be accompanied by an adult when using elevators or the recreation areas.

14. Personal items shall not be placed in the halls or on the staircase landings, although doormats are allowed. Linens, cloths, clothing, curtains, rugs or mops must not be shaken or hung from any of the windows, doors or balconies, but American flags may be hung from private balconies. No fire exits shall be obstructed in any manner.

15. Children under thirteen (13) may not maintain residence for a continuous period exceeding three months. Guests who will be in residence for more than a few days should be made known to the Association.

16. Leasing or renting of the apartment by an apartment owner is not prohibited, however, the approval of the Association is required in advance and the minimum rental period is four weeks. Please see the Amended Declaration, Paragraph 11. No more than four people may occupy rental units.

17. Owners must maintain their units in good condition and repair and may not make alterations to the common elements without prior approval from the Association.

18. The Association shall have a key to each unit. No one shall alter a lock or install a new lock without providing the Association with a key.

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19. All draperies and other types of interior window coverings or window casings facing the street shall be white or pastel shades.

20. Storm doors or shutters shall be white or aluminium color and shall be of design and materials approved by the Association in advance.

21. Owners must notify the manager in advance when their units will be occupied in their absence whether the occupants be family, friends or renters giving the same information as is required on rental requests. This is very important for security reasons.

22. All cooking on patios is prohibited.

23. Patios may be screened in but only according to the specifications approved by the Board on April 18, 1978.

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AMENDED DECLARATION OF CONDOMINIUM
OF
LEONARDO ARMS BEACH CLUB CONDOMINIUM, UNIT I
FORT MYERS BEACH, FLORIDA

1. RECITAL - This Condominium was created by a Declaration dated March 20, 1969 in which Leonardo Arms, Inc. was the developer. That Declaration is recorded in the Lee County, Florida Public Records in O.R. Book 520 at Page 725.

The submission of the land to the condominium form of ownership by that document is, and will remain, effective. It is the desire of the unit owners, however, to operate with modernized documents free of internal conflicts and obsolete references to the developer, hence this Amended Declaration.

2. PLAN OF DEVELOPMENT - The Condominium consists of one six story building with 12 units on each floor for a total of 72 units restricted to singlefamily residential purposes.

3. NAME - ASSOCIATION - The name of the Condominium Association is Leonardo Arms Beach Club Condominium Association Unit 1, Inc. This Association is incorporated as a nonprofit Florida corporation.

4. DEFINITIONS - The terms used herein shall have the meanings stated in the Condominium Act (Florida Statutes, Chapter 718) and as follows, unless the context otherwise requires:

4.1. ASSESSMENT - The share of the funds required for the payment of common expenses which from time to time is assessed against a unit owner.

4.2. ASSOCIATION - The Corporation responsible for the operation of the Condominium.

4.3. BOARD OF ADMINISTRATION - The Board of Directors responsible for administration of the Association.

4.4. COMMON ELEMENTS - The portions of the condominium property not included in the units as defined in Florida Statute 718.108, including:

4.5. The land.

4.6. All parts of the improvements which are not included within the units.

4.7. Easements.

4.8. Installations for the furnishing of services to more than one unit or to the common elements, such as electricity, water and sewer.

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4.9. COMMON EXPENSES - All expenses and assessments properly incurred by the Association for the condominium.

4.10. COMMON SURPLUS - The excess of all receipts of the Association over the common expenses.

4.11. CONDOMINIUM DOCUMENTS - The Declaration and its attached exhibits, which set forth the nature of the property rights in the Condominium and the covenants running with the land which govern these rights. All the condominium documents shall be subject to the provisions of the Declaration. Documents which are still in force as previously promulgated and which are not amended hereby are the Articles of Incorporation of the Association, the Architects Certificate, as previously amended December 16, 1969, as filed in O.R. Book 573, Page 809, Lee County Public Records, and Plat in O.R. Book 520, Page 749, Lee County Public Records, and Condominiums Plat Book 1, Pages 195-201, and amended Page 1 of 7 of Plat recorded with Architects Certificate in O.R. Book 570 at Page 709, Lee County Public Records.

4.12. CONDOMINIUM PARCEL - A unit together with the undivided share in the common elements which is appurtenant to the unit.

4.13. CONDOMINIUM PROPERTY - The lands and personal property, both tangible and intangible, subject to condominium ownership, whether or not contiguous and all improvements thereon and all easements and rights appurtenant thereto.

4.14. LIMITED COMMON ELEMENTS - Those portions of the common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.15. OPERATION - The administration and management of the condominium property.

4.16. PERSON - An individual, corporation, trustee or other legal entity capable of holding title to real property.

4.17. SINGULAR, PLURAL, GENDER - Whenever the context so permits, the use of the plural shall include the singular, the singular, the plural and use of any gender shall be deemed to include all genders.

4.18. UNIT - A part of the condominium property which is subject to exclusive ownership.

4.19. UNIT NUMBER - The letter, number or combination thereof which is designated upon the surveyor plans (Exhibit "B") and which is used as the identification of a unit.

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4.20. UNIT OWNER - The owner of a condominium parcel.

5. UNITS SHALL BE CONSTITUTED AS FOLLOWS:

5.1. REAL PROPERTY - Each unit and all appurtenances thereto, for all purposes, constitute a separate parcel of real property, which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the condominium property, subject only to the provisions of the condominium documents and applicable laws.

5.2. BOUNDARIES - Each unit shall be bounded as to both horizontal and perimetrical boundaries as below defined, whether they exist now or are created by construction, settlement or movement of the buildings, or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows and shall be determined in the following manner:

5.3. HORIZONTAL BOUNDARIES - The upper and lower boundaries of the units shall be:

5.4. UPPER BOUNDARY - The underside of the finished undecorated ceilings of the unit, extended to meet the perimetrical boundaries.

5.5. LOWER BOUNDARY - The upperside of the finished undecorated surface of the floors of the unit, extended to meet the perimetrical boundaries.

5.6. PERIMETRICAL BOUNDARIES - The perimetrical boundaries shall be the interior surfaces of the perimeter walls of the unit as shown on the surveyor plans and the interior surfaces of the unit's windows and doors that abut the exterior of the building or common areas. Where there exist porches or balconies exclusive to units, the unit boundaries are extended to include same within the unit.

5.7. EXCLUSIVE USE - Each unit owner shall have the exclusive use of his unit.

5.8. APPURTENANCES - The ownership of each unit shall include, and there shall pass as appurtenances thereto whether or not separately described, all of the right, title and interest of a unit owner in the condominium property which shall include, but not be limited to:

5.9. COMMON ELEMENTS - An undivided share of the common elements.

5.10. LIMITED COMMON ELEMENTS - The exclusive use (or use in common with one or more other designated units) of the following limited common elements that may exist:

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Garden area, storage locker, garage or other facilities (enclosed, screened, fenced or open).

5.11. The parking space or spaces assigned to the unit.

5.12. ASSOCIATION MEMBERSHIP and an undivided share in the common surplus and property, real and personal, held by the Association. Including the right of user for recreation purposes in favor of Leonardo Arms Units II and III unit owners in the common recreational elements and the same privileges in proportion to their interest to participate in the use, operation and management and to serve as officers and directors of a common integrated association for the purpose of the management of said common recreational elements, as established by the instrument dated July 23, 1970, and recorded in O.R. Book 638, Page 102, Lee County Public Records, provided that the Association and owners in these phases pay their proportionate share of the expenses of using these facilities as determined by the Association.

5.13. EASEMENT TO AIR SPACE - An exclusive easement for the use of the air space occupied by the unit as it exists at any particular time and as the unit may be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

5.14. EASEMENTS - The following non-exclusive easements to (as applicable) each unit owner, to the Association and its employees, agents and hired contractors, to utility companies, unit owners' families in residence, guests, invitees and to governmental and emergency services (but not to the general public), are hereby granted and created:

5.15. INGRESS AND EGRESS - Easements over the common areas for ingress and egress to units and public ways.

5.16. MAINTENANCE, REPAIR AND REPLACEMENT - Easements through the units and common elements for operation, maintenance, repair and replacements. Such access is to be only during reasonable hours except that access may be had at any time in case of emergency.

5.17. UTILITIES - Easements through the common elements for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services to other units and the common elements.

5.18. PUBLIC SERVICES - Access to the property and to the units for emergency, regulatory, law enforcement and other public services in the lawful performance of their duties.

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5.19. MAINTENANCE - The responsibility for the maintenance of the unit shall be as follows:

5.20. BY THE ASSOCIATION - The Association shall maintain, repair and replace at the Association's expense:

5.21. Such portions of the unit as contribute to the support of the building in which the unit is located including, but not limited to, the perimeter walls, columns, roof and floors. Also, wiring, piping, ductwork and other mechanical or electrical or other installations or equipment serving the common areas or more than one unit.

5.22. Provided that if the maintenance and repair and replacement of any of the above shall be made necessary because of the negligence, act or omission of a unit owner, his family, lessees, invitees and guests, in that event the work shall be done by the Association at the expense of the unit owner, and the cost shall be secured as an assessment.

5.23. All incidental damage caused to a unit by work done or ordered by the Association shall be promptly repaired by and at the expense of the Association.

5.24. BY THE UNIT OWNER - The responsibility of the unit owner shall be as follows:

5.25. To maintain, repair and replace at his expense, all portions of the unit except the portions to be maintained, repaired and replaced by the Association. The unit owner's responsibility specifically includes windows, window and balcony glass, doors (except wooden entrance doors which the Association will maintain), screens and associated hardware, appliances, fixtures, switches, fan motors, compressors, wiring, piping and ductwork serving only the particular unit, whether located inside or outside the unit.

5.26. A unit owner shall not paint or otherwise decorate or change the appearance of any portion of the building not within the interior walls of the unit or which is visible from the exterior of the unit, unless the written consent of the Association is obtained in advance. (This shall not be construed to require approval of interior shades, drapes or curtains (which shall be, or faced with, white or pastel tones) or for placing appropriate furniture on balconies, patios or terraces.)

5.27. ALTERATION AND IMPROVEMENT - No owner shall make any alterations in the portions of the improvements which are to be maintained by the Association or remove any portion thereof or make any additions thereto or

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do any work which would jeopardize the safety or soundness of the building or impair any easements.

5.28. COMMON ELEMENTS - The common elements and common surplus shall be owned by the unit owners in the shares shown upon Exhibit "B", the Surveyors Plat as previously recorded. Common expenses will be shared equally by each unit as provided by the Amendment to the original Declaration recorded in O.R. Book 782, Page 640, dated February 21, 1972, which is not hereby amended and which is incorporated herein and made a part hereof.

5.29. No action for partition of the common elements shall lie.

5.30. The maintenance and operation of the common elements shall be the responsibility of the Association which shall not, however, prohibit management contracts.

5.31. Each unit owner and the Association shall be entitled to use the common elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of owners of other units.

5.32. Material alteration of or substantial additions to the common elements may be effectuated only by amendment to the Declaration. Provided, however, that the Association is authorized to enter into agreements, to acquire leaseholds, memberships and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas and other facilities whether or not contiguous to the lands of the Condominium if they are intended to provide enjoyment, recreation or other use or benefit to the unit owners.

6. FISCAL MANAGEMENT - The fiscal management of the Condominium including budget, fiscal year, assessments, lien for and collection of assessments and accounts shall be as set forth in the By-Laws.

7. ASSOCIATION - The administration of the Condominium by the Board of Directors and its powers and duties shall be as set forth in the By-Laws.

8. INSURANCE - The insurance which shall be carried upon the property shall be governed by the following provisions.

8.1. ASSOCIATION TO PURCHASE - All insurance policies except those insuring an individual unit owner separately (see 8.2.) shall be purchased by the Association.

8.2. UNIT OWNERS - Each unit owner may obtain insurance at his own expense, affording coverage upon his personal property and for his personal liability, for owner or mortgagee title insurance and as the owner may desire.

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8.3. COVERAGE - CASUALTY - The buildings and all other improvements upon the land and all personal property owned by the Association shall be insured in an amount equal to the current insurable replacement value thereof (exclusive of excavation and foundations) as determined from time to time to account for inflation. Such coverage shall afford protection against:

8.4. LOSS OR DAMAGE BY FIRE, WINDSTORM and other hazards covered by the standard extended coverage endorsement.

8.5. SUCH OTHER RISKS as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the buildings, including but not limited to, flood insurance, vandalism and malicious mischief, if available.

8.6. PUBLIC LIABILITY AND PROPERTY DAMAGE in such amounts and in such forms as may be necessary to adequately protect the Association.

8.7. WORKERS COMPENSATION AND UNEMPLOYMENT COMPENSATION to meet the requirement of law.

8.8. PREMIUMS - Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expenses.

8.9. ALL INSURANCE POLICIES PURCHASED by the Association shall be for the benefit of the Association, and the unit owners and their mortgagees as their respective interests may appear and shall provide that all proceeds payable as a result of casualty losses in excess of \$10,000.00 shall be paid to any bank in Florida with trust powers as may be approved by the Association. Such bank is herein referred to as the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold and disburse them as provided in Paragraph 9, next following.

9. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE - If any part of the common elements or units shall be damaged or destroyed by casualty, the same shall be repaired or replaced unless such damage rendered 80% or more of the units in the Condominium untenable, and 80% of the owners' condominium vote against repair or replacement, in which event the proceeds shall be distributed to the unit owners and their mortgagees, as their interests may appear, and the condominium shall be terminated as provided in Paragraph 14 following.

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ATTORNEYS AT LAW
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FORT MYERS, FLORIDA

9.1. ANY SUCH RECONSTRUCTION OR REPAIR shall be substantially in accordance with the as-built plans and specifications.

9.2. CERTIFICATE - The Insurance Trustee may rely upon a Certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver this certificate as soon as practical.

9.3. ESTIMATE OF COSTS - Immediately after a casualty causing damage to property which the Association under Paragraph 8 has the responsibility to insure, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property insofar as reasonably possible in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

9.4. ASSESSMENTS - If the proceeds of insurance will not be sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premium, if any) assessment shall be made against the unit owners in the Condominium who own the affected property in proportion to the damage suffered by such units in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair, such funds are insufficient, special assessment shall be made against such unit owners in the same fashion in sufficient amounts to provide funds for the payment of such costs. It is specifically provided that those units which have suffered damage which is covered by insurance shall pay the insurance deductible amount, if any.

9.5. CONSTRUCTION FUNDS - The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against unit owners, shall be disbursed in payment of such costs by the Insurance Trustee and the Association, upon the written request of the Association, signed by an Officer of the Association and by the Architect or Contractor in charge of the work who shall be selected by the Association, setting forth that the sum then requested either has been paid by the Association or is justly due to persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials and the amounts so paid or now due.

9.6. SURPLUS - It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in a construction fund after payment of all

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costs of the reconstruction and repair for which the fund is established, such balance shall be repaid to the owners of the affected property who contributed to the fund in the same proportion as their contributions were made. If insurance proceeds constituted the entire fund, any excess shall become part of the common surplus.

9.7. INSURANCE ADJUSTMENTS - The Board of Directors has the exclusive right to adjust with insurance companies all losses under policies purchased by the Association.

10. USE RESTRICTIONS - The use of the property of the Condominium shall be in accordance with the Amended Rules and Regulations attached as Exhibit "C" and the following provisions:

10.1. LAWFUL USE - All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair upon condominium property shall be the same as the responsibility for the repair and maintenance of the property concerned as expressed earlier in this Declaration.

10.2. REGULATIONS - Reasonable regulations concerning the use of the condominium property may be made and amended from time to time by a majority vote of the Board of Directors. Copies of the regulations and amendments shall be furnished by the Association to all unit owners. No regulation may unlawfully discriminate against any group or class of users. No new or amended regulation affecting fundamental property rights may be enforced prior to approval by the owners. Changes in Exhibit "C" (Regulations) shall not be construed as amendments to this Declaration and need not be recorded in the Public Records.

10.3. USE OF THE UNITS is restricted to single family residential purposes only. Single family is defined to mean persons who are related by blood or marriage or persons who are living as a single economic unit under the same roof. The foregoing shall not be construed to restrict ownership of units which may be by natural persons, corporations, trusts or other entities, provided however that the occupancy of units owned by business entities shall be restricted to individuals who have been made known to the Association in advance of occupancy, and provided further that the use of such units shall be in compliance with all the same provisions of these documents applicable to units owned by natural persons.

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11. CONVEYANCE, DISPOSITION, FINANCING - In order to assure a community of congenial residents and protect the value of the units, the conveyance, disposal and financing of the units by any owner shall be subject to the following provisions:

11.1. NO OWNER may sell, lease, give or dispose of a unit or any interest therein in any manner without the written approval of the Association except to another unit owner. No lease may be for less than four consecutive weeks. Only entire units may be leased. All leases must expressly state that the lessee will abide by all of the condominium documents and that failure to do so is a material breach of the lease which will be a cause for forfeiture of the lease.

The owner of each unit, by this Declaration, grants to the Condominium Association the authority to act and to bring proceedings against lessees or tenants in the owner's name for violations of the documents, including eviction and termination.

11.2. NO OWNER MAY MORTGAGE his unit without the written approval of the Association except to an institutional lender regularly engaged in the business of making residential first mortgage loans, provided that a unit owner who sells his unit needs no approval to take back a purchase money mortgage.

11.3. THE APPROVAL OF THE ASSOCIATION SHALL be obtained as follows:

11.4. WRITTEN NOTICE SHALL BE GIVEN the Association by the owner of his intention to sell, lease, transfer in any fashion or encumber his interest. The notice shall include the name and address of the proposed lessee acquirer or lender and a correct and complete copy of the proposed documents to be executed to effectuate the transaction. The Association may require such other and further information as it deems reasonably necessary and may impose a charge not to exceed an amount permitted by law. No charge shall be made in connection with the extension or renewal of a lease.

11.5. IF A SALE, the Association must, within 30 days after receipt of the information required above, either approve the transaction, disapprove for cause, or upon the written demand of the owner, furnish an alternate purchaser it approves or itself elect to purchase, and the owner must sell to such alternate or to the Association upon the same terms set forth in the proposal given the Association or the owner may withdraw his proposed sale. If the Association fails or refuses within the allotted time to notify the owner of either approval or disapproval in writing, or if it fails to provide an alternate purchaser or

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make an election to purchase the unit itself then the Association shall conclusively be presumed to have approved the transaction, and the Association shall, upon demand, provide a certificate of approval.

11.6. AT THE OPTION OF THE OWNER OR THE ASSOCIATION, if a dispute as to price arises, it shall be submitted prior to any litigation to arbitration by two qualified real estate appraisers practicing in Southwest Florida. One shall be selected by each party, and the average of their appraisals shall be the agreed price; and a judgment of specific performance upon the arbitrators' average price may be entered in any court of jurisdiction. The arbitration expense shall be shared equally by the owner and the Association.

11.7. THE SALE SHALL BE CLOSED WITHIN 60 DAYS after an alternate purchaser has been furnished or the Association has elected to purchase or within 30 days of the arbitration award, whichever is later.

11.8. IF THE PROPOSED TRANSACTION IS A LEASE, GIFT, DEVISE or mortgage to a lender other than those types listed above, assignment of interest or other disposition than a sale, notice of disapproval of the Association shall be sent within thirty (30) days in writing to the owner or interest holder, and the transaction shall not be made.

11.9. NOTICE OF SUIT - An owner shall give notice to the Association of every suit or other proceedings which may affect the title to his unit, such notice to be given immediately after the owner receives knowledge thereof.

11.10. FAILURE TO COMPLY - Section 11.9 will not affect the validity of any judicial sale.

11.11. JUDICIAL SALES - No judicial sale of a unit nor any interest therein shall be valid unless the sale is a public sale with open bidding.

11.12. UNAPPROVED TRANSACTIONS - Any transaction which is not approved pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

12. COMPLIANCE AND DEFAULT - Each owner and the Association shall be governed by and shall comply with the terms of the condominium documents as they may be amended from time to time.

12.1. Failure to comply shall be grounds for relief, which relief may include but shall not be limited to an action to recover damages or injunctive relief or both. Actions may be maintained by the Association or by any unit owner.

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12.2. In any such proceeding, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as shall be awarded by the court.

12.3. In the event of a grievance of an owner against the Association, the Board of Directors or a member thereof, prior to the institution of litigation, written notice in detail of the grievance shall be given the Directors, and they shall be allowed a period of 20 days in which to try to resolve the grievance.

12.4. NO WAIVER OF RIGHTS - The failure of the Association or any owner to enforce any covenant, restriction or other provision of the condominium documents shall not constitute a waiver of the right to do so thereafter as to subsequent or other infractions.

13. AMENDMENTS - Amendments to this Declaration shall be made as follows:

13.1. An Amendment may be proposed either by the Board of Directors or by any owner and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-Laws, which notice includes notice of the substance of the proposed amendment. Passage shall be evidenced by a certificate executed in recordable form signed by the President or Vice President of the Association that it has been enacted by the affirmative vote of the required percentage of unit owners (which vote may be evidenced by written approval of owners not present), and the separate written joinder of mortgagees where required shall include the recording data identifying the location of the Declaration as originally recorded and which shall become effective when recorded in the public records.

13.2. CORRECTORY AMENDMENT - Whenever it shall appear that there is a defect, error or omission in any of the condominium documents, a simple majority vote of the voting interests in the Association shall be the required percentage, or the procedure set forth in F.S. 718.110(5) may be used.

13.3. REGULAR AMENDMENTS - An amendment which does not change the configuration or size of any condominium unit in any material fashion, materially alter or modify the appurtenances to a unit, change the percentages of ownership of the common elements, sharing of common expenses or materially adversely affects the property rights of unit owners may be enacted by a simple majority vote.

13.4. EXTRAORDINARY AMENDMENTS - An amendment which will have the effect of doing any of the things mentioned in 13.3. above shall require the

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affirmative vote of all the record owners of the affected units and all record owners of liens thereon, but only if the same will have a material adverse effect on the owners' property rights.

14. TERMINATION - The Condominium shall be terminated in the following manner:

14.1. By the agreement of 80% of the owners, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyance of land. The termination shall become effective when such agreement has been recorded in the public records.

14.2. SHARES OF UNIT OWNERS AFTER TERMINATION - After termination of the Condominium, the owners shall own the property as tenants in common in undivided shares, and the holders of mortgages and liens against the unit or units formerly owned by such owners shall have mortgages and liens upon the respective undivided shares of the owners. Such undivided shares of the owners shall be as shown upon Exhibit "B" to the Declaration. All funds of the Condominium held by the Association except for the reasonably necessary expenses of winding up shall be disbursed to the unit owners and mortgagees as their interests may appear. The costs incurred by the Association in connection with a termination shall be a common expense.

14.3. FOLLOWING TERMINATION - The property may be partitioned and sold upon the application of any owner. Provided, however, that if the Board of Directors following a termination determines to accept an offer for the sale of the condominium property, each owner shall by his acceptance of a deed to his unit, be deemed to have granted power of attorney to the Board of Directors to execute such deeds and other documents required to effect sale. In such event, any action for partition shall be held in abeyance pending sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

15. RIGHTS OF MORTGAGEES - Where an approved institutional mortgagee of a first mortgage of record obtains title to a unit by foreclosure or by deed in lieu of foreclosure, such mortgagee and its successors and assigns shall not be liable for such unit's assessments or share of the common expenses which became due prior to acquisition of title unless it is secured by a claim of lien for assessments recorded prior to the recordation of the mortgage.

Also, such mortgagee may obtain title, own, occupy, lease, sell or otherwise dispose of such unit without the approval of the Association.

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FORT WORTH, TEXAS 76101

100%
for
extraordinary
amendments

16. ENFORCEMENT OF ASSESSMENT LIENS - Liens for assessments may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of mortgage on real property. During his occupancy, the foreclosed owner shall be required to pay a reasonable rental, and the Association shall be entitled to the appointment of a receiver to collect it, and the Association shall have all the powers provided in F.S. 718.116 and shall be entitled to collect interest at 18% per annum on unpaid assessments and reasonable attorneys' fees incident to the collection of such assessment or enforcement of such lien, with or without suit.

17. MEMBERS - The qualification of members, the manner of their admission shall be as follows:

17.1. ALL OWNERS OF UNITS in the Condominium shall be members of the Association, and no other persons or entities shall be entitled to membership, nor to serve as Directors.

17.2. MEMBERSHIP IN THE ASSOCIATION shall be established by the recording in the Public Records of Lee County, Florida, a deed or other instrument establishing a change of record title to a unit in the Condominium; the new owner thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated. Provided, however, that the change of ownership and occupancy of the new owner must have been in compliance with this Declaration, and the Association need not recognize membership or ownership in any person until its requirements have been complied with.

18. COMMON EXPENSES - The percentage of sharing common expenses are an equal share for each unit.

19. SEVERABILITY - If any provision of this Declaration or its exhibits as now constituted or as later amended or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

20. VOTING - Each unit shall have one full indivisible vote in all matters.

IMPORTANT NOTICE

The following is not a new rule, but we want to call your attention to the importance of it. We are striving to provide security for our occupants, and we must abide by the Fire Department rules.

21. Owners must notify the manager in advance when their units will be occupied in their absence, whether the occupants be family or renters, giving the same information as is required on rental requests. This is very important for security reasons.

Also, you should be aware that, with the adoption of Rule #24, we are now in a position to legally impose the fines specified in our By-Law #4.13 (copy attached).

4.13. THE DIRECTORS MAY, pursuant to F.S.617.10(3), impose fines in such reasonable sums as they deem appropriate, not to exceed \$150.00, against unit owners for violations of the condominium documents, including the Rules and Regulations, by owners or their guests or lessees and to be secured and collect the fine in the same manner as an assessment for common expenses. Each day of violation shall be a separate violation. No fine shall be imposed until the owner(s) has been given an opportunity to be heard before the Board.

The following Amendments have been made to our documents, Exhibit C - Rules and Regulations, in accordance with our Declaration, paragraph 10.2. Please attach them to the last page of your Amended Documents.

15. (as amended). Children under thirteen (13) may not maintain residence for a period exceeding three months per year. Guests who will be in residence for more than a few days should be made known to the Association.

24 (new rule):

(a) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days and said notice shall include:

1. A statement of the date, time and place of hearing.

2. A statement of the provisions of the declaration, association by-laws, or association rules which have allegedly been violated, and

3. A short and plain statement of the matters asserted by the association.

(b) The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the association.



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please check for meeting changes on our website WWW.FMBGOV.com.

TIME: 9 AM
DATE: LPA January 9, 2023 and Town Council January 22, 2023
CASE: VAR20230278
ADDRESS: 7400 Estero Blvd
APPLICANT: Leonardo Arms
REQUEST: Special exception request to reconstruct the deck, fence and a walkway seaward of the 1978 CCCL

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency** will review the application materials and hear testimony to make a **recommendation**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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Town of Fort Myers Beach
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Fort Myers Beach, FL 33931

Town of Fort Myers Beach
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Fort Myers Beach, FL 33931

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«OwnerName»
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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
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«OwnerName»
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1. **Requested Motion:**

Meeting Date: January 22, 2024

Approve recommended changes, inclusive of those from the January 8, 2024 Town Council meeting and approve a resolution entitled:

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

a review and an update was requested by Town Council.

What the action accomplishes:

Updates the existing Town Council Policies and Procedures Manual with suggested language changes.

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

At the December 7, 2023, Ft. Myers Beach Management & Planning Session, the Town Council reviewed and discussed its current policies and procedures and requested several changes as shown on the Exhibit to Resolution highlighted in yellow. A summary of the additional changes follows:

1. Page 12, #4 regarding use of electronic communication during meetings - Language was added to clarify such communication may occur during a meeting if it was not disruptive to the orderly conduct of the meeting. As discussed, any emails/text that involve public business are public records regardless of if the device used was Town or personal equipment.
2. Page 12, #6 regarding gifts – Language was added to refer to Florida law as far as interpretation of the paragraph.
3. Page 14, Added Items Removed From Consent Agenda.
3. Page 27 - The typo was corrected and the word "next" was deleted.
4. Charts on Pages 29 and 30 – Reference to "Coffee/muffins" was deleted and the time slot was identified as "Public Gathering."
5. Added Section 13 - Appointment to Vacant Town Council Seats

Attachments:

1. 23-182, Final Resolution 23-182 re Adopting Amended Town Council Policies and Procedures Manual - ns suggestions - 12-18-2023
2. 23-182, Exhibit A to resolution 23-183 TC PnP 1.2

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. Recommended Approval:

Amy Baker, Town Clerk
Amy Baker, Town Clerk
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/12/2024
Approved - 1/16/2024
Approved - 1/16/2024
Approved - 1/16/2024
Final Approval - 1/16/2024

RESOLUTION NUMBER 23-182

**A RESOLUTION OF THE TOWN OF FORT MYERS
BEACH, FLORIDA, ADOPTING AND AMENDING THE
TOWN COUNCIL POLICIES AND PROCEDURES
MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the 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 services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

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

WHEREAS, the Town Council has adopted a Policies and Procedures Manual to standardize the way the Town Council conducts its meetings, acts on items before it and adopts, amends, and implements legislative and policy decisions; and

WHEREAS, the Town Council desires to amend and update the Town Council Policies and Procedures Manual previously approved by Resolution 23-30.

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

Section 1. The foregoing whereas clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

Section 2. The amended Town Council Policies and Procedures Manual, attached as Exhibit "A" is approved.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

1/22/2024

THE FOREGOING RESOLUTION was adopted by the Town Council upon 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	_____
John King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 22nd day of January 2024, 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:**

Vose Law Firm LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of January 2024.

EXHIBIT “A”

nTown of Fort Myers Beach Town Council **Policies and Procedures Manual** **Table of Contents**

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Last revised 1/22/2024

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EXHIBIT “A”

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1. Introduction

This Town Council Policies and Procedures Manual is for the purpose of helping the Council Members in the discharge of their duties. They are intended to be guidelines, not “rules” on how to conduct business. Town Council may vary from these policies and procedures on a case-by-case basis by a majority vote unless in conflict with Florida law, the Town Charter, the Land Development Code, Code of Ordinances, Comprehensive Plan or other Town guiding documents. As the Town Council continues to discover situations that are unique to Fort Myers Beach, it will want to update and amend this manual. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of Council will find in one handy reference, answers to policy and procedure questions that come up from time to time. By having an agreed-upon guide, members of Council also may develop common expectations on proper conduct of Council meetings, dealings with the public, and the roles of Town staff and committees.

This manual should be used in conjunction with the Town Charter, Comprehensive Land Use Plan (Comp Plan), Land Development Code (LDC), Code of Ordinances, and the annual budget as necessary. In the event of a conflict between this document and Florida statutes, Town Charter or other Town guiding documents, such other document shall prevail over the language in the Policies and Procedures manual.

2. Town Council Mission and Job Description

Mission:

To legislate and police the powers of the Town, including establishing boards, commissions and committees; to perform all duties and obligations imposed on the municipality by law; to insure by strategic planning and clear policies that the unique and natural characteristics of the island are preserved; to supervise the Town Manager and Town Attorney; to perform all actions for the welfare of the residents, owners, businesspersons, and guests of the Island in adherence to the Town Charter, State and Federal Law.

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as needed to make changes.
- Review and interpret the Land Development Code and conduct public hearings as needed to make changes.
- Conduct hearings regarding land use matters.
- Introduce and approve Charter Amendments for adoption by referendum.
- Appoint a Town Manager.
- Appoint a Town Attorney.
- Introduce and enact ordinances.

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Standing Advisory Committees
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Meeting Schedule
Source of Items
Timetable and Preparation Process
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- Introduce and adopt resolutions.
- Review and adopt the Operations and Capital Improvement budgets.
- Review and approve budget amendments.
- Create Special Assessment Districts as may be needed.
- Establish advisory committees as needed.
- Review and approve inter-local agreements.
- Review and approve contracts with the Town above the threshold limit allowed to Town Manager.
- Elect a Mayor and Vice Mayor.
- Perform any other duties that are lawfully defined by the Charter and Florida statutes.

Council Member Requirements:

- Electronically file a Statement of Financial Interests and Ethics Training (Form 6) on the Florida Commission on Ethics website, every year.
- Complete and file Form 6F – Final Statement of Financial Interest, within 60 days of leaving office.
- Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.

3. How Town Council Will Operate

Code of Conduct:

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Town Council pledges to adhere to the following CODE OF CONDUCT:

1. Regularly attend all scheduled meetings of the Town Council as well as special or called meetings relevant to the office.
2. Regularly attend all scheduled meetings of outside committees of which they are a member.
3. Prepare for each meeting.
4. Create a positive environment in meetings of Town Council.
5. Maintain an attitude of courtesy and consideration toward colleagues, residents, and staff during all discussions and deliberations.
6. Allow residents, colleagues, and staff sufficient opportunity to present their views within the prescribed rules for conduct of meetings of Town Council.

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7. Avoid the use of abusive, threatening, or intimidating language or gestures directed at colleagues, residents, or staff.
8. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
9. Respect all local, state, and federal laws, rules, and other regulations.
10. [Electronically](#) submit completed financial disclosure forms [via the Florida Commission on Ethics website](#), by the specified deadline.
11. Publicly acknowledge the adopted position when asked about a decision of Town Council.
12. Read the Town Comprehensive Plan and follow its directives in all decision-making processes for the Town.
13. Follow the procedural and substantive requirements of the LDC.

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Code of Ethics:

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Members should ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the residents served by the Town Council and by promoting public confidence in the integrity, independence, ability and impartiality of Town Council.

1. Members shall not convey the impression that they can influence the outcome of a decision of Town Council and shall not attempt to use their office to [direct or](#) influence staff recommendations, [the Town Manager or Town Attorney without the concurrence of the Town Council](#).
2. Members shall discharge their duties and responsibilities without favor, [bias](#) or prejudice toward any person or group. Members should not allow personal or business relationships to impact upon their conduct or decisions in connection with Town Council business and shall not lend their influence towards the advancement of personal interests, [towards the advancement of the interests of friends or business associates or other conflict of interest situations](#).
3. Members shall avoid creating the appearance of impropriety by refraining from engaging in private discussions with an applicant – or their representatives about specific upcoming Town Council quasi-judicial agenda items [unless the ex parte communication is disclosed as required](#). If a member receives a private written, telephonic or electronic communication about an agenda item, the member will promptly forward the information to the Town Manager and the Town Clerk, or to the member’s Town e-mail account so that it may be shared with all other members and filed with the Town official records to comply with the Public Records Law requirement. Any private written, telephonic, or electronic communication about an agenda item, must be submitted to the Town Clerk prior to the commencement of the Town Council meeting at which the agenda item is discussed or it cannot be mentioned or read by any member [unless otherwise allowed by majority vote of the Town Council](#).

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4. No member shall communicate, receive, send, or solicit any private written, telephonic, or electronic communication during a Town Council meeting if disruptive to the orderly conduct of the meeting, unless it pertains to an emergency situation (example: audio or video feed of Council meeting not working properly).
5. Members shall refrain from any private discussion of Town Council business, or matters that could come before the Town Council, with other members per the requirements of Florida’s Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
6. Consistent with Florida law Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during Town Council proceedings. Florida law prohibits the spouse or minor child of that member from soliciting or accepting these as well, and the Member shall be vigilant in ensuring compliance from those family members. Members should contact the Town Attorney or the Florida Commission on Ethics if they have any questions about compliance with Florida law as to gifts.
7. ~~Members shall refrain from participation in any proceeding in which their impartiality may reasonably be questioned.~~ A member whose personal employment or business relationship with a person or entity that is subject to a recommendation of Town Council shall seek the advice and counsel of the Town Attorney, if such relationship could conceivably influence the members’ impartiality during Town Council discussion of the subject. The provisions of Chapter 112, Florida Statutes and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determinations.
8. Members shall remain vigilant against deviations from Town Council policies and procedures.

As a legislative and quasi-judicial body, Town Council must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, the Town Charter, Town code and LDC, and apply to legislative and quasi-judicial actions. The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be unreasonable, arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

The other due process prong, procedural due process, requires a fair method of adjudicating the rights of property owners, requiring notice and an opportunity to be heard by an impartial decision maker. In legislative matters, this requirement is derived from Florida Statutes, the Town Code and LDC that provide the type and period of notice depending on the nature of the property interest subject to regulation at a public hearing. Quasi-judicial decisions have an underlying Constitutional requirement for procedural due process.

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Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others. Key overarching principles to keep in mind are that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the Town Council provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

Assignment of a Town Council Representative:

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Town Council may choose to assign a member to lead a project or assess an issue. The Town Council Representative, or often called a “Point Person” may be assigned to do fact-finding and/or research, recommend a course of action and report back to Town Council for direction. Final decisions are made by a majority of Town Council.

Sunshine Issues:

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Members of Town Council and all Town advisory committees, boards and agencies are subject to the Sunshine Law (F.S. 286.011). This means that any gathering of, or communication between, two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action taken by communication through a spouse or other go-between.

Town Council members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or civic groups regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met. These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor’s backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

Email and Texting Policy:

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Email and texting are convenient ways to communicate with staff, Town Council, residents, and others. However, it presents unique legal and ethical challenges. All email and texts regarding Town business must be properly retained as a public record. Furthermore, any email or text regarding an issue that will come before Council in a quasi-judicial hearing must be properly disclosed as an ex-parte communication as appropriate. Council members must be vigilant to not

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accidentally violate Sunshine Law requirements. Emailing or texting anyone stating a position on an issue that will come before Town Council is particularly risky. Email and text actions to avoid include:

1. Sending an email to another Council member with anything that could be construed as a position.
2. Copying another Council member on a response to an email sent by a resident, staff member or other person.
3. If another Town Council member’s email is inadvertently forwarded to you, respond to the sender recognizing its accidental nature, the fact that it is a Sunshine issue and retain a copy of your response.
4. Sending an email “Reply All” when more than one Council member is also on the email that was received.

Florida has a very broad public records law. Most written communications to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email and text communications and email address and mobile phone number may be subject to public disclosure. (This statement must be included in the closing of any email regarding Town business).

Public Records:

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It is the policy of the State of Florida that municipal records shall be open for personal inspection by any person (s. 119.01, F.S.). To that end, the Legislature has enacted the Public Records Law (Ch. 119, F.S.), which contains requirements that public records, as defined in s. 119.011, F.S., be made available for public inspection, they be kept in usable condition, they be kept in safe places, they be kept in convenient places, and copying of records be provided at reasonable costs. A public record is “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”

Council members’ responsibility is to ensure their own public records are properly handled and preserved, and to see that the law is adhered to by all employees of the Town. The Town Clerk has been assigned the responsibility of being the custodian of public records. Council members must further understand that their public record must be retained even after leaving office.

Any use of personal electronic equipment or email accounts for government business is allowed, but for a council member’s own protection, it is suggested that a copy of any documents produced is sent, to their Town email account for proper retention. Materials prepared for Town Council meetings, hearings, minutes, and workshop will already be managed by the custodian of public records and do not need to be retained by the Council member. If there are any questions on retention of a particular document, consult with the custodian of public records and/or the Town Attorney before destroying.

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4. Training Materials and First Meeting

Training Materials:

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The Town Clerk will provide each new member of the Town Council with copies of:

- Town Charter.
- Comprehensive Plan.
- Land Development Code.
- Code of Ordinances.
- Florida Code of Ethics.
- Florida Sunshine and Public Records Laws.
- Emergency Operations Plan.
- Town Council Policies and Procedures Manual.
- Local Planning Agency Policies and Procedures Manual.
- Town Personnel Manual.
- Town Purchasing and Procurement Manual.
- Other materials as determined by the Town Attorney, Town Manager and Town Council members.

As part of a Council member’s orientation, they will be provided a tour of the Town facilities with introductions with all staff members. ~~Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.~~

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Training Recommendations:

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- Successful completion of all courses required by the National Incident Management System (NIMS).
- Florida League of Cities, Inc., Institute of Elected Municipal Officials (IEMO) Basic Course.
- Making Good Planning Decisions.
- Hands-on Emergency Operations Training.
- Other courses as determined by the Town Attorney, Town Manager and Town Council members.

Election of Officers:

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At the first meeting after the second Tuesday in November, the Council’s Mayor and Vice Mayor will be chosen. Each Council member may nominate a person for each of these positions. A second is not required. The voting procedure will be agreed upon in advance.

Outside Committee Representation:

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Charlotte Harbor National Estuary Program – www.chnep.org

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Meetings: The Policy Committee meets the third Monday every other month at 9:30 am*.
Mission: The CHNEP is a partnership that protects the estuaries and watersheds from Venice to Bonita Springs to Winter Haven. This partnership gives citizens, elected officials, resource managers, and commercial and recreational resource users in the 4,700-square mile study area a voice to address diverse resource management concerns including fish and wildlife habitat loss, water quality and water flow. The watershed in the study area includes all or parts of Lee, Charlotte, Sarasota, Manatee, Polk, Hardee and DeSoto counties.

Coastal Advisory Committee – <https://www.lee.gov/our-natural-resources/beaches/beachcombs/CAAC>

Meetings: Last Monday of each month at 9:30 am.*
Mission: The Council’s charge is to advise the Board of County Commissioners, staff and the various related advisory boards when proceeding with a project affecting beach and shoreline preservation regarding the proper methods in helping to conserve the Beaches of Lee County.

Horizon Council – <https://www.lee-county.com/business/horizon-council/>

Meetings: First Friday of each month*
Mission: The Horizon Council is the advisory board to the county commission on economic development issues. This unique public-private partnership is made up of 62 members from government, education, business, and community organizations. Established in 1991, the mission of the Horizon Council is to:

- Work toward improving the business environment in Lee County; and
- Retain and encourage the expansion of existing businesses; and
- Attract new and diversified employment to the area

Human Services Council – <https://www.lee-county.com>

Meetings: Third Tuesday of each month*
Mission: The Council will ensure the efficient delivery of community health and human services through:

- Communication
- Coordination
- Strategic Planning
- Innovation
- Integration and collaboration
- Measurable Outcomes

Metropolitan Planning Organization – <https://leefpo.com/>

Meetings: Third Friday of each month at 9 am*
Mission: The MPO is responsible for conducting a continuing, cooperative, and comprehensive transportation planning process for all of Lee County. It must plan for the movement of both people and goods within the county by all modes of travel – including highways, public transportation, bicycles, and foot. It also plans for the connections (such as airports, seaports, or bus, railroad, and pipeline terminals) linking these modes or tying us to the rest of the world.

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The MPO sets priorities among surface transportation improvement projects within Lee County for state or federal funding. To be eligible for federal funds, federal law requires that the MPO endorse a transportation improvement program identifying the projects to be done over the next few years.

Southwest Florida Regional Planning Council – www.swfrpc.org

Meetings: Third Thursday of each month at 9 am*

Mission: The Southwest Florida Regional Planning Council is a locally formed regional planning agency serving six counties: Charlotte, Collier, Glades, Hendry, Lee, and Sarasota. Its mission is to protect and improve the region’s physical, economic, and social environment. The agency is directed by a thirty-four-member Council composed of local elected officials and gubernatorial appointees. The activities of the Southwest Florida RPC can be classified into three major areas: long range planning, tactical planning, and transportation planning.

Estero Bay Agency on Bay Management – <http://www.esterobayagency.com>

Meetings: Second Monday of each month at 9:30 am*

Mission: Its directive is to make comments and recommendations regarding the management of Estero Bay and its watershed. The ABM collects and maintains data and it reviews and comments to regulatory agencies on issues affecting the watershed

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*Meeting times are subject to change.

5. Town Advisory Committees, Boards and Agencies Standing Advisory Committees

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Council Selection of Advisory Board, Agency, and Committee Members:

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Residency: ~~Except as required by Town Charter, Town Ordinance or Florida statute, residency on Fort Myers Beach will not be a requirement for nomination or election to a committee, commission, or board of the Town.~~ [As provided by Sec 2-94 of the Town Code, committee members shall be a registered voter or a property owner in the Town's jurisdiction](#)

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Advertising: All advisory committees are listed on the Town website. Information included will be the committee mission, current projects, when the committee meets and current members on the committee and whether submission of an annual Form 1 (Financial Disclosure) is required by the Florida Commission on Ethics.

Openings: In the event of an opening for an advisory board or committee, Town staff will list the opening on the website with a date when applications must be submitted to the Town Clerk for consideration by Town Council. Whenever possible, committee selection will be scheduled 30 days after proper notification. Advertising in local newspapers can be considered if approved by the Town Manager. Committee candidates will be encouraged to appear for interviews during the selection process.

Preliminary matters: The Council should decide how to go about voting prior to any voting taking place and decide the number of members on a committee ahead of time.

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Voting:

1. Each Council member makes selections, marking no more than the total number of seats available (or writes the names down), and initials his ballot.
2. Those receiving the most votes are selected to seats available.
3. If there is a tie for any number of seats still left open, there will be a runoff consisting only of the persons who are tied.

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Examples of voting procedure:

First Ballot:

Seats available – 9

Candidates – 15

Votes on First Ballot: Results of First Ballot

3 get 5 votes apiece 3 are elected

3 get 4 votes apiece 3 are elected

4 get 3 votes apiece 4 go on a second ballot

3 get 2 votes apiece 3 are eliminated

2 get 0 votes apiece 2 are eliminated

There would be a second ballot containing only the names of the four candidates who got three votes. Council would vote for three candidates. This process would be repeated in case of a tie until all seats are filled. A variation on this method of voting is that after the first ballot, if there is a tie which prevents all the seats from being filled, the runoff would consist of all the un-selected candidates, not just the ones involved in the tie.

4. The ballots are given to the Town Clerk, who conducts the tallying and announces the results.
5. Once all selections are made, Council adopts a motion containing the new members' names.

Effective Date of Appointment and Follow Up:

Newly appointed advisory board, agency and committee members who are required to file a Financial Disclosure Statement, will be notified of the disclosure requirements no later than the date of appointment. The Town Manager or designee is responsible for such notification. These appointments should be made effective as of some future date, so that there is sufficient time to provide the required notification. For convenience, the notice could be accompanied by a copy of the required disclosure forms, which are available on-line from the Florida Commission on Ethics (<http://www.ethics.state.fl.us/>)

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Ad Hoc Committees:

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Town Council has the authority to form ad hoc committees requesting participation by volunteers. Ad hoc Committees can be used at Town Council's discretion to address specialized and or short-

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term Town issues.

The mission, specific objectives, expected products, membership and timelines of an ad hoc committee should be clearly stated and agreed to by Town Council. One Town Council member will be an ex-officio member of each ad hoc committee. Where possible, an attempt will be made to have a balanced committee membership. Minutes or verbal reports will keep Town Council informed on a regular basis. A final report will document findings and recommendations and will be presented at a Town Council meeting or workshop.

Ad hoc committees are subject to the public records laws, sunshine laws, quorum, and statutory ethical requirements. It is the Town’s responsibility to ensure that each committee member is educated on these issues.

Outline of Committee Orientation Material:

- Meeting Requirements
 - Notice
 - Location Requirements, such as ADA compliance
 - Agendas
 - Quorum
- Sunshine Requirements
- Public Records Requirements
- Statutory Ethical Requirements

6. Meeting Preparation and Planning

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Meeting Schedule:

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Regular meetings of Town Council may be found on the website calendar. Management and Planning meetings (M&Ps) are work sessions and are scheduled to discuss financial and other issues before the Town. The need for workshops special meetings, continuances, or rescheduled meetings will be determined by consensus of the Town Council members or the Town Manager and Town Attorney.

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Source of Items:

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Items for Town Council agendas are generated by requests and/or legislation (ordinances or resolutions) from members of Town Council prepared by the Town Attorney, requests and actions from the Local Planning Agency, continuations from previous council meetings, in addition to anything Council members, the Town Manager or Town Attorney may wish to have included. Some of these inquiries are routine and can be handled by staff because Town Council policy and procedures have been previously approved which apply.

When an item arises that requires Town Council action either to make a decision or to direct staff or the Town Attorney how to proceed it will appear on the agenda identified as a Council member’s request or as an item under the Town Manager’s section of the agenda which is the “catch all” for

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miscellaneous items, or Town Attorney’s section, as appropriate. For an item to appear on an agenda, at least two Council members must agree and shall direct the Town Manager to do so, provided time schedules allow. (Note the agenda preparation timetable below).

Whenever possible, any material written and distributed by Council members as part of the agenda should be included in Council members’ packets – allowing ample time for review. This preserves the integrity of the seated Council, conforms to the Florida Public Records law, and lessens the opportunity for misunderstandings and miscommunication. No significant Town staff or Town Attorney time will be spent on an agenda item requested by an individual Council member without advance approval by a majority of the Council. Written requests to be placed on a Council agenda from the public should be submitted directly to the Town Manager. Agenda Management [for future meetings](#) is reviewed at each [Management & Planning Session](#).

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Timetable and Preparation Process:

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A draft agenda will be sent to Town Council for review and comment within 24 hours. The Town Council chair may modify the order of the agenda subject to the approval of the Town Council. Absent an emergency or pressing need, by close of business on the Wednesday prior to the next regular Council meeting, a packet including the finalized agenda and supporting material will be placed in the Council members’ mailboxes and placed on the Town website.

The Council members’ packets include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.). A sincere effort is made to see that Council packets are complete; if something is not available, a written explanation will be provided. Generally, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

The agenda is posted at Town Hall and on the Town website. Meetings may be announced in local newspapers. Hearing notices will be advertised as required by law and may be provided as a service to local newspapers. Occasionally an item comes up late and may be placed on an amended agenda, or as an “add on” (added too late to be included on the published agenda). Such additions should be an exception [and require a majority vote prior to the approval of the final agenda at the beginning of the meeting](#).

Continued Hearings and Legislative Issues:

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It is the goal of the Town Council to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any Town Council member who missed the initial hearing should attempt to review the DVD prior to participating in the continued hearing or legislative discussion and resolution. If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the Town Council shall consult with the Town Manager and the Town Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director’s discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

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Attendance Policy:

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The Charter states “A member of Council may forfeit the office, if the member: (d) Misses three consecutive regularly scheduled council meetings without an excused absence.” This statement recognizes that because of the significant meeting preparation required by staff, applicants, and other supporting personnel, it is important that a quorum of the Town Council members be present for all noticed meetings. The Town Manager should be notified of a planned Council member’s absence as soon as known. The Town Manager or designee will notify the Town Attorney and Mayor. It is important that the Town Council know that it will have a quorum of its members prior to notification of a meeting/hearing. Work session attendance is equally important since that is often when information is shared, and issues resolved before putting the item on an agenda of a regular meeting for a vote.

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Participation by Videoconference:

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A Council member may participate in a Town Council meeting via videoconference if one of the following conditions is met:

1. Permission is granted from the Council for an “extraordinary circumstance”, including but not limited to a medical situation, unexpected travel delay, transportation issue, etc. or.
2. An emergency order or executive order authorizes the use of communications media technology, as provided in s. 120.54(5)(b)2, F.S.

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A quorum of Town Council members must be met without the missing Council member(s) in attendance unless this requirement is suspended by emergency order or executive order.

7. Meeting Procedures

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Generally, the Order of Agenda Items:

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1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Approval of Final Agenda
5. Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).
6. Local Achievements and Recognitions
7. Advisory Committee Items / Reports / Appointments
8. Approval of Minutes
9. Consent Agenda
10. Items Removed from Consent Agenda
11. Proclamations, Recognitions and Awards

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~~Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).~~

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~~12. Approval of Minutes~~

~~13. Consent Agenda~~

~~14. Advisory Committee Items and Reports~~

~~11. Public Hearings of proposed ordinances (At conclusion of hearing, requires motion and roll call vote)~~

~~12. Administrative Agenda~~

- a. Introduction of proposed ordinances (Requires a motion and a majority vote for scheduling the hearing).
- b. Resolutions (Requires a motion and vote for passage)
- c. Unfinished business (Items from previous agendas scheduled by Town Manager – should be listed separately on the agenda)

~~15. New business (Scheduled by the Town Manager, should be listed separately)~~

~~13. Final Public Comment (not limited to agenda items)~~

~~14. Town Manager’s Items and Reports~~

~~15. Town Attorney’s Items and Reports~~

~~16. Council Members Items and Reports~~

~~17. Agenda Management (generally addressed during Council work sessions)~~

- a. Topics for upcoming regularly scheduled meetings
- b. Planning and scheduling of Management and Planning, and other work sessions

~~18. Review New Actions from Meeting~~

~~17. Adjournment (Requires a motion and vote – no second is required. It is a privileged motion allowing no discussion before vote)~~

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Conduct of Council Meetings:

- The Mayor will conduct Council meetings, and in the Mayor’s absence the Vice Mayor will do so.
- The Town Clerk shall deliver a nondenominational invocation.
- Robert’s Rules of Order shall be the reference for parliamentary procedure governing the conduct of Town Council meetings when not in conflict with the Town Charter, Town Ordinances, Florida Statutes or these Policies and Procedures. It is not intended that Council meetings be unnecessarily formalistic, but rather that parliamentary procedure will be invoked only when necessary to facilitate the business of the meeting.
- All participants and audiences at Town Council meetings are expected to exhibit common courtesy and proper decorum. No personal attacks will be tolerated. The Chair may

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request that someone who is being disruptive be removed from chambers [after providing the individual with notice that the continuation of the disruption will result in removal](#).

- Individuals wishing to speak during the Public Comment times are requested to (1) fill out an index card (available in the meeting room) indicating their name and the topic they will address and (2) give that card to the Clerk prior to the start of the meeting. When recognized by the Chair, the speakers will advance to the podium and state their name for the public record.
- Public Comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by vote of the Council. The Public Comment times are intended as opportunities for interested parties to present their viewpoints to the Council members. They are not intended as question-and-answer sessions or as dialog with the Council. Response to questions and/or clarifications requested during public comment may, with the approval of Town Council, be answered immediately if there is a straight-forward, short answer, directed to the appropriate person for response at a later time or placed on an agenda for a future Council meeting.
- After a proper motion and second, discussion by the Council members shall be limited to agenda items with expression of ideas, facts, and conclusions. No member will speak twice on the item until all others who want to speak have spoken.
- The discussion by Council members is intended as an opportunity for Council members to share their viewpoints with each other. Since this opportunity does not exist outside of Council meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Town Manager or Town Attorney, which could be obtained outside of the Council meeting. While there is no time limit or censorship on comments, Council members should take into consideration the total time available in the meeting for the published agenda and the time allocated for the specific item in the agenda.

Any Council member may present resolutions [related to celebrations or in support of causes for the benefit of the Town, which must be previously reviewed for form and sufficiency by the](#) Town Attorney and [subject to, a vote by the Town Council](#).

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Rules of Civility:

The Town of Fort Myers Beach Town Council recognizes that public discourse is essential to the democratic system of government. It also embraces civility in public deliberations. Rules for Council discussion and public participation while conducting meetings and workshops are as follows:

1. Speakers are permitted to deliver his or her comments without interruption, absent inappropriate language, conduct or personal attacks.
2. Speakers and debates should focus on issues, not on persons or personalities.
3. Persons are encouraged to participate in the governmental process.
4. To allow time to hear all points of view, speakers are allotted 3 minutes.

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5. Sidebar discussions while others are speaking are discouraged in Council Chambers. These discussions are to be removed from the chambers so as not to be disruptive to those conducting and following Council business.
6. Only the speaker recognized by the Chairperson has the floor. Speakers should identify themselves for the record. Speakers should utilize the microphone so that their comments can be recorded.
7. We seek to understand one another's points of view.
8. Anger, rudeness, ridicule, impatience, and lack of respect for others are not acceptable behavior. Demonstrations in support or opposition to a speaker or idea such as clapping, cheering, booing, or hissing or intimidating body language are not permitted in Council Chambers or workshop facilities.
9. We should all take initiative to make things better. Our goal is to foster an environment which encourages a fair discussion and exchange of ideas without fear of personal attacks.
10. No use of profanity will be tolerated.
11. Any email or other digital or internet platform used to communicate with the Town Council, individual members of the Town Council, Town Manager, Town Attorney, or Town staff that contain personal attacks, offensive language or slurs; that are belligerent, sarcastic, accusatory or unsigned shall be deemed [by the Town Council as](#) non-compliant with these “Rules of Civility.” Such communications place absolutely no obligation upon Town Council Members, the Town Manager, the Town Attorney or Town staff to respond.

Minutes:

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Notes will be taken of all meetings and work sessions. The notes are then transcribed into summary minutes that become the written record of subjects discussed, conclusions reached, actions taken, and assignments given. The minutes include the names of all those participating in the meeting including Council members, staff, the Town Attorney, applicants, their attorneys and witnesses, and people who offer public comments. The minutes also serve as a record of motions and votes on all Council decisions.

Once completed, the minutes are provided to Council members for approval at their next meeting. The approval of the minutes is intended for Council members to accurately document the proceedings of the Town Council. Before moving approval, the minutes should be amended, if necessary, to portray more accurately what occurred at a Council meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what was done. Once approved by Council, the original is filed in a secure file and a copy is placed on the Town's web page.

Video and/or audio recordings when made are available at the request of the public or anyone who wishes to listen to the meeting or a portion of the meeting. The original video and audio recordings are stored in a secured area for safekeeping. Any request for production of a verbatim transcript,

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in whole or in part, of any meeting, workshop or other function of the Town Council or any Town committee thereof by a member of the public shall be paid for by the member of the public. Any need for a verbatim transcript requested by Town staff, shall require prior consent of payment by the Town Council, except when, such requests are required, by a court of competent jurisdiction or quasi-judicial officer in the proper exercise of its powers. Video and audio recordings are only the legal record in the absence of approved minutes.

Council Members Items and Reports:

Items and Reports time is set aside for Council Members to report on activities of interest to fellow members, staff, and the public. Council Members are encouraged to send as much information as possible prior to the meeting. Unless an issue is time sensitive, the item will be placed on a future agenda if a vote is required.

Agenda Management:

The Town Manager is responsible for compiling and distributing a schedule of future meetings and work sessions.

Action List:

The Town Manager is responsible for compiling and distributing a list of action items that includes a short status and expected date of completion.

How Voting Order is Established for Roll Call Votes:

The voting order for calling the roll-on Town Council votes shall be conducted at the direction of the Town Clerk. Votes on ordinances require a roll call vote; any Council member may call for a roll call vote on any motion before the Council.

Voting Conflicts:

Florida Statute has very specific rules regarding voting conflicts. If a Town Council member has a voting conflict, he/she must publicly disclose that conflict at the latest at the beginning of the discussion of the subject at the meeting. A Town Council member is permitted to participate in the discussion but cannot vote on the subject. The specific rules are set out in s. 112.3143(3)(a), F.S. as amended, quoted below:

“(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose

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the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.”

NOTE: s. 112.3143(b) F.S. defines “relative” as follows: “any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. Also, Section 112.3143(4) prohibits participation by an appointed (as opposed to an elected) official in the event of a voting conflict of interest.

Guidelines for Legislative Hearing Procedures:

1. The Chair opens the hearing.
2. Staff presents Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable and a copy of the business impact estimate when applicable, which shall be maintained by Town staff with the hearing’s resulting ordinance or resolution as required.
3. The Chair or Town Attorney reads the ordinance or resolution title.
4. Staff and/or the Town Attorney present(s) a brief overview of the ordinance or resolution.
5. Public input is taken.
6. Public input is closed
7. Town Council members ask questions, if any, of staff/Town Attorney
8. Town Council members discuss ordinance or resolution, including changes, deletions, etc.
9. A motion is made and seconded to either approve the ordinance or resolution as is, or with modifications, or to take some other action.
10. The motion is discussed and voted upon, with roll call voting as appropriate. Upon consideration and passage of all appropriate motions, the Chair declares the hearing on the ordinance or resolution to be concluded, continued, tabled, or other action in conformity with the motion.
11. If an ordinance is approved, the Town Council shall schedule a second reading of the ordinance for adoption.

Notes: There is no ex parte disclosure for legislative hearings.
Members of the public are not sworn in.

The above is intended as a guide and the Council may conduct the legislative hearing utilizing another procedure, so long as due process requirements are met.

Guidelines for Quasi-Judicial Land Use Hearing:

1. The Chair opens the hearing.
2. Staff present Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable, which shall be kept by Town staff with the hearing’s resulting resolution or Order.

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3. The Chair asks if any Council member has a conflict of interest or has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record. See section 34-52 of the Land Development Code.
4. All witnesses are sworn in. This includes Town staff, applicant and applicant’s representatives, and anyone who wishes to make public sworn testimony on this case. All persons are requested to state their name for the record when they address the Council and if presenting testimony as an expert, shall state their qualifications and area of expertise. Town Council shall vote to accept or reject the testimony as expert testimony. No statement of qualifications or additional vote is needed if the individual has been previously accepted as an expert in a particular area and this is stated in the record.
5. The applicant presents its case, including any testimony by its experts or others in support of the applicant’s request. Town Council may ask clarification questions of the applicant and others giving testimony in support of the applicant’s request. *
6. Town staff presents its report and recommendation. Town Council may ask for clarification or questions of staff. *
7. Local Planning Agency representative, if available, presents LPA recommendation. Town Council may ask clarification questions of the LPA representative.
8. Public sworn testimony is opened. At its conclusion, the Chair closes the public sworn testimony portion of the hearing.
9. Applicant presents rebuttal, if any. Town Council may ask detailed informational questions of applicant. **
10. Staff presents rebuttal, if any. Town Council may ask detailed informational questions of staff. **
11. The testimony portion of the hearing is closed, and Council discussion starts.
12. Council next votes on a resolution or Order, or takes other action if approval by ordinance is required.
13. The reafter the hearing is closed or continued, or other action is taken in conformity with the successful motion, and the time of closure is verbally noted for the record.

*Council has determined that these Council questions are to clarify the applicant’s and staff’s presentations of information and are intended to be short Qs and As.

**Council has determined that these Council questions are to discuss detailed, substantive matters involving the application.

NOTE: The above is intended as a guide and the Council may conduct the quasi-judicial hearing utilizing another procedure, so long as due process requirements are met.

If new evidence is submitted prior to or at a Town Council hearing for a quasi-judicial matter after the final LPA hearing, Town Council can choose to:

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1. Send the matter back to the LPA for review and recommendation.
2. To continue the hearing to provide sufficient time for the staff and Town Attorney to make recommendations; or
3. To complete the hearing if agreeable to the staff and Town Attorney.

8. Reimbursement Procedures

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Travel Expenses:

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It is the desire of the Town of Fort Myers Beach that Town Council members be reimbursed for certain expenses incurred while traveling on Town business. Appropriate allowances, forms and procedures are documented in the Town Personnel Manual.

Business Expenses:

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From time to time, it may be necessary for members of Town Council to entertain various Federal, State and County officials while transacting official Town business. Such business expenses would normally include lunches and/or dinners. A Direct Expense Voucher may be submitted for reimbursement and must be signed by the person requesting reimbursement, and the Town Manager. Invoices must be attached as supporting documentary evidence.

Educational Reimbursement:

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The Educational Reimbursement Program is used to encourage Town Council members to improve their knowledge and skills needed for the Town's effectiveness. Reimbursement conditions, forms and procedures are documented in the Town Personnel Manual.

9. Council Communications Policy and Processing Procedures

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Council Communications Policy:

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Any communication by individual Council members to the media, other governmental agencies, or in public forums should, as clearly as possible, distinguish between personal opinions and actions or direction taken by Town Council. This policy in no way means to censor viewpoints or restrict individual rights but is solely suggested to preserve the integrity of the Council, staff, and the Town.

Mail Processing Procedures:

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Mail for the Town should be addressed to the current address. All mail is opened stamped and distributed (it is all public record). Council mail is given to the Administrative Assistant to log and process. Any Council mail that needs a prompt or detailed answer is pulled, copied, and a draft response is prepared for review, usually by the Mayor. The original is distributed, along with other mail, with a note stating a draft response is being prepared. When the response is finalized, it is copied and distributed to all Council members for reading at their leisure.

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Communications with Potential Applicants for Zoning and Communications with Vendors or Service Providers:

Section 34-52 of the LDC specifies regulations regarding communications with public officials in non-quasi-judicial matters and ex parte communications with public officials in quasi-judicial matters.

10. Non-Discrimination and Harassment

Policies:

These policies are documented in the Town Personnel Manual

11. Interview/Selection Process for Legal Services

The Town Council shall competitively procure Legal Services (Town Attorney) candidates in accordance with the Town's adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Legal Services candidates. The Town Council may direct the Town Manager or designee to review the proposals submitted by the applicants for Legal Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

INTERVIEW PROCESS FOR LEGAL SERVICES

Individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP#: _____ . Interview date: _____

	9:00-9:30 (Public Gathering)	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1	Coffee/muffins	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2	Coffee/muffins	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3		Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4		Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5		Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant 1: _____
Applicant 2: _____
Applicant 3: _____
Applicant 4: _____
Applicant 5: _____

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NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with 1 being the top choice. The Town Clerk will tally the votes and announce each applicant’s combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of only the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period of legal services, if necessary, is discussed including assignment of representation for ongoing municipal litigation cases.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

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TOWN COUNCIL RANKING SHEET FOR LEGAL SERVICES

RFP# _____

DATE: _____

Councilor Name:

Councilor Signature:

Ranking (#1 is top choice)

1. _____
2. _____
3. _____
4. _____
5. _____

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12.0 Interview/Selection Process for Town Manager

The Town Council shall competitively procure Town Manager candidates in accordance with the Town's adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Manager candidates. The Town Council may direct the ~~acting then current Town Manager~~ or designee to review the proposals submitted by the applicants for Town Manager Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

INTERVIEW PROCESS FOR TOWN MANAGER

Councilors rank top 5 candidates from applications. Top 5 overall are invited and scheduled for individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP# _____ Interview date: _____

	9:00-9:30 Public Gathering	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1	Coffee/muffins	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2	Coffee/muffins	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3	Coffee/muffins	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4	Coffee/muffins	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5	Coffee/muffins	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant

1: _____

Applicant

2: _____

Applicant

3: _____

Applicant

4: _____

Applicant

5: _____

NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

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TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with 1 being the top choice. The Town Clerk will tally the votes and announce each applicant’s combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of only the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period, if necessary, is discussed.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

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TOWN COUNCIL RANKING SHEET FOR TOWN MANAGER

RFP# _____

DATE: _____

Councilor Name: _____

Councilor Signature: _____

Ranking (#1 is top choice)

1. _____

2. _____

3. _____

4. _____

5. _____

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EXHIBIT “A”

13. Appointment to Vacant Council Seats

In the event of a vacancy on the Town Council pursuant to Sec. 4-06 of the Town Charter, the Town Council shall:

1. Declare and announce at a public meeting the reason the vacancy has been created;

2. Direct the Town Manager or designee to notify the public as soon as reasonable by the most appropriate means, including but not limited to posting on the Town's website, a press release, social media, advertisement, that a vacancy on the Town Council has occurred with instructions on how to apply to serve as a Town Council member and notice that a Form 6 must be filed with the Florida Commission on Ethics pursuant to Florida law;

3. Thereafter the Town Council shall appoint an individual, who is qualified as provided in Section 4-01(c) of the Town Charter, to serve as a Town Council member prior to the expiration of the term of the vacant seat;

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