



Fort Myers Beach Town Council

**Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931**

Agenda

Monday, April 6, 2026

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. Lee County Property Appraiser - Honorable Matt Caldwell
Lee County Property Appraiser - Honorable Matt Caldwell

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

- A. Appointment of Members to the Local Planning Agency
Appointment of Members to the Local Planning Agency

IX. APPROVAL OF MINUTES

- A. Town Council Meeting - March 2, 2026
B. Town Council Management & Planning Session — March 5, 2026
C. Town Council - March 16, 2026

X. CONSENT AGENDA

- A. Resolutions 26-060 through 26-063; Extension of Local Emergency - Tropical Storm Debby

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO TROPICAL STORM DEBBY 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.

- B. Resolutions 26-064 through 26-067; Extension of Local Emergency - Tropical Storm Helene

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 HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE) 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.

- C. Resolutions 26-068 through 26-071; Extension of Local Emergency - Tropical Storm Milton

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 MILTON, 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.

XI. ITEMS REMOVED FROM CONSENT AGENDA

XII. PUBLIC HEARINGS

- A. Ordinance 26-07; Smoking and Vaping

This legislative agenda item is a First Reading and Public Hearing on proposed Ordinance 26-07. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for May 4, 2026 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

XIII. ADMINISTRATIVE AGENDA

- A. Resolution 26-073; Dune Management Plan Memorandum's of Agreement

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, DELEGATING AUTHORITY TO THE TOWN MANAGER TO EXECUTE MEMORANDUMS OF AGREEMENT BETWEEN THE TOWN AND BEACH FRONT PROPERTY OWNERS IN ACCORDANCE WITH THE TOWN OF FORT MYERS BEACH DUNE

MANAGEMENT PLAN; AND PROVIDING AN EFFECTIVE DATE.

- B. Resolution 26-072, L0195 FDEP Grant Approval for Downtown Stormwater Mitigation Phase I

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ADMINISTER A GRANT FROM THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION THROUGH THE FY25-26 STATE APPROPRIATIONS FOR THE FORT MYERS BEACH STORMWATER DOWNTOWN MITIGATION PHASE I PROJECT IN THE AMOUNT OF \$292,500.00; AUTHORIZING THE TOWN MANAGER TO EXECUTE RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE GRANT AND PROGRAMS; PROVIDING AN EFFECTIVE DATE.

- C. Castle Beach Condo Association

Termination of Easement with Castle Beach Condo Assoc. and entering into Maintenance Agreement. (Documents to follow.)

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

NOTE: THIS MEETING IS STREAMED LIVE ON [YOUTUBE](#).

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



For special 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.

1. **Request:**

Meeting Date: April 6, 2026

Appointment of Members to the Local Planning Agency

Why the action is necessary:

Fills vacancies to maintain a quorum and ensure the Local Planning Agency can continue advising Town Council on community planning, land use, and preservation of the island's unique natural characteristics in accordance with the Town Code.

What the action accomplishes:

Fills a current vacancy on the board.

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

Per Town of Fort Myers Beach Code of Ordinances, [Division 3.—Local Planning Agency \(LPA\)](#)

Sec. 34-112. - Purpose and Scope.

The broad objectives of town planning and the creation of the local planning agency are to further the welfare of the citizens of the town by helping to promote a better, more helpful, convenient, efficient, healthful, safe, and attractive community environment and to insure that the unique and natural characteristics of the island are preserved.

Sec. 34-113. - Composition, appointment and compensation of members.

- (a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be registered voters within the territorial boundaries of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.
- (b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.
- (c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).
- (d) All appointed members of the local planning agency must file an annual financial disclosure as required by the Florida Commission on Ethics.

Current Status

There is currently **(1) one vacancy** at the Local Planning Agency.
The Town Clerk's Office has received a total of (1) one application for appointment.

Public Notice

The community was initially notified of the vacancies on February 19, 2026, with all applications due to the Town Clerk's Office by 4:00 p.m. on Monday, March 16, 2026.

Attachments:

1. Schoonover, Edward

Financial Impact:

None

6. Alternative Action

Do not appoint members and readvertize.

7. Management Recommendations:

8. Recommended Approval:

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 3/18/2026
Approved - 3/23/2026
Approved - 3/23/2026
Approved - 3/24/2026
Final Approval - 3/24/2026



RECEIVED

By Amy Baker at 1:42 pm, Feb 23, 2026

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 02/23/26

Name: Schoonover

Edward

J

Last

First

Middle initial

Telephone Number: (218) 820-3389

Email Address: ed.schoonover@jandjholmes.com

Home Address: 8180 Lagoon Rd

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? AAC, BORCAB

If yes, when is your term expiration? N/A

I am applying for appointment to: (Check one)

☐ Anchorage Advisory Committee

☐ Audit Committee

☐ Bay Oaks Recreational Campus Advisory Board

☐ Cultural and Environmental Learning Center Advisory

☐ Board Historic Preservation Advisory Committee

☒ Local Planning Agency

☐ Marine and Environmental Resources Task Force Nuisance

☐ Abatement Board

☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I would like to assist the town in the process of changing and easing codes and regulations in order to assist residents and commercial business in their efforts to get shovels in the ground and rebuild.

Community Involvement:

Laguna Shores HOA (former), Anchorage Committee (current) BORCAB (current)

Interests / Activities:

Outreach Africa advisor (non profit)

You may attach a resume in addition to the above information.

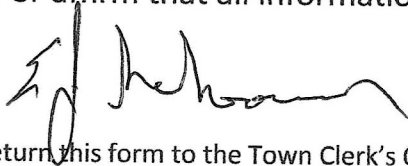
Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

02/23/26

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

ED SCHOONOVER

LPA CANDIDATE

CONTACT

218.820.3389
ed.schoonover@jandjholmes.com
8180 Lagoon Rd
Fort Myers Beach, FL 33931

PROFILE

I have nearly 25 years of experience working in a municipal government. I spent most of my time working in the Parks and Recreation Department but have spent time in various other departments including: Planning, Engineering, Surveying and Public Works. I then spent time managing and assisting operations for a large family YMCA. My latest chapter has been in property management as our companies own and operate 29 properties in both the residential and commercial realms. We are proud of our laundromat and services chain of stores that covers the North Central Minnesota Area. We have been full time residents of Fort Myers Beach since 2018.

EXPERIENCE

Owner/Property Manager and Development Coordinator

2013 – Present JMKS, J2, Chip, JMK and Sons Properties

Our companies own and operate a variety of properties. We have had HUD/HAP properties that required us to have extensive knowledge in Section 8 and affordable housing plans. Also included in our property profile are several group homes serving developmentally disabled adults and children. Our commercial side includes office buildings and a chain of service-related storage units and wash facilities.

Maintenance and Operations Director

2010 – 2013 Brainerd (MN) Family YMCA

I managed and oversaw all aspects of building operations. Some aspects of management included: Manage staff, coordinate barrier removal for ADA compliance, seek and award bids for projects with various contractors, I participated in the complete remodel of a Gymnasium floor and the reconstruction and remodeling of two pools.

Operations Specialist

1982 – 2008 Brainerd Area Civic Center

Assisted in management and operations under the auspices of both nonprofit and municipal management. Major focuses were: superior customer service, maintaining playing surfaces and facilities to an NHL type standard, implementing utility saving projects reducing water and electricity expenses.

Ed Schoonover

LPA Candidate

8180 Lagoon Rd
Fort Myers Beach, FL 33931
218.820.3389
ed.schoonover@jandjholmes.com

REFERENCES

Chuck "Gringo" Grillo

Retired NHL teams front office

218.821.8400

Mr. Grillo is the former vice president and director of player personnel for the San Jose Sharks (NHL). Mr. Grillo was the Head Scout for the Pittsburgh Penguins (NHL) and has won a Stanley Cup in that role. Mr. Grillo was one of our major tenants at Brainerd Area Civic Center and can testify to my work ethic and attention to detail

Bob Motzko

Head Coach Minnesota Golden Gophers Men's Hockey (NCAA)

320.291.6431

Mr. Motzko serves as head coach of the perennial top ten in the nation Gopher men's hockey teams. Mr. Motzko has won an International Gold Medal leading the men's junior hockey team. Mr. Motzko served on the LSVB board with me and can testify to my leadership and ability to get things done.

Randy Klinger

Special Education Teacher, Sarasota, FL

218.839.0990

Mr. Klinger was the Executive Director of the Brainerd Family YMCA and worked closely with me on various major projects. Mr. Klinger is currently a special ed teacher with life experience of helping others succeed. Mr. Klinger can testify to my management abilities and experience securing quality contractors to complete major projects under cost and on time.



Fort Myers Beach Town Council

Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931
Monday, March 2, 2026

Minutes

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members Present: Mayor Dan Allers, Vice Mayor Scott Safford, Council Members John King, Rebecca Link, and John McLean.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Dan Allers announced the following change: Under Public Hearings, Item B has been rescheduled to the Town Council Management & Planning Session on March 5, 2026, at 9:00 a.m. Council Member King moved to approve the final agenda as amended, seconded by Council Member McLean. The motion carried unanimously.

V. PUBLIC COMMENT

Chris King, Vice President of the Fort Myers Beach Library District Board, recognized the Friends of the Fort Myers Beach Library for hosting a fabulous book sale over the weekend. She also noted the President of the organization, Jan Fleming, did a great job. She noted that the sale set a fundraising record and announced that another sale will be held at the end of March.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King recognized the Anchorage Advisory Committee Chair and Library Board Vice President Chris King for her nomination for the Keep Lee County Beautiful Volunteer of the Year for her continued and continual cleanup of Fort Myers Beach. He noted that the winner will be recognized on Thursday morning. Mayor Allers also extended his congratulations.

Vice Mayor Safford announced that there was a celebration for Captains for Clean Waters' 10th Anniversary last weekend. He recognized Captain Dan and Captain Mike for creating and growing the organization in the last ten years. He emphasized the importance of clean water and hopes for an even brighter future for the organization.

Council Member Link congratulated Tunaskin, Inc. and their leadership for their beach cleanup and shirts for the upcoming anniversary.

Council Member McLean also congratulated Chris King for her achievements.

Mayor Allers announced the upcoming 30th Anniversary Celebration on March 6, 2026. He recognized all the staff members, committee members, council members, mayors, and vice mayors that came before the current council and their work in the past 30 years. He extended an invite to all to come to the celebration.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Chris King, Chair of AAC, reported that the committee was looking forward to welcoming the new committee member, Tom Hedrick, and thanked the Council for the appointment. She also recognized the work of the committee's Harbor Master Curtis Ludwig in both the Anchorage and Mooring Field areas. Chair King highlighted the higher revenues in Mooring Field area. She announced that Committee Member Ted Lawwill will be providing additional information to the committee in March. She stated that the committee is looking forward to learning more about the new software platform for posting agenda and meeting information. She also provided that the committee will assess and ensure that the Roles and Responsibilities document is properly set. Additionally, Chair King noted the plans for the upcoming Cruisers Appreciation Event and thanked the 2026 monetary sponsors for this event. She reported that the committee has about \$6,000.00 for this event and future events, with combined funding from sponsors, the 2025-2026 budget, and residual funds. She also thanked Beach Talk Radio for on-site AV assistance and promotion. Lastly, she thanked all in-kind sponsors, who will be posted through the communication plan with an announcement at the next Council meeting. The Committee Chair stated that she looked forward to the AAC's partnership with MERTF in the town's efforts to provide water taxi and ferry services for businesses in a safe and environmentally friendly manner. She noted that, at the direction of the town manager, the two committees will have a joint meeting in May to discuss and recommend to Council a framework for guardrails to govern such activity.

On behalf of the Anchorage Advisory Committee, the Committee Chair brought forth the recommendation that the council and town staff continue exploring every avenue for funding a much-needed plan of action to address canal and channel dredging. She applauded Committee Vice Chair Nash for the very thorough report provided to the committee last week on shoaling in the Buccaneer Lagoon entrance. She noted that the lack of benchmarks, reports, and plans bars access to FEMA funds and creates risk. She stated that there are talks with the federal and state government regarding funding for these efforts. She thanks those who have initiated and facilitated the discussions. Chair King noted that a full analysis would cost around \$200,000.00.

VIII. APPROVAL OF MINUTES**A. Management & Planning Session - February 5, 2026**

Council Member King moved to approve the minutes, along with the minutes of the February 17, 2026, Town Council meeting as corrected, seconded by Vice Mayor Safford.

The motion carried unanimously.

B. Town Council - February 17, 2026

Council Member King provided the following corrections: 1) On Page 7, Paragraph D, the last name "Bowen" should be "Boan"; 2) On Page 8, Paragraph X, "Marine and Environmental Task Force" should be "Marine and Environmental Resources Task Force"; and 3) On Page 10, in the last sentence, "Studio A" should be "Studio AD".

Council Member King moved to approve the minutes as corrected, along with the minutes of the February 5, 2026, Management & Planning Session, seconded by Vice Mayor Safford.

The motion carried unanimously.

IX. CONSENT AGENDA

Council Member McLean moved to approve the consent agenda, seconded by Council Member King.

The motion carried unanimously.

A. Resolutions 26-041 through 26-045 Extension of Local Emergency - Tropical Storm Debby

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO TROPICAL STORM DEBBY 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 McLean moved to approve the resolution, seconded by Council Member King.

The motion carried unanimously.

B. Resolutions 26-046 through 26-050 Extension of Local Emergency - Tropical Storm Helene

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 HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE) 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 McLean moved to approve the resolution, seconded by Council Member King.

The motion carried unanimously.

C. Resolutions 26-051 through 26-055 Extension of Local Emergency - Tropical Storm Milton

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 MILTON, 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 McLean moved to approve the resolution, seconded by Council Member King.

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

A. Ordinance 26-06; Purchasing

This legislative agenda item is a First Reading and Public Hearing on proposed Ordinance 26-06. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for March 16, 2026 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) CLARIFY AND STREAMLINE EXISTING REGULATIONS AND PROCEDURES; 2) INCORPORATE BY REFERENCE STATUTORY MANDATORY TERMS AND CONDITIONS AND STATE AND FEDERAL GRANT REQUIREMENTS; AND 3) IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Town Manager McKannay reviewed the background of the request as stated on the blue sheet.

No public comment.

Council Member King moved to approve the ordinance for a second reading on March 16, 2026, seconded by Council Member Link.

The motion carried unanimously by roll call vote.

B. Ordinance 26-07; Smoking & Vaping

This legislative agenda item is a First Reading and Public Hearing on proposed Ordinance 26-07. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for April 6, 2026 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

This item has been rescheduled to the Town Council Management & Planning Session of March 5, 2026, at 9:00 a.m.

XII. ADMINISTRATIVE AGENDA

A. Special Event: 30th Anniversary Celebration

APPROVAL TO PROHIBIT PARKING ALONG OLD SAN CARLOS BOULEVARD FROM 12:00AM TO 5:00PM ON FRIDAY, MARCH 6, 2026, CLOSURE OF OLD SAN CARLOS BOULEVARD FROM 10:00AM TO 5:00PM FRIDAY, MARCH 6, 2026, AND THE TOWN'S SPECIAL EVENT PERMIT TO CELEBRATE THE TOWN'S 30TH ANNIVERSARY.

Mayor Allers read the title of the resolution. Town Manager McKannay noted that the only special request for this event permit is the parking prohibition. Council Member King moved to approve the resolution, seconded by Council Member McLean.

The motion carried unanimously by roll call vote.

B. Resolution 26-059, 2027 Federal Appropriation Request Support

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ENCOURAGING AND PROVIDING COMMUNITY SUPPORT FOR THE TOWN OF FORT MYERS BEACH COMMUNITY PROJECT FUNDING REQUESTS FOR FISCAL YEAR 2027 AND AUTHORIZE THE TOWN MANAGER TO DETERMINE FINAL APPROPRIATION REQUESTS AND SUBMIT IN COORDINATION WITH AND THROUGH THE TOWN'S FEDERAL LOBBYIST; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay noted that they were moving forward with a plan on the federal level regarding appropriations for town projects and needs. He called up staff member Jason Freeman to provide a brief overview.

Council Member McLean moved to approve the resolution, seconded by Council Member Link.

The motion carried unanimously by roll call vote.

C. Ahtna Liquidated Damages Waiver Request

Provide direction to Staff to grant or deny relief from Liquidated and Actual Damages to Ahtna Marine & Construction Company for the Town's Beach Renourishment and Hurricane Recovery Project.

Town Manager McKannay presented the recommendation to deny the request for liquidated and actual damages. Staff member Chadd Chustz was called up to provide a brief overview.

Council Member Link moved to deny relief for both the liquidated and actual costs, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

D. Resolution 26-037, Newton Beach Park Ranking and Authorization to Negotiate

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING/REJECTING OR MODIFYING THE RANKING AND DETERMINING JR EVANS ENGINEERING, P.A. AS THE MOST RESPONSIVE AND QUALIFIED FIRM AS RECOMMENDED BY THE TOWN MANAGER AND THE SELECTION ADVISORY COMMITTEE BASED ON THE RESPONSES RECEIVED TO RFQ-25-17-AD FOR THE FORT MYERS BEACH ENGINEERING & ARCHITECTURAL SERVICES NEWTON PARK BEACH FACILITY RECONSTRUCTION PROJECT; AUTHORIZE THE TOWN MANAGER OR DESIGNEE TO NEGOTIATE WITH THE QUALIFIED FIRM; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay reviewed the background of the request as stated on the blue sheet. He noted that the Selection Advisory Committee's recommendation is to use JR Evans Engineering, P.A.

Council Member King moved to approve the resolution, seconded by Council Member Link.

The motion carried unanimously by roll call vote.

E. Resolution 26-056; 2525 Estero Parking Lot

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING AND APPROVING THE TOWN MANAGER'S EMERGENCY CONTRACT WITH ICS MATERIALS, INC. RETROACTIVE TO DECEMBER 1, 2025 TO COMPLETE CONSTRUCTION OF A PARKING AREA WITH A PERMITER RETAINING WALL AT 2525 ESTERO BOULEVARD IN THE AMOUNT OF \$138,053.13; PROVIDING FOR CONFLICT, SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay reviewed the background of the request as stated on the blue sheet. Council Member Link noted that there may be a scrivener's error on the date on page 988 of the contract, Exhibit E.

Mayor Allers moved to approve Resolution 26-056 for 2525 Estero Boulevard parking lot with the caveat to provide directions to the staff to bring back whatever is necessary to provide proper safety protocols both pre-construction or during construction and post-construction, seconded by Council Member King.

The motion carried unanimously by roll call vote.

F. Resolution 26-019; Purchase of Stormwater Video System Van

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF AN VOYAGER STORMWATER VIDEO SYSTEM VAN FROM ARIES INDUSTRIES, INC. IN THE AMOUNT OF \$288,137.00, PROCURED THROUGH SOURCEWELL CONTRACT #120721, FOR USE IN THE TOWN'S STORMWATER SYSTEM MAINTENANCE PROGRAM; AUTHORIZING THE TOWN MANAGER TO SIGN THE PURCHASE ORDER WITH ATTACHED ADDENDUM; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay reviewed the background of the request as stated on the blue sheet. Council Member King moved to approve the resolution, seconded by Vice Mayor Stafford.

The motion carried unanimously by roll call vote.

G. Resolution 26-058; CEC RFQ-24-06 STA #3 - 2026 Beach Monitoring Tasks

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE SUPPLEMENTAL TASK AGREEMENT #3 OF CONTRACT RFQ-24-06-AD BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR PHYSICAL MONITORING OF BEACH PROFILES, PERMIT REQUIRED WINTER SHOREBIRD MONITORING, FUNDING, ADMINISTRATION, AND STAKEHOLDER TASKS, AND POST STORM SURVEYS AND ASSESSMENTS FOR A COST OF \$122,800.00; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay called on staff member Chadd Chustz to provide a brief overview. Mr. Chustz noted three main components: beach maintenance; shorebird and winter monitoring; and a method to bypass the procurement process to submit assessment of damages to the federal and state partners in a timely fashion. Council Member McLean moved to approve the resolution, seconded by Council Member King. The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

None

XIV. TOWN MANAGER'S ITEMS

Manager McKannay provided an update on the negotiations with the Fort Myers Beach Elementary School District. There was a request for an assessment by engineers and architects for additional data to assist with negotiations. These reports were received last week and will be available to both the Council and the public. He noted that both reports conclude that while portions of the HVAC and building roof walls retain value, the foundation, floor system, and electrical infrastructure pose concerns. He noted that significant efforts and financial investments are needed for the school to be continually used and meet FEMA requirements. He noted that the property may be utilized for lower risk use but that there would still be a long-term risk and costs. Town Manager McKannay also noted that the building would need to be elevated, and there is no guarantee that the building, or a portion thereof, would be retained after elevation. He reported that, should negotiations go well, the town would then receive the structures and property and then move forward with some financial compensation. He and the staff will meet with the superintendent tomorrow to seek potential property and financial compensation. If no agreement is within reach, he would recommend another round of mediation.

Manager McKannay then provided an update on the Emergency Temporary Placement Permit Process. The initial permits have now reached the fourth month mark within a six-month timeline. A letter will be sent out to remind those with an upcoming deadline for reapplication. He noted that he would remain firm on needing to see progression, as directed by the Council. He concluded with a statement that the opportunity to appeal is included in the process.

Lastly, Manager McKannay acknowledged the work of Jason Freeman and congratulated him on his new title as Administrative Executive Officer. He noted that there are no financial impacts associated with this decision.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Link commented on a potential opportunity with Lowe's for a nomination of the town to receive funding for Bay Oaks. Town Manager McKannay responded that he forwarded the nomination process to the directors. Council Member Link stressed the close deadline for submission and noted that applications must be tailored to meet specific expectations. Town Attorney Stuparich stated that the Town Manager should finalize the application and that the Town Mayor should sign. Mayor Allers asked if the application was project-specific, and the Town Manager answered that it was. There was consensus that the application would be brought forth before Council at the meeting on March 16, 2026, which would provide time for submission on March 20, 2026.

Council Member King, along with town staff, met with the staff members of Senator Rick Scott for the purpose of seeking funding assistance for canal dredging. He reported that he recently received a compilation of revenue sources for the Senator's staff and will review the information. He informed Council that he will be late to the M&P meeting on Thursday due to the Keep Lee County Beautiful event. Mayor Allers requested that in the next fiscal year, there be time allotted in a future M&P meeting to discuss shelter for the additional equipment the town has acquired. He noted that such shelter may increase the equipment's longevity and lower long-term costs. Town Manager McKannay communicated a note of appreciation for the direction and stated that he is in discussion on this matter.

A. Town Advisory Boards

Designation of a Council representative to the Anchorage Advisory Board (AAC) and Cultural & Environmental Learning Center Advisory Board (CELCAB).

Town Clerk Baker noted that due to the resignation of Jim Atterholt (former liaison to AAC and CELCAB), a Council representative must be identified to replace that role. Council Member McLean volunteered for both positions, and congratulations were extended by Town Council. Town Attorney Stuparich noted that because this was an administrative matter among the Council, no formal vote was needed.

XVII. ADJOURNMENT

Council Member King moved to adjourn. The meeting was adjourned at 11:16 a.m.



Fort Myers Beach Management & Planning Session

Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931
Thursday, March 5, 2026

Minutes

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members Present: Mayor Dan Allers, Vice Mayor Scott Safford and Council Members John King, Rebecca Link, and John McLean.

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Joint Session with Public Safety Committee

Joint Session with Public Safety Committee

Public Safety Committee Chair Dawn Thomas noted that recently, there has been a lot of redundancy in the committee's meetings and several issues that have already been addressed by Council or staff. She noted that the Committee is seeking guidance and updates on their purpose.

Town Manager McKannay proposed that the committee start a neighborhood watch program. He noted that such group would need to coordinate with the town and the County Sheriff's office. There are also potential opportunities for studying the effects of the adopted ordinance on bicycles and for the traffic and safety of Estero Boulevard.

Raleigh Baker, Neighborhood Services Coordinator, agreed with the idea of a neighborhood watch program. She also suggested that the committee could revisit finding grant funding for emergency call boxes, which can be placed in parking lots or near tram stops.

Vice Mayor Safford and Mayor Allers mentioned the former Civilian Emergency Response Team (CERT), a group of certified community volunteers that would respond to emergencies and provide services (like

directing traffic) during town events. Mayor Allers noted that the town would allow the team to use the boat during the aftermath of Hurricane Irma. Vice Mayor Safford said that the team likely dissolved due to underutilization and lack of workflow management. He stated that the membership and engagement were high and that volunteers truly wanted to assist the community. He requested that Mr. Farrell look into the reason for the dissolution of CERT. Town Manager McKannay stated that he was confident that he could work and come up with solutions for leadership responsibilities and the delineation of work for the volunteer group. He stressed the importance of identifying boundaries and roles between the volunteer watch program and CERT. He reiterated the importance of such groups and their significant impacts during emergency situations and town events.

Council Member Link conducted research on what similar projects other small island communities are doing. She started by asking Chair Thomas if she or the committee had any issues they would like to prioritize.

Committee members identified issues related to increased traffic, Estero Boulevard, bicycle safety and guidance, pedestrian education and safety, and broken lighting. Chair Thomas mentioned the committee's work on implementing a bicycle educational program. The Public Safety Committee has also tracked statuses on dilapidated buildings and coordinated communication between the Fire Department and residents not at home during hurricanes. Chair Thomas noted that when ideas are brought up to staff, they usually receive an update that the issue is still in progress on the staff's end or that state agencies have control over that area.

Council Member Link proposed an idea for informational pamphlets on local laws that can be distributed to the public, such as preparation for a hurricane. Mayor Allers also suggested distribution of information via radio or television. Council Member Link then presented the remaining ideas under the following headings: 1) emergency preparedness and disaster response, including hurricane evacuation planning and communication, disaster communication systems, and post-storm debris removal; 2) public workshops; 3) traffic and pedestrian safety, like crosswalk safety, golf cart and scooter regulations, and seasonal traffic management plans; 4) water and beach safety, such as rip currents and alerts; 5) safety for kayaks and boats; 6) high-rise fire preparedness; 7) code enforcement and building safety, such as occupancy limits, vacation rentals, and flood compliance; 8) police and community safety, including educational sessions, seasonal strategies, and coordination with CERT.

Committee Chair Thomas asked Council Member Link how the committee should go about completing such tasks without overwhelming the Public Information Officer. She noted that they had brought educational and informational materials to the staff member, who then stated that she is working on the items and informed the committee of her limited capacity. Mayor Allers noted that there are many ideas. However, there is also a lack of delineation on process, organization and responsibility. Committee Member Farrell noted that there seemed to be a gap between ideas and

implementation.

Council Member McLean also noted that the committee lacked a strategic plan and procedures. He would like to make similar improvements with AAC and their committee chair. He hopes to establish something similar across all committees.

Town Manager McKannay acknowledged that the AAC Chair had sent him processes that she would like to implement for the committee. He says that committees can send him a request for a staff member to attend their meetings. Staff can then be assigned based upon availability. He also noted that staff members want to be included in the process and discussions.

Lastly, he mentioned that Abby Eberhart, the new Public Information Officer, wishes to work closely with the committee on ideas and ways to implement them. Town Manager McKannay stressed that committees should bring up ideas to him, even if the proposals have a cost. He could work with them on weighing the pros and cons. He noted that Rileigh Baker is their liaison, but he can also assign additional staff members for specific topics. He also presented the possibility of the new Public Information Officer attending the next committee meeting.

Council Member McLean suggested that the committee could also focus on lightning detectors, especially with the higher incidents of lightning on beaches. He stated that learning the community's wants will help the committee to determine how to prioritize ideas.

Mayor Allers brought up an idea for a workshop where the community can learn about the Public Safety Committee and have an opportunity to submit input. He also brought up a potential second event where the committee can request donations, similar to what AAC currently implements. He also noted potential training opportunities for the community members on new technologies and safety features. Council Member Link also noted how the public outreach event can be marketed as a "Welcome Back" event that marks the beginning of a new season. She also suggested inviting different speakers and setting up individual booths.

Vice Mayor Safford brought up ideas on crosswalks and research on barricades for mitigating traffic. He also proposed that the committee could identify pothole and lighting issues. He also supported ideas on sidewalk safety and education, as well as emergency call boxes. Mayor Allers noted that the data is already available on emergency call boxes due to the committee's past work on them. He suggests that the committee use the existing data and proceed from there. The Mayor additionally stated that the committee should also find ways to look for funding for their projects.

Chair Dawn Thomas asked if staff members with experience with grant writing could assist the committee, as no member on the committee is a professional grant writer. Mayor Allers stated he knew of volunteers who could assist in serving as grant writers. Council Member Link mentioned she may also know someone who can help.

Thomas Yozzo, Emergency Services Director, noted that the lightning detection was an excellent idea. He also mentioned that there may be federal funding

and grant opportunities that the staff and the committee can look into. He emphasized the importance of volunteer emergency response teams. Staff is currently working with the county and is going back and forth on acceptable bicycle-related signage. He noted that the County was not very open to the idea of painting sidewalks. The County is going through a lot of changes on their end as well. He believes that barriers on Estero Boulevard would be a great asset. Director Yozzo responded to Chair Thomas' concerns about redundancy with staff work. He noted that there were many aspects that staff did not cover, including vendors, comparisons of different materials for the barriers, and addressing the potential large cost for the project.

Vice Mayor Safford discussed the importance of having people assigned to the crosswalks. Council Member Link asked if these individuals could be volunteers. Vice Mayor Safford said that volunteers were utilized in the past. Director Yozzo noted that it would be best to keep CERT for emergency situations only and to use neighborhood watch programs in this case. He also noted that they should work with the legal team to ensure that proper training is conducted for volunteers.

Mayor Allers stressed the importance of data, which the state and county use for their decisions for approval.

B. Proposed Ordinance: Smoking/Vaping
Discussion item only

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

Town Attorney Stuparich presented that Town Manager McKannay had asked her to work with him on an ordinance on smoking and vaping. In her research, she found a Florida ordinance from 2022. Florida law has preempted local governments from establishing smoking inside buildings. In 2022, the Florida Clean Air Act (formerly the Florida Clean Indoor Air Act) contained a new carve-out from the preemption that would allow local governments to establish smoking regulations in public beaches and parks, with the exception of unfiltered cigars. Lee County has updated their regulations to include vaping, and she noted the boundaries within public parks and beaches. Town Attorney Stuparich, after confirming with Mayor Allers, stated that the town did not have a public beach but did have a public park. She also provided that any county park inside the town would also belong to its jurisdiction. She drafted an ordinance and shared it with the Town Manager. Additionally, the Town Attorney noted that the town's code included smoking restrictions in recreation centers and community buildings. This language is not enforceable, and she therefore recommended amending

the code.

Town Manager McKannay believed that this was a timely and prudent time to bring up a discussion on smoking and vaping regulation. He stated that this ordinance would protect public health and comfort, preserve the natural beauty of the beaches and parks, reduce litter and environmental harm, and enhance the overall visitor experience of the town. He recognizes that there is a balance of personal freedom and shared responsibility. He noted that he intended for enforcement to be a balance between punitive and educational measures, prioritizing the former.

Mayor Allers requested that the staff focus on clear communication on what the ordinance would be restricting. He noted that there had been news reports that the town was banning smoking on the entire beach, which was not true.

Council Member McLean noted his concerns about enforceability and lobbyist intervention at the state level, citing the exception of unfiltered cigars. He believed that this ordinance may be a bit of an overreach. Mayor Allers added that, in his discussions with the Town Attorney, there is a need to establish ordinances that would address situations that may occur later on. He referred to the issue of canal dredging as an example. Council Member McLean wishes to prioritize cleaning up any unenforceable language.

Council Member Link stated that she was surprised by the significant environmental impacts of vaping and smoking. She noted that unfiltered cigars were biodegradable. She said that she was in support of Council's consideration of the ordinance. Vice Mayor Safford echoed Council Member Link's remarks on litter and pollution from vaping and smoking (especially the former). Council Member King believes that this is not governmental overreach but governmental support. He is disappointed that Florida law allows for smoking in outdoor areas of open-air restaurants. He also noted the importance of enforcement.

Town Attorney Stuparich provided a summary of the next steps. She also noted that the City of Sanibel is also considering a similar ordinance that was on second reading last Monday. She also acknowledged the similarity of the language between the ordinances.

IV. AGENDA MANAGEMENT

A. March 2026

Vice Mayor Safford and Council Member King wished to follow up on their request to establish a community redevelopment agency (CRA). Mayor Allers noted that there was past action to establish a CRA and that Council has already provided direction on this matter. He also stated that staff is currently working with Lee County Commissioner Mulicka. Town Manager McKannay announced that there are parallel efforts for the CRA path, with one for educating leaders and one for receiving approval from the BOCC. He stated that a study is being drafted and that staff could come back at the next

Management & Planning Session to discuss. Vice Mayor Safford asked Town Attorney Stuparich if there is state legislation that may affect or expedite this process. She responded that there is none at this time but will also follow up to confirm.

Vice Mayor Safford provided a summary of updates on the Charter Review Commission. He stated that proposals will be brought before Council on April 20, 2026. Town Clerk Amy Baker stated that so long as the ordinance is finalized before summer break, there are no issues with timing.

Council Member McLean reconfirmed that the AAC is working on more formalized policies and procedures. He hopes that there will be consistency among all advisory committees.

Mayor Allers noted the addition of the discussion on shelter for town equipment on the next Council meeting agenda. Vice Mayor Safford provided his consent for this item.

Town Manager McKannay requested a change in the next Management & Planning Session meeting date to April 15, 2026. Vice Mayor Safford and Council Member Link both noted that they can attend virtually. Mayor Allers requested that the Town Manager work on finding a date.

V. ADJOURNMENT

Council Member King moved to adjourn, seconded by Council Member McLean. The meeting was adjourned at 10:33 a.m.



Fort Myers Beach Town Council

**Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931**

Minutes

Monday, March 16, 2026

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members Present: Mayor Dan Allers, Vice Mayor Scott Safford, Council Members John King, Rebecca Link, and John McLean.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the final agenda, seconded by Council Member McLean.

The motion carried unanimously.

V. PUBLIC COMMENT

Prior to Public Comment, Town Manager McKannay thanked Town Clerk Baker for acknowledging the two recovering staff members during the Invocation. He also thanked and commended the Fort Myers Beach Fire District, Lee County Sheriff's Department, and all staff who responded to one of the incidents. Similarly, he commended on the staff's quick reaction when one of the Rangers felt ill. He asked for all to keep the two staff members in their prayers.

Lori Webster, a resident, reminded Council to keep an open mind and to represent the community that they serve. She acknowledged the immense responsibility that Council members take on. She trusted that the body would hear, and not just listen to, the testimony presented. She asked that the Council act on facts rather than rumors. She thanked the Council for their time and service to the community.

Cher Lownie spoke on behalf of the Wyndham property across the street from Estero Cove. She and her husband own a unit there and have been on the board for years. She stated that instead of selling the property after Hurricane Ian and earning interest from the sale, the Pohlmann family held on and paid their taxes and construction crews. She believed that the town government is now unfairly inconveniencing the owners in their attempts to build onto their property and

further attract individuals to the south end of the island. She noted that there were not that many options in terms of places for long-term residents to eat and socialize.

Dave Garney introduced himself as an owner at Estero Cove. He requested that the Council expedite the opening of Bert's Beach Bar and other restaurants on the south end of the island. He noted that before Hurricane Ian, there was an abundance of restaurants. However, he believes now that such places are few and controlled by Santini Plaza and their rental fees. Mr. Garney stated that he checked the website for restaurant planning and emailed staff and the town with questions on plans for additional restaurants. He would like to see a five-year plan and learn why good restaurants are not opening businesses in this area.

Patrick Vanasse, speaking on behalf of Wyndham Property, requested that another speaker representing the Pohlmann family, John Callis, speak first before he addressed permitting issues. He also requested that the individual representing the contractor who has worked and is currently working on the project to speak before him. Mayor Allers approved the request.

Mr. Callis introduced himself as the representative of his family, who had owned the property since the late 1990s. He stated that the property first operated as a Holiday Inn before becoming the Wyndham property. He believed that he and his family have been good neighbors and acted in ways that were courteous to the neighborhood, such as by keeping the noise down. He plans to continue to keep it this way. When the building was destroyed by Hurricane Ian, he allowed for a triage center and property use by the city to stage the beach re-nourishment. He also said that he gave the go-ahead to staff for staging infrastructure projects. He provided that last week, he agreed to seaweed removal and placing dumpsters on the property. Mr. Callis believed that he has worked with the town as much as possible to make the town better. He noted the family's desire to keep the property in their hands and to open a bar and restaurant. He stated that they were currently in the permitting process and are looking to install a wave mitigation wall, which he believed everyone in the town would want. Because engineering is not finished yet, he is requesting that a special event permit be approved so that the family can open quickly and begin to use the infrastructure that is currently housed on another property. He thanked the Council for their time and thanked everyone for their support.

Lee Selton, who is with the contractor, noted that they have been working closely with Mr. Callis on getting the property cleaned and ready. He stated that once they receive approval, they would be able to clean up and be ready within 30 days. He does not believe that there would be any issues and noted that underground utilities already exist. He announced that most of the work would be reconnecting. Patrick Vanasse provided that there were multiple individuals in attendance from the surrounding condominium associations willing to yield their time to him, if allowed. Mayor Allers noted that four individuals were willing to cede their time. Mr. Vanasse stated that the property owners are currently working on a development agreement to add improvements to the property, a large tiki structure with a bar and restaurant with some trailers. He said that Mr. Callis wishes to open this year. They looked into ways to expedite the process and went down the path of the ETP

permit, which they now realize is not viable due to the need for a pre-existing temporary permit. They are currently on Plan C for a reoccurring special event permit. He stated that they reviewed the code and did not find any restrictions on duration. He believed that it would be a creative solution until they can return to Council in the form of a public hearing. He expressed confidence that they have met all the criteria for the permit. He announced their plans to submit the application this week and requested that Council direct staff to add a hearing for a special events permit to the Council meeting on April 6, 2026. Mr. Vanasse noted that the Pohlmann family was a local family and that the property originally had two restaurants, a bar space, and consumption and entertainment on premises. They wish to bring back these uses. He also acknowledged Mr. Callis' desire to potentially create a wave mitigation wall and that the owner is in talks with the contractor. He asserted that this wall would serve as an eventual substitute for the trailers and would align with the town's wishes for more brick and mortar structure and improvements. He lastly requested Council's approval for the contractor to move forward on the LDO with onsite improvements. He stated that they can act very efficiently and quickly on these improvements. He noted that, regardless of the temporary use approval, they want to move forward with improvements and continue investing in the property.

Barbara Puffer stated that she and her husband have lived on Estero Boulevard since 1991. She is representing her condominium as well as a year-old advocacy group of eleven condo associations that involves 600 units. She requested a speedy process for the Wyndham property. She has provided a petition and copies of the appeal to Town Clerk Amy. Ms. Puffer thanked Town Manager McKannay for recommending that they come and speak at the public comment session. She also expressed her appreciation to the Council for focusing on the facts rather than internet vitriol. She noted that the Pohlmann family has allowed the community to access the beach across their property without any charge. She said that the family has been a good partner with the town. She was grateful for the family's decision to consider phased-in developments and installing permitted underground utilities. She also mentioned the community's desire to protect beach access and property values.

Susan Bookman introduced herself as a resident in Estero Cove on Estero Boulevard. She wanted to acknowledge that the Pohlmann family have been exceptional neighbors. The family has provided her and those on the east side of Estero Boulevard with beach access. She also noted that they have allowed their property to be used for emergency services after Hurricane Ian. The property also hosted sand sculpting events and provided the community with a place to gather, eat, drink and listen to music. She said that she never noticed any problems with traffic caused by those entering or exiting the parking lot. She also had not observed any disturbances, and that those who visited and used the property were mainly families with young children and senior citizens. She asserted that they needed a place that was nice and quiet like the Wyndham property.

Joy Sullivan, a full-time resident of Fort Myers Beach, announced that the FMB Community Foundation and Bay Oaks are holding a pickleball tournament this Saturday at the Bay Oaks Gym. She extended an invitation to attend and noted

that there were still some spots open for both the morning and afternoon periods. The groups are raising money for charities, including the public library, Estero Island Historic Society, and more. She encouraged registration for the event. She stated that the Mayor and Town Manager will be participating in a match. She will be offering raffle tickets for a Gearbox pickleball paddle.

As the Membership Vice President of the Woman's Club, Ms. Sullivan asked for a "yes" vote to the organization's request.

Howie Hoffman, a resident of Fort Myers Beach for 27 years, voiced his appreciation for the Woman's Club. He requested that Council listen to the club's wishes.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member McLean stated that he wished he was able to experience the St. Patrick's Day Parade hosted by the Woman's Club. He, however, saw the pictures and commented that he was sure it was a wonderful event. He extended his congratulations.

Council Member Link agreed with Council Member McLean's remarks. She also wanted to extend her congratulations to the Lions Club.

Council Member King congratulated Council Member McLean's daughter on her engagement. He thanked town staff for their work and noted that he was glad to hear that the two town employees are doing well. He also acknowledged Vice Mayor Safford and fellow councilors for their work on the Lee County Metropolitan Planning Organization Survey. He noted that this was the only government entity with full participation. He stated that the state government did add additional requests but wanted to extend his thanks for the work done so far.

Vice Mayor Safford recognized both town staff and the Lee County Sheriff's Department for their excellent job on crowd control during spring break. He stated that there were not that many incidents and attributed the success to their good planning and execution.

Mayor Allers also congratulated Council Member McLean and his daughter. He thanked town staff and the Lee County Sheriff's Department for their work. He recognized the Woman's Club and the Lion's Club.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

- A. Approve the appointment of members to the Public Safety Committee (PSC).
Approve the appointment of members to the Public Safety Committee (PSC).

Mayor Allers announced that there was one applicant, Robert Luke Williams. Town Clerk Baker noted that Mr. Williams was not in attendance but does have a message in case of appointment.

Vice Mayor Safford voted for Mr. Williams. Council Member King voted for Mr. Williams. Mayor Allers voted for Mr. Williams. Council Member Link voted for Mr. Williams. Council Member McLean voted for Mr. Williams. All votes have been verified by all members of Council.

Council Member McLean moved to appoint Robert Luke Williams to the public open seat for the Public Safety Committee, seconded by Council Member King.

The motion carried unanimously.

Town Clerk Baker read the message that Mr. Williams provided following the appointment. He wrote that he was excited and honored to serve this position for the community. He is grateful to the Town Council for their trust in him. He looked forward to working with other community members, staff and residents. He recognizes the importance of public safety and is committed to approaching the tasks ahead with an open mind and what would be beneficial for everyone. He wanted to thank those who supported him along the way and encouraged all to contact him with ideas, thoughts, or concerns.

VIII. APPROVAL OF MINUTES

Town Clerk Baker noted that the office had lost their long-time transcriptionist and secured a new one. She stated that the Council should receive a package of minutes at their next meeting.

IX. CONSENT AGENDA

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

Mayor Allers provided that the next three items are public hearings for review of land use requests. Town Attorney Stuparich noted that there is a variance request, a special exception request, and a rezoning request. She provided a summary of the quasi-judicial process. She asked Town Clerk Baker if all items have been properly noticed. Town Clerk Baker responded affirmatively. There were no conflicts of interest. Mayor Allers reiterated that his wife is a member of one of the applicant's organizations. The Town Attorney confirmed that this was not enough to warrant a conflict of interest to prevent him from voting, as his wife did not receive anything of monetary value. Town Clerk Baker swore in those providing testimony.

A. Resolution 26-020, VAR20250220- 173 Gulf Island Drive

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20250220, REQUESTING A VARIANCE FROM SECTION 34-638(d)(6)b.3 OF THE LAND DEVELOPMENT CODE TO REDUCE THE REQUIRED 20-FOOT SIDE STREET SETBACK BY 11.9 FEET TO ALLOW A 232-SQUARE-FOOT DECK FOR THE EXISTING SINGLE-FAMILY RESIDENCE IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 173 GULF ISLAND DRIVE, GENERALLY REFERRED TO AS STRAP NUMBER: 29-46-24-W2-0050C.0120 IN FORT MYERS BEACH; AND PROVIDING FOR OTHER 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. Ex parte Communications: Council Member McLean heard this specific resolution as a member of the Local Planning Agency. Council Member Link received an email on February 12, 2026 from a Fort Myers resident, Robin Gornto, who advised her that the multi-generational neighborhood of single family homes wants to protect their quiet neighborhood. The resident was opposed to the variance and felt that there would be too much noise. Council Member Link thanked her for her comments and gave no promises that Council would listen. Vice Mayor Safford had a brief conversation with Mark Tagley, a neighbor, regarding this item.

Mr. Green has been recognized as an expert in his field. Mayor Allers asked the property owner if he had seen a copy of the back-up agenda materials from staff. The owner responded that he believed so.

Jason Green of Community Development Services reviewed the background of the request as stated on the blue sheet. He presented staff's recommendation to deny the variance request and noted that the Local Planning Agency voted unanimously to recommend denial. He also submitted the criteria that staff used for the Council's reference.

Mr. John Prinz, the owner of the property, stated that he bought the property three months before Hurricane Ian and then expanded his house after the hurricane. He planned to retire full-time on the property and currently spends around sixty days per year. He said that this was his family's destination house. In the interim, he noted that the property currently has monthly rentals, around four to six a year. The deck is the main form of access to the house and is about fifty years old. He views the structure as an eyesore. He spoke with neighbors but did not personally receive any signs of resistance to his plans.

Council Member McLean noted that, at the LPA hearing, neighbors did testify that the property was rented more frequently than monthly and expressed concerns about the noise, believing that this expansion would make the property more attractive to shorter-term rentals. Mr. Prinz responded that there were rumors that he was trying to make the property into a duplex with a party deck, and he does not understand how that came about. He said that he had a five-day rental from December to January, a rental in February, and a rental in March. He confirmed with his management company that there was a maximum of one rental per thirty-day period. He asserted that the company complied with this rule. He had received a permit from the village to operate monthly rentals, and he noted that the property manager is informed to keep the noise down. He acknowledged that there was one neighbor, who does not reside in a property in the direct line of sight, who expressed concerns about noise. He asserted that he will do all that he can to make sure there are no noise issues.

Council Member Link echoed Council Member McLean's concerns. She asked Mr. Prinz if the property and rentals are fully compliant. The owner responded affirmatively.

Vice Mayor Safford requested the name of the management company. Mr. Prinz answered that it was Sun Palace.

Mayor Allers asked staff if there were any open-code violations for this property in terms of short-term rentals. Mr. Green responded that there were none that he knew of at this time.

Mayor Allers questioned why the owner did not wish to build back the deck to what it was before the hurricane. Mr. Prinz said that the deck is noncompliant as-is and that the stairs went into the door. He wished for enough space to sit out on the deck. He also stated he was open to any adjustments, as needed.

Public Comment:

Susan Crawford, a resident of the town for over 30 years, stated that she lived directly next to the property. She believed that the 20-foot rule is there for a reason. She asserted that the violation was about 12 feet and set back just eight feet from the road. She thought that the violation was extreme and argued that other properties built around the area have been able to comply. She said that she and others have spoken at the town meetings in January and February.

Public comment closed.

Council Member McLean stated that he saw testimony on the record from residents who are opposed. While he heard the applicant has neighbor support, he stated that he did not see any evidence today. He provided that we all live with the benefit of extra land because of our right-of-ways, which sometimes can be significant. He noted that land rights go to the right-of-way line. He recognized that this property is already non-conforming and that the variance would make it even more so.

Council Member King moved to deny the resolution, seconded by Council Member Link.

Vice Mayor Safford noted that he has a difficult time going against the LPA's recommendation, and he concurs with that recommendation to deny.

Mayor Allers mentioned the potential neighbor support and the opposition during public comment. He stated that the town has always been open to individuals building back what was already there, especially in cases where there is a safety concern. He does not know how the property's neighbors would feel about this but did note the possibility of returning to Council. Town Attorney Stuparich stated that he would need to ask the maker and seconder of the motion if they would be willing to accept an amendment that would allow for continuance, or for the property owner to come back. Mayor Allers asked both Council Member King and Council Member Link. The property owner stated he would be happy to reapply and get some letters from neighbors for support.

Council Member McLean inquired if Council could deny the request without prejudice and allow for the item to come back. Town Attorney Stuparich responded affirmatively. Council Member King consented to the modification. Council Member McLean expressed his belief that this would be the right procedural path for the body.

Council Member Link asked for clarity on what the applicant could bring back

in this case. Town Attorney Stuparich responded that the owner would have additional flexibility to bring up whatever would work. She read the relevant rule. Mr. Prinz asked if he would be able to ask for continuance. The Town Attorney noted that continuance would allow for the public hearing to resume and would not go back to the LPA for review.

Mayor Allers asked Council Member King if he wished to further modify so that there would be a continuance. Council Member King stated he would like to leave the motion as it was originally amended.

The motion to deny the resolution without prejudice carried unanimously by roll call vote.

B. Resolution 26-015, SEZ20250271, 166/168 Coconut Drive

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250271, A REQUEST TO INCREASE THE NUMBER OF BEDROOMS IN A TWO-FAMILY RESIDENCE WHILE UTILIZING THE POST-DISASTER BUILDBACK CODE OF THE LDC SECTION 34-3238(2)(E)(4)(A), FOR THE PROPERTY LOCATED AT 166/168 COCONUT DRIVE, GENERALLY REFERRED TO AS STRAP NUMBER: 29-46-24-W2-0070A.0160 IN FORT MYERS BEACH; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Council Member McLean noted that he heard this resolution as a member of the LPA. Council Member Link noted that she had a brief interaction in regards to this item.

Mr. Green has been certified as an expert in his field. Mike Martell, the owner and contractor, made a request to be qualified as an expert witness. He noted that he is in the hurricane restoration business and has experience with FEMA compliance. Council Member King moved to accept the applicant as an expert witness for this quasi-judicial hearing, seconded by Mayor Allers.

The motion carried unanimously.

Jason Green of Community Development Services reviewed the background of the request as stated in the blue sheet. He reported that staff recommended approval of the special exception with the following conditions:

1) that three parking spaces be provided on-side and that the applicant would be responsible to ensure that vehicles have access to stabilized parking spaces and that no on-street parking would occur; 2) special exception approval does not equate to an undeniable right to permit approval and that such property must comply with requirements in the Fort Myers Beach Comprehensive Plan and Land Development Code; and 3) that failure to comply with the above conditions would render the approval null and void. He also noted that the Building Code would also apply to the second condition. Council Member McLean asked if there was evidence that this property was originally a five-bedroom house. Mr. Green stated that, based on the best information available, the property was a two-family duplex with a total of five bedrooms and three bathrooms.

Vice Mayor Safford asked if the build-back would still be two units. Mr. Green

responded affirmatively.

Mayor Allers requested the location of the fifth bathroom within the drawings. The owner indicated that there were only four bathrooms. Mr. Green noted that this adjustment could be made with the approval. Mr. Martell stated that his family will be living on the upper floor and the middle, or second, floor will be rented out. He is requesting the additional bedroom for his family residing on the property. He confirmed that he agrees to the stipulations provided by the town staff.

Council Member McLean asked if there are any parking changes requested and if there would be anything underneath the building that would inhibit parking. Mr. Martell answered that there would be one additional space and that there's currently space for six trucks and 300 feet of storage, as allowed by FEMA.

No public comment.

Council Member Link moved to approve Resolution 26-015 SEZ20250271 for 166/168 Coconut Drive as-is, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

C. Ordinance 25-20; CPD2025-0203, 175 Sterling Ave. (FMB Womans Club)

This quasi-judicial agenda item is a Second Reading and Final Public Hearing on proposed Ordinance 25-20.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/APPROVING WITH CONDITIONS/ DENYING A REZONING TO A COMMERCIAL PLANNED DEVELOPMENT (CPD) FOR THE PROPERTY LOCATED AT 175 STERLING AVENUE, A PARCEL GENERALLY IDENTIFIED AS STRAP NUMBER 33-46-24-W2-00004.0000 TOWN OF FORT MYERS BEACH FROM INSTITUTIONAL TO ALLOW FOR THE REDEVELOPMENT OF THE PROPERTY FOR THE FORT MYERS BEACH WOMANS CLUB; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Ex parte Communications: Council Member McLean disclosed that he had spoken with two neighbors and two members of the Woman's Club. Council Member Link provided the following disclosures: 1) February 6th, an e-mail requesting to limit member organization and recreational uses for this property to non-profit organizations with support for parking lot uses; 2) February 11th, a phone call communicating a preference for institutional zoning and special exception in lieu of rezoning; 3) February 20th, a meeting with two individuals of the Woman's Club where the Council Member noted that she would and did step out of the room once this topic was brought up; 4) her conversation with one of the two Woman's Club members who let her know that the club had no intention of selling; 5) March 4th, the same individual from the fourth disclosure approached her; 6) March 15th, an e-mail from Cyndi Hawkins of the Women of Irish Heritage of Southwest Florida spoke of the benefits of their collaboration with the Woman's Club and expressed her support; and 7) an e-mail from Beth Burwinkel who is in support of the new project. She noted

that she never promises any guarantees to those who reach out to her. Both Council Member King and Vice Mayor Safford stated that they had received the same emails as Council Member Link and also had discussions with individuals from both sides. Mayor Allers stated that he did converse with some individuals during the Saint Patrick's Day Parade but that the topics revolved around the organization, the building, and donations.

Mr. Green has been certified as an expert in his field.

James Ink presented a background on the property. The building was destroyed by Hurricane Ian, and he was onboarded for this project. They had a pre-application meeting with town staff where they discussed how the Woman's Club building does not fit the cultural facility category. Instead, they agreed that public service would better match the organization and its purpose. He also noted that they did want to allow for consumption on-site, which would require a special exception and a public hearing. They discussed and revised the schedule of uses, which is incorporated into the new master concept plan. The application, with the plan and schedule of uses, was submitted. The town staff came back with minor requested changes, and those were completed. The staff created a report and presented to the LPA, who had minimal comments. He did note that there was one member of the public who had concerns about what would happen if the Woman's Club goes away. The LPA voted unanimously. The first Council meeting was in January. The item passed unanimously. In the second reading, there was an issue with the advertising sign. This issue was resolved, and they completed the necessary tasks with Town Clerk Baker. There was also a neighborhood meeting that did get contentious. He also added some comments on the current code and any potential future updates.

Mari Torgerson, a member of the Woman's Club, detailed the progress the organization made since she joined in 2017. After Hurricane Ian, the board voted to approve an emergency deviation in their mission statement to assist the residents of Fort Myers Beach. The organization raised funds that went to those directly affected. During pre-application discussions, she stated that she was shocked that alcohol was not allowed for institutional zoning. She expressed her opinions against adding non-profit use to the CPD. She provided a summary of the discussions with staff on the specific category for use. She also noted that the organization incorporated a bylaws provision on dissolution because they needed a plan in case something did happen. She emphasized that the organization does not have any plans to sell the property.

Mr. Ink summarized their requests and asked for time following public comment for rebuttal.

Public Comment:

Deb Nelson, a board member of the Woman's Club, noted that the organization helped her find her people. She noted that the club centers around the importance of helping others and commitment. She provided that the bylaws provision on dissolution helps to strengthen the organization and that there are no plans to sell or leave.

Donna Marie Rich noted that she joined shortly after Hurricane Ian. She praised the organization and its members for their kindness and energy. She stated that the club is committed to service, education, and collaboration. She believed that rebuilding the property would allow for restoration of a gathering place for community, service, education and partnership.

Kathy Nash, also a member of the Woman's Club, praised the club's work for the community. She stated that the organization is staying and growing.

Dawn Thomas, a past president and co-chair of the Capital Campaign for the Fort Myers Beach Woman's Club, emphasized the organization's commitment to transparency in the rebuilding process. She stated that they were approached by two buyers but noted that the organization had no intention of selling. While she understands the public's concerns and desire to restrict the sale of this property to another non-profit organization, she noted that such a restriction would diminish property value.

Greg S. expressed his deep appreciation for the organization, especially for their assistance following Hurricane Ian. He stated that this was one of the reasons that he joined the club. He stressed that the organization is transparent in its request and believed that the development is appropriate for the island.

Barbara Mezeske, President of the Woman's Club, said that the group has worked diligently and tirelessly to rebuild the property. She noted the organization's intention to restore a building that everyone can enjoy.

Anita Cereceda, a member of the LPA and former Council Member, asked that Council approve the request. She stressed the importance of facts over passion, especially for zoning issues. She believed that there was no reason to not approve.

Ron Benack voiced his support for the request. He acknowledged that while there is some miscommunication regarding the rebuilding, he believed that the community wants the Woman's Club back in the neighborhood.

Kristin Carrington, co-founder of the FMB Tip Jar, praised the work and contributions of the Woman's Club and showed her support for the request.

Peter Andis, representing Snug Harbor Restaurant and Wahoo Willies, acknowledged the Woman's Club, and the men and women that make up its membership, for their contributions to the community. He noted that businesses and individuals alike benefit from the actions of the club. He believed that volunteers are a part of Fort Myer Beach's identity.

Lori Webster, a resident and member of the Woman's Club, stated that the club made a huge impact on her and many others in the community. She praised the club's work and planning, referring to some recent and upcoming events as examples. She does not understand where the concerns for selling are coming from and stressed that the club has no plans on moving.

Cole Stinson focused on Fort Myer Beach's strong sense of community. He stated that he valued his time more than his money and that his (and many other vendors') choice to assist the Woman's Club shows how much the club means to this community. He voiced his support for this rebuild.

Ellen Vaughn, a member of the Woman's Club and a Fort Myers Beach

resident, emphasized the importance of focusing on the facts rather than feelings. She believed in the club and its ability to pivot and thrive in the face of change.

Nan Williams, a member and past Treasurer, Vice President, and board member, noted the hard work that she and the rest of the club have done. She cited the St. Patrick's Day Parade as an example. She voiced her support for the request.

Howie praised the Woman's Club and asked Council to approve their wishes. Three members of the public ceded their time to Patrick Vanasse. Mr.

Vanasse wished to address the misunderstandings that he and others were in opposition to the rebuilding. He noted that they only wished for guardrails to be set in place. He expressed his concerns about what could happen in the future, should the Woman's Club wish to sell. He believed that the property would be very attractive to those who wish to build a private club at that location. He stated that he would like to see protection against these situations. He proposed three options, which he outlined in a handout that was distributed to the Council: 1) retain institutionalized zoning; 2) include an annotation to the usage for non-profits only; and 3) define the organization using the categories offered by Lee County.

Tom Torgerson noted that while guardrails are beneficial in some cases, they can be counterproductive in others. He believes that any restrictions on the rebuilding will fall in the latter of the two situations. He stated such guardrails would lower property value and collateral, which would impact the club's financing options. He asserts that all will benefit from this rebuilding.

Angie Deers, a board member of the Woman's Club, found friendships, purpose, and community in the club. She described the organization's work after Hurricane Ian and stated that those actions truly showed what the group represented. She voiced her support for the request.

Randy Weck, a Fort Myers resident, praised the club's work after Hurricane Ian. He asserted that they need structures like the one in this request and showed his support for the rebuilding.

Albert Dambrose, architect of Studio AD and future resident, acknowledged the club's work following Hurricane Ian and expressed his commitment to assist the organization as an architect. He voiced his request that the Council allow for the rebuild to move forward.

Mr. Ink provided his closing remarks. He noted the four conditions: 1) development of the property must comply with all requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein; 2) the development order must be substantially with the master concept plan exhibit and building elevation renderings in this case DCI20250203; 3) these elevations are deemed consistent with the land development code Division 7 Commercial Design Standards; 4) All state and local permits including but not limited to right-of-way and storm water permits, must be applied for and received prior to commencement of site development; and 5) all landscaping must meet the visibility vehicle at intersection requirements found in 34-3131 of the land

development code. He provided that they were not in support of any other conditions provided by Mr. Vanasse.

Public comment closed.

Council Member McLean noted that the four conditions that Mr. Ink provided were more comprehensive than the staff recommendation. He wished to ensure that the master concept plan and that the missing condition be included. Mr. Ink confirmed that they are binded to the plan and the elevations.

Council Member Link wished to know if the CPD is protecting the neighborhood by having clear and specific uses and if it limits the development standards. Mr. Ink responded affirmatively and also noted it limits the elevations. She then asked if institutional zoning with special exemption would afford more flexibility but would mean going back to the start of the process. He responded yes to both.

Council Member King inquired as to how the staff came to the conclusion that the rebuilding would not have an adverse effect. Mr. Greene responded that this was a standard statement when a small-scale property already exists and had a similar use.

Following the closing of the public hearing, Council Member King began the discussion by pointing out his disappointment in the staff for forcing applicants to choose between options they may not necessarily want. He voiced his support for the Woman's Club and said that he did not like to devalue property.

Vice Mayor Safford wished that a deal could have been worked out. He noted again his deference to the LPA decision (especially when unanimous and accompanied by staff approval).

Mayor Allers spoke in favor of the Woman's Club and emphasized that residents are not entitled to the right to choose their own neighbors.

Town Attorney Stuparich noted there was only one substantive change with the additional condition. There were also minor wording modifications between the conditions identified by Mr. Ink and the ones provided. She believes that staff does not have any concerns and that there are no deviations from the uses. She listed them as follows: a membership organization as the principal use, the administrative offices, the on-premise consumption of alcoholic beverages, an ATM, temporary uses, and commercial accessory uses. These are contingent on the design attached as part of Exhibit C. She provided a summary of the following exhibits: 1) Exhibit A, the master concept plan; 2) Exhibit B, the schedule of uses; 3) Exhibit C, the architectural rendering; and 4) Exhibit D, the conditions of approval.

Council Member McLean moved to approve Ordinance 26-06; CPD2025-0203, 175 Sterling Ave. (FMB Womans Club) and to do so with the conditions as listed and the additional conditions that are included by the applicant as far as the elevation drawings and the master concept plan being included as part of the conditions, seconded by Council Member Link.

The motion carried unanimously by roll call vote.

The Council took a recess for 15 minutes.

D. Ordinance 26-06, Purchasing Ordinance Amendments

This legislative agenda item is a Second Reading and Public Hearing on proposed Ordinance 26-06.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) CLARIFY AND STREAMLINE EXISTING REGULATIONS AND PROCEDURES; 2) INCORPORATE BY REFERENCE STATUTORY MANDATORY TERMS AND CONDITIONS AND STATE AND FEDERAL GRANT REQUIREMENTS; AND 3) IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the Ordinance. Jason Freeman, Deputy Town Clerk and Legislative Liaison, was available to answer questions. No public comment.

Council Member King moved to approve Ordinance 26-06, seconded by Council Member Link.

The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

A. Resolution 26-057; Mooring Field Office Lease

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A COMMERCIAL LEASE WITH FMB MATANZAS LLC FOR DOCK SPACE, UPLAND RESTROOM FACILITIES, AND OFFICE SPACE FOR THE MATANZAS PASS MOORING FIELD AND NEIGHBORHOOD SERVICES OPERATIONS; AUTHORIZING THE MAYOR TO EXECUTE THE COMMERCIAL LEASE ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay acknowledged the Harbor Master and the Matanzas Pass Bayside Resort for working together. Curtis Ludwig, Harbor Master, asserted that this new contract and office space would help the Mooring Field. He believed it would allow for more opportunities for amenities that they can charge their customers. There is now a physical address to allow customers to have packages delivered, for a charge. There are also mailboxes, which can be rented.

Council Member King noted that there was good negotiation based on the

difference between the current and past agreement.

Vice Mayor Safford inquired about the revenue outlook. Mr. Ludwig noticed that the numbers are slightly higher than last year, and they are hoping to close near the \$300,000 mark. He said that the increase was approximately ten percent.

Council Member McLean acknowledged the good job and is excited that there will be proper facilities for guests. Mayor Allers wished to confirm that the lease would be paid from funds from the Mooring Field and not directly from the taxpayer fund. Community Development Director Frankie Kropacek stated that it is a combination of funds from the Mooring Field and Community Services from Tom Yozzo's side. Mr. Ludwig also noted that the rangers and code officers would also be able to use the office space.

Council Member King moved to approve the resolution, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

Anita Cereceda addressed some of her remarks from the beginning of the meeting. She wished to explain her intent during the discussions on the Wyndham property. She noted the slippery slope that recurring special event permits can cause. She stated that these types of permits were originally used for bands or farmer's markets that occur once or twice a week. She stated that businesses who operate six to seven days a week should not be considered recurring. She thanked the Council for their vote. She expressed her wishes to see development in the south end of the island but wants improvements to be done properly. She identified zoning cases as extensions of permissions and not as transactions. She requested the Council open this to further public discourse rather than simply give their approval.

Patrick Vanasse expressed his disagreement with Ms. Cereceda's remarks. He believes in following the process and noted that he conferred with staff and then made his request. He asserts that the special events permit does offer flexibility and that Council should be able to use this as a creative solution to allow a business to move forward more quickly.

XIV. TOWN MANAGER'S ITEMS

A. Update on Strategic Planning Session and April M&P dates

Town Manager McKannay called up Tracy Kohler for an update on the Strategic Planning Session. She reported that the staff has been working on finalizing the objections, key actions, and measurable KPIs to submit to USF, Angela Christ, and the Daily Institute for consideration. There is currently a draft version that Angela will be editing to better meet the Council's expectations. They expect to come before the Council on Thursday, May 7, 2026.

Information will be published prior to that date for public comment and the Council's review.

- B. Follow-Up: Lowe's Community Bucket-List Project Ideas
Town Manager McKannay also followed-up on the Lowe's community grant opportunity. He noted that they will be asking for assistance in constructing an elevated storm resilience recovery operations base. The application will request funds for covering the currently unprotected space. He also expressed their wishes to be able to use the area for maintenance and office space. He stated that the project would cost around \$500,000.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Stuparich noted her plans to work with Town Manager McKannay on the special events issue.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member McLean noted that the Mound House was hosting some interesting events.

Council Member Link requested to learn more about how items are ultimately placed on the agenda.

Vice Mayor Safford wished to address an e-mail he received about the bridge closure on the first weekend and Estero Boulevard closure on the second weekend. He believed that the town may wish to look into pushing out more information ahead of major closures. Town Manager McKannay is confident that notifications were made but noted that he also received similar feedback. He will look into the processes and find ways to improve. Mayor Allers also noted that news stations provided the information. Vice Mayor Safford stated that some of the information was inconsistent, and Council Member King echoed his remarks.

Vice Mayor Safford requested that Council discuss a path where businesses can, during construction, move next door and generate buzz for commercial enterprise. Mayor Allers noted that he believed Council agreed not to issue any new temporary permits and that the plan was that, once the development order is approved, the business could come back before Council to ask for such use. Vice Mayor Safford requested time at a future Management & Planning Session to discuss paths that businesses can utilize as they are growing their brick-and-mortar operations. Mayor Allers suggested that the applicants come back and provide updates on their permits, infrastructure, and development order. He also provided his consent but noted some potential complications in creating a new path. Town Attorney Stuparich noted that this could potentially be done on individual projects by the Council but that specificity is essential. She also provided that by allowing one project to go through without final approval, there is detrimental reliance. This would expose the town to legal liability. She emphasized that Council must proceed very carefully. Town Manager McKannay also expressed caution.

XVII. ADJOURNMENT

Council Member King moved to adjourn. There were no objections.

The meeting adjourned at 12:57 p.m.

1. **Request:**

Meeting Date: April 6, 2026

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO TROPICAL STORM DEBBY 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.

Why the action is necessary:

Keeps the Local State of Emergency in effect for Tropical Storm Debby

What the action accomplishes:

Continues the Local State of Emergency issued for Tropical Storm Debby

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-154.

Attachments:

1. 26-060, Extension of Local Emergency - Debby 04.07.26 - 04.13.26
2. 26-061, Extension of Local Emergency - Debby 04.14.26 - 04.20.26
3. 26-062, Extension of Local Emergency - Debby 04.21.26 - 04.27.26
4. 26-063, Extension of Local Emergency - Debby 04.28.26 - 05.04.26

Financial Impact:

Expenditures related to response and recovery efforts for Tropical Storm Debby have been incurred and are being tracked under applicable emergency and storm-related accounts. The Town anticipates seeking reimbursement through eligible state and federal disaster assistance programs, including FEMA, as applicable.

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Tropical Storm Debby

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 3/18/2026
Approved - 3/18/2026
Approved - 3/19/2026
Approved - 3/23/2026
Final Approval - 3/23/2026

RESOLUTION NUMBER 26-060

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO TROPICAL STORM DEBBY; 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be

limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 26-061

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO TROPICAL STORM DEBBY; 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be

limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 26-062

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO TROPICAL STORM DEBBY; 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be

limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 26-063

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO TROPICAL STORM DEBBY; 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be

limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

1. **Request:**

Meeting Date: April 6, 2026

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 HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE) 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.

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Helene

What the action accomplishes:

Continues the Local State of Emergency issued for Hurricane Helene

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-192

Attachments:

1. 26-064, Extension of Local Emergency - Helene 04.07.26 - 04.13.26
2. 26-065, Extension of Local Emergency - Helene 04.14.26 - 04.20.26
3. 26-066, Extension of Local Emergency - Helene 04.21.26 - 04.27.26
4. 26-067, Extension of Local Emergency - Helene 04.28.26 - 05.04.26

Financial Impact:

Expenditures related to response and recovery efforts for Hurricane Helene have been incurred and are being tracked under applicable emergency and storm-related accounts. The Town anticipates seeking reimbursement through eligible state and federal disaster assistance programs, including FEMA, as applicable.

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Hurricane Helene

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 3/20/2026
Approved - 3/23/2026
Approved - 3/23/2026
Approved - 3/24/2026

RESOLUTION NUMBER 26-064

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 HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 26-065

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 HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 26-066

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 HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
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 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
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 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
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7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 26-067

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 HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

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WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

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 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

1. **Request:**

Meeting Date: April 6, 2026

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 MILTON, 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.

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Milton

What the action accomplishes:

Continues the Local State of Emergency issued for Hurricane Milton

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-214

Attachments:

1. 26-068, Extension of Local Emergency - Milton 04.07.26 - 04.13.26
2. 26-069, Extension of Local Emergency - Milton 04.14.26 - 04.20.26
3. 26-070, Extension of Local Emergency - Milton 04.21.26 - 04.27.26
4. 26-071, Extension of Local Emergency - Milton 04.28.26 - 05.04.26

Financial Impact:

Expenditures related to response and recovery efforts for Hurricane Milton have been incurred and are being tracked under applicable emergency and storm-related accounts. The Town anticipates seeking reimbursement through eligible state and federal disaster assistance programs, including FEMA, as applicable.

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Hurricane Milton

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 3/20/2026
Approved - 3/23/2026
Approved - 3/23/2026
Approved - 3/24/2026
Final Approval - 3/24/2026

RESOLUTION NUMBER 26-068

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 MILTON; 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

(b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 26-069

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 MILTON; 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
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SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 26-070

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 MILTON; 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
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5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

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(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 26-071

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 MILTON; 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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

(b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of April 2026, 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

1. **Request:**

Meeting Date: April 6, 2026

This legislative agenda item is a First Reading and Public Hearing on proposed Ordinance 26-07. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for May 4, 2026 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

Florida Statutes, Section 386.209, preempted local governments from regulating smoking in public buildings. In 2022, the law was amended to permit counties and municipalities to further "restrict smoking within the boundaries of any public beaches and public parks that they own, except that they may not further restrict the smoking of unfiltered cigars. A municipality may further restrict smoking within the boundaries of public beaches and public parks that are within its jurisdiction, but are owned by the county, unless such restriction conflicts with a county ordinance, except that they may not further restrict the smoking of unfiltered cigars." The law as amended also allowed municipalities and counties to regulate the use of vapor-generating devices. Lee County recently adopted Ordinance 25-14 to prohibit smoking and vaping in county parks. The proposed ordinance amends the Town's current ordinance in accordance with Section 386.209 and regulates smoking and vaping in public parks and beaches, including Bowditch Park, Lynn Hall Memorial Park, and the pier which are county parks located within the territorial boundaries of the Town of Fort Myers Beach. It does not conflict with Lee County Ordinance 25-14 or restrict or regulate the use of unfiltered cigars.

A smoking ordinance is rarely mandatory, but can serve as:

A. A policy strength

Shows proactive governance and alignment with modern public-space standards.

B. A tie-breaker

When proposals are otherwise equal, communities with:

- Environmental protections
- Health policies
- Clean-beach initiatives

may score higher.

C. Supporting documentation

Can be cited in grant narratives under:

- Sustainability
 - Public health commitment
 - Environmental stewardship
 - Visitor experience enhancement
-

Situations Where It Could Matter More for Fort Myers Beach

Given Fort Myers Beach's profile as a tourism-driven coastal community, smoke-free policies may strengthen:

- Beach renourishment or coastal management narratives
 - Blue Flag-style environmental certifications
 - Marine debris reduction initiatives
 - Eco-tourism branding
 - Family-friendly destination marketing
 - Post-hurricane "build back cleaner and safer" initiatives
-

Strategic Consideration

If the Town ever considered such a policy, it could be framed as:

"A public health, environmental protection, and visitor-experience measure aligned with coastal sustainability and family-friendly tourism goals."

The draft ordinance was reviewed by the Town Council at their Management and Planning Meeting on March 5, 2026 with direction to Town staff to schedule the draft ordinance for first reading.

Attachments:

1. First Reading Ord 26-07- Smoking and Vaping Prohibition
2. Ch_2022-213 Vaping and Smoking
3. Lee County Ord. 25-14
4. Rev. Business Impact Statement- Smoking and Vaping Prohibition Ord. 26-07

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Amy Baker, Town Clerk
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 3/17/2026
Approved - 3/20/2026
Approved - 3/23/2026
Approved - 3/24/2026
Final Approval - 3/24/2026

ORDINANCE NO. 26-07

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, 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 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, Florida Statutes, Section 386.209, previously known as the Florida Clean Indoor Air Act ("Act"), pre-empted local governments from regulating smoking in public buildings; and

WHEREAS, in 2022, the Act was amended and renamed as the Florida Clean Air Act, and permitted counties and municipalities to further "restrict smoking within the boundaries of any public beaches and public parks that they own, except that they may not further restrict the smoking of unfiltered cigars. A municipality may further restrict smoking within the boundaries of public beaches and public parks that are within its jurisdiction, but are owned by the county, unless such restriction conflicts with a county ordinance, except that they may not further restrict the smoking of unfiltered cigars."; and

WHEREAS, as amended Section 383.209 now further provides "[t]his section does not preclude the adoption of county or municipal or county ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part."; and

WHEREAS, Lee County recently adopted Ordinance 25-14 to include vaping as a prohibited activity in its county parks; and

WHEREAS, Bowditch Park, Lynn Hall Memorial Park, and the pier are county parks located in the territorial boundaries of the Town of Fort Myers Beach; and

WHEREAS, the Town’s current regulations concerning smoking do not include regulations regarding smoking and vaping in the Town’s public parks or beaches; and

WHEREAS, a first reading of the title of this Ordinance occurred at a public hearing before the Town Council on _____, 2026, and the Town Council voted to approve scheduling a second reading of this Ordinance and a public hearing on _____, 2026; and

WHEREAS, the Ordinance was advertised in the News Press and a Business Impact Estimate was published on the Town’s website on the ____ day of _____, which is 10 days prior to the Town Council’s second reading of the title to the Ordinance and public hearing; and

WHEREAS, a second reading of the title to the Ordinance was heard on _____, 2026 and followed by a public hearing regarding the adoption of this Ordinance; and

WHEREAS, the Ordinance is not in conflict with Lee County Ordinance 25-14 and does not regulate or restrict the use of unfiltered cigars; and

WHEREAS, it is in the best interest of the health and safety of the residents of the Town of Fort Myers Beach for the Town Council to adopt an ordinance to prohibit smoking and vaping in all of the Town’s public parks, and beaches, including, Bowditch Park and Lynn Hall Memorial Park and the Lee County’s pier, as authorized by Section 386.209, Florida Statutes.

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

SECTION 1. The above “Whereas” clauses are adopted herein by reference.

SECTION 2. Section 18-30 of the Town of Fort Myers Beach Code of Ordinances is hereby amended to read as follows:

Section 18-30. Regulated Behavior

[...]

(f) Smoking and Vaping. Pursuant to F.S. Ch. 386, the Florida Clean Air Act, ~~No person shall smoke or vape within the confines of those recreation centers and community buildings designated by the town manager~~ the boundaries of any public park or public beach in the Town of Fort Myers Beach, including but not limited to Bowditch Park, Lynn Hall Memorial Park, and the pier which are owned by Lee County and located within the territorial boundary of the Town of Fort Myers Beach.

1) The term “smoke” means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, with the exception of unfiltered cigars.

2) The term “vape” means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

3) The term “public beach” shall include beach access areas.

SECTION 3. Conflicts. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. Effective Date. This Ordinance shall become effective upon adoption.

The forgoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of _____, 2026 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, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2026.

CHAPTER 2022-213

Committee Substitute for House Bill No. 105

An act relating to the regulation of smoking by counties and municipalities; revising the title of part II of ch. 386, F.S.; amending s. 386.201, F.S.; revising a short title; amending s. 386.209, F.S.; authorizing counties and municipalities to further restrict smoking within the boundaries of public beaches and public parks under certain circumstances; providing an exception; amending ss. 381.84 and 386.211, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part II of chapter 386, Florida Statutes, entitled “INDOOR AIR: SMOKING AND VAPING,” is renamed “SMOKING AND VAPING.”

Section 2. Section 386.201, Florida Statutes, is amended to read:

386.201 Short title ~~Popular name.~~—This part may be cited as by the ~~popular name~~ the “Florida Clean Indoor Air Act.”

Section 3. Section 386.209, Florida Statutes, is amended to read:

386.209 Regulation of smoking preempted to state.—This part expressly preempts regulation of smoking to the state and supersedes any county or municipal ~~municipal or county~~ ordinance on the subject; however, counties and municipalities may further restrict smoking within the boundaries of any public beaches and public parks that they own, except that they may not further restrict the smoking of unfiltered cigars. A municipality may further restrict smoking within the boundaries of public beaches and public parks that are within its jurisdiction but are owned by the county, unless such restriction conflicts with a county ordinance, except that they may not further restrict the smoking of unfiltered cigars. School districts may further restrict smoking by persons on school district property. This section does not preclude the adoption of county or municipal ~~municipal or county~~ ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part.

Section 4. Paragraph (h) of subsection (3) of section 381.84, Florida Statutes, is amended to read:

381.84 Comprehensive Statewide Tobacco Education and Use Prevention Program.—

(3) PROGRAM COMPONENTS AND REQUIREMENTS.—The department shall conduct a comprehensive, statewide tobacco education and use prevention program consistent with the recommendations for effective program components contained in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the CDC, as amended by the CDC. The

program shall include the following components, each of which shall focus on educating people, particularly youth and their parents, about the health hazards of tobacco and discouraging the use of tobacco:

(h) *Enforcement and awareness of related laws.*—In coordination with the Department of Business and Professional Regulation, the program shall monitor the enforcement of laws, rules, and policies prohibiting the sale or other provision of tobacco to minors, as well as the continued enforcement of the Florida Clean Indoor Air Act prescribed in chapter 386. The advertisements produced in accordance with paragraph (a) may also include information designed to make the public aware of these related laws and rules. The departments may enter into interagency agreements to carry out this program component.

Section 5. Section 386.211, Florida Statutes, is amended to read:

386.211 Public announcements in mass transportation terminals.—Announcements about the Florida Clean ~~Indoor~~ Air Act shall be made regularly over public address systems in terminals of public transportation carriers located in metropolitan statistical areas with populations over 230,000 according to the latest census. These announcements shall be made at least every 30 minutes and shall be made in appropriate languages. Each announcement must include a statement to the effect that Florida is a clean ~~indoor~~ air state and that smoking and vaping are prohibited except as provided in this part.

Section 6. This act shall take effect July 1, 2022.

Approved by the Governor June 24, 2022.

Filed in Office Secretary of State June 24, 2022.

LEE COUNTY ORDINANCE NO. 25-14

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF LEE COUNTY, CHAPTER 20 (PARKS AND RECREATION), ARTICLE II (PUBLIC CONDUCT IN COUNTY PARKS); PERTAINING TO SMOKING AND VAPING AT PUBLIC PARKS AND PUBLIC BEACHES; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, Board of County Commissioners of Lee County, Florida (the "Board") is the governing body in and for Lee County, Florida; and

WHEREAS, the Board is authorized pursuant to Chapter 125, Florida Statutes, to enact Ordinances necessary in the exercise of its powers; and

WHEREAS, the Board has adopted Ordinance 18-12, which was amended by Ordinance 18-27 and Ordinance 20-11, pertaining to public conduct in county parks (the "Lee County Parks and Recreation Ordinance"); and

WHEREAS, on August 1, 2023, the Board adopted the "Code of Ordinances of Lee County, Florida," as the official codification of all ordinances of a general and permanent nature; and

WHEREAS, the Lee County Parks and Recreation Ordinance has been codified in the Lee County Code of Ordinances at Chapter 20, Article II; and

WHEREAS, the Board has determined that it is in the interest of the public health, safety and welfare that the Lee County Parks and Recreation Ordinance be amended to prohibit smoking and vaping at all public parks and public beaches, in accordance with Florida Statutes Section 386.209, as amended.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Lee County, Florida that in order to promote the public health, safety and welfare of the citizens of Lee County, Florida the following Ordinance is hereby enacted:

SECTION ONE: AMENDMENT TO CODE OF ORDINANCES, CHAPTER 20

The Code of Ordinances of Lee County, Chapter 20 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 20 – PARKS AND RECREATION

ARTICLE II. – PUBLIC CONDUCT IN COUNTY PARKS

Sec. 20-28. Conduct.

[Subsection (a) remains unchanged.]

(b) *Smoking.* Pursuant to F.S. Ch. 386, Florida Clean Indoor Air Act, as amended from time to time, no person shall smoke or vape within the confines of any school property or within the boundaries of any public indoor park facility or public beach. ~~No e-cigarette or vaping use is permitted on school property or indoor park facility.~~

- 1) The term "smoke" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, with the exception of unfiltered cigars.
- 2) The term "vape" means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

[Remainder of subsection is unchanged.]

SECTION TWO: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION THREE: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FOUR: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code of Ordinances. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article," or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Attorney, or the County Manager or his designee, without the need for a public hearing.

SECTION FIVE: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION SIX: EFFECTIVE DATE

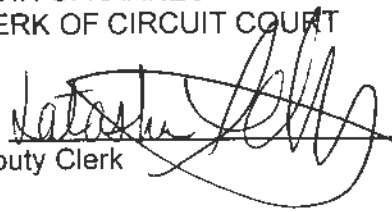
This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner Hamman made a motion to adopt the foregoing ordinance, seconded by Commissioner Mulicka. The vote was as follows:

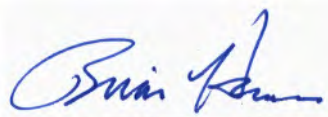
Kevin Ruane	Aye
Cecil L Pendergrass	Absent
David Mulicka	Aye
Brian Hamman	Aye
Mike Greenwell	Aye

DULY PASSED AND ADOPTED this 17th day of June, 2025.

ATTEST:
KEVIN C. KARNES
CLERK OF CIRCUIT COURT

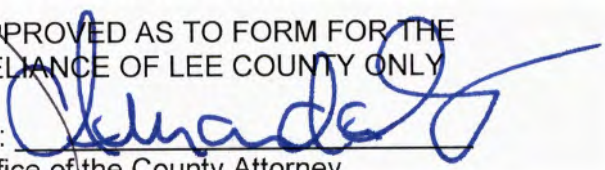
BY: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Kevin Ruane, Chair **BRIAN HAMMAN**



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: 
Office of the County Attorney

FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee

COUNTY ORDINANCE #: 25-14
(e.g., 93-001)

PRIMARY KEYFIELD

DESCRIPTOR: Smoking & Vaping

SECONDARY KEYFIELD

DESCRIPTOR: Parks

OTHER KEYFIELD

DESCRIPTOR: Beaches & Shores

ORDINANCE DESCRIPTION: Smoking & Vaping in Parks & Beaches
(25 Characters Maximum Including Spaces)

ORDINANCES AMENDED: (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

AMENDMENT #1: Lee County
Code of Ord.
Sec. 20-28

AMENDMENT #2: _____

ORDINANCES REPEALED: (List below the ordinances that are repealed by this legislation.)

REPEAL #1: _____ ; REPEAL #3: _____

REPEAL #2: _____ ; REPEAL #4: _____

(FOR OFFICE USE ONLY):

COUNTY CODE NUMBER: _____

KEYFIELD 1 CODE: _____

KEYFIELD 2 CODE: _____

~~KEYFIELD 3 CODE: _____~~



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

June 23, 2025

Kevin Karnes
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Dear Kevin Karnes:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 25-14, which was filed in this office on June 23, 2025.

Sincerely,

Alexandra Leijon
Administrative Code and Register Director

AL/dp

RECEIVED

By Latasha Seth at 2:55 pm, Jun 23, 2025

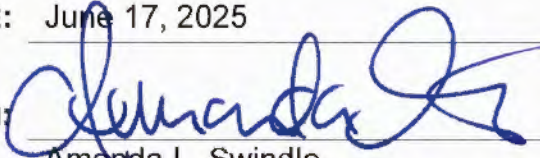
**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

VIA HAND DELIVERY

DATE: June 17, 2025

To: Commissioner Ruane
Chair, Board of County
Commissioners

FROM:


Amanda L. Swindle
Assistant County Attorney, Senior

**RE: Ordinance No. 25-14
Public Hearing to Amend Ordinance to Prohibit Smoking & Vaping at County
Parks and Public Beaches
Agenda Item 9:30PH60 - June 17, 2025**

Attached, approved as to form, please find the original of the above-referenced ordinance adopted by the Board of County Commissioners on June 17, 2025.

The original ordinance is attached to the memorandum for execution. Kindly execute the ordinance at your earliest convenience and then forward to the Records Management Department for filing and transmittal to Tallahassee.

By copy of this memorandum to Claudia Curtin, I request that a clerk attest to the Chair's signature on the attached ordinance and return the fully executed copy with all exhibits to my attention via email.

Insofar as State Statute mandates that the ordinance reach Tallahassee within ten (10) days of the adoption, please expedite the above request so that the ordinance arrives in Tallahassee no later than June 27, 2025. Also attached please find the Data Retrieval form to accompany the ordinance when transmitted to the State.

Thank you for your prompt attention to this matter.

Attachment

VIA EMAIL ONLY:

Samantha Westen, Executive Assistant
Rose Bahena, Administrative Specialist, Senior
Claudia Curtin, Records Program Manager
leeclerkminutes@leeclerk.org
Lauren Schaefer, Legal Administrative Specialist (for ordinance history)

2025 JUN 20 PM 12:52
RECEIVED
MINUTES OFFICE

AGENDA ITEM REPORT

DATE: June 17, 2025
DEPARTMENT: County Attorney
REQUESTER: Amanda L. Swindle
TITLE: Conduct Public Hearing to Amend Ordinance to Prohibit Smoking, Vaping at County Parks, Public Beaches

I. MOTION REQUESTED

Conduct Public Hearing to Amend Chapter 20 of the Lee County Code of Ordinances, Parks & Recreation, to Prohibit Smoking & Vaping at County Parks & Public Beaches.

II. ITEM SUMMARY

Currently, Chapter 20 of the Lee County Code of Ordinances prohibits smoking at schools and indoor park facilities. This amendment will expand the prohibition to smoking and vaping at all county parks and public beaches, with certain exceptions, in accordance with Florida Statutes Section 386.209, as amended. The ordinance will continue to be enforced by Parks & Rec, including the appeal process. The fine schedule will continue to be \$100, \$200, and \$300 for a first, second, and third offense.

The Executive Regulatory Oversight Committee reviewed the proposed amendment to the Code on May 14, 2025, and voted 6-1 to recommend its adoption.

III. BACKGROUND AND IMPLICATIONS OF ACTION

Florida Statutes Section 386.209 has generally preempted the regulation of smoking to the state, with certain exceptions, including the ability for local governments to prohibit smoking at schools and indoor park facilities. The statute was amended in 2019 to further allow local governments to prohibit smoking and vaping at all county parks and public beaches. Unfiltered cigars are exempt under the statute.

Currently, Chapter 20 of the Lee County Code of Ordinances prohibits smoking at schools and indoor park facilities. This amendment will expand the prohibition to smoking and vaping at all county parks and public beaches, with certain exceptions, in accordance with Florida Statutes Section 386.209, as amended. The ordinance will continue to be enforced by Parks & Rec, including the appeal process. The fine schedule will continue to be \$100, \$200, and \$300 for a first, second, and third offense.

The Executive Regulatory Oversight Committee reviewed the proposed amendment to the Code on May 14, 2025, and voted 6-1 to recommend its adoption.

IV. FINANCIAL INFORMATION

Current Year Dollar Amount:	No funding required.
Included in the Current Budget?:	N/A
Fund:	N/A
Comments:	

Is this a revenue or expense item? No
Is this Discretionary or Mandatory? Discretionary
Will this item impact future budgets? No
Program:
Project:
Account Strings:
Fund Type?

V. RECOMMENDATION

Approve

ATTACHMENTS:

Smoking Vaping Ordinance, FAIS - Smoking & Vaping, Business Impact Statement - Smoking and Vaping

REVIEWERS:

Sandra Kokotilo, County Attorney
Amanda Swindle, County Attorney
Richard Wesch, County Attorney
Mack Young, Parks & Recreation
Anne Henkel, Budget Services
Peter Winton, County Manager

Created/Initiated - 6/4/2025
Approved - 6/5/2025
Approved - 6/5/2025
Approved - 6/9/2025
Approved - 6/9/2025
Final Approval - 6/9/2025

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 Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND 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
 - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

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

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):

The proposed ordinance prohibits smoking and vaping in certain public locations within the Town of Fort Myers Beach in order to protect community interests in safety, aesthetic, and cleanliness.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, 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 [City's/Town's/Village's] regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

No direct impact on private, for-profit businesses anticipated.

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

Zero.

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].

Not applicable.

1. **Request:**

Meeting Date: April 6, 2026

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, DELEGATING AUTHORITY TO THE TOWN MANAGER TO EXECUTE MEMORANDUMS OF AGREEMENT BETWEEN THE TOWN AND BEACH FRONT PROPERTY OWNERS IN ACCORDANCE WITH THE TOWN OF FORT MYERS BEACH DUNE MANAGEMENT PLAN; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

To facilitate timely execution of Memorandums of Agreement (MOA) between the Town and Property owners.

What the action accomplishes:

Authorizes the Town Manager to execute MOA's on behalf of The Town.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

The Town's Dune Management Plan (DMP) is authorized by the Florida Department of Environmental Protection (FDEP) permit number #0413684-001-JC. This permit is issued under the authority of Chapter 161, which includes consideration of the provisions contained in Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). Pursuant to Operating Agreements executed between the Department of Environmental Protection (Department) and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

The long-term success of the Town's Dune Management Plan is dependent on the continuity of each Managed Beach Zone (MBZ), and the collective efforts of the program. In order for staff and partnering agencies to monitor the long-term progress of the program and for the Town to have a reasonable assurance of success after commitment of funds; it is essential to have a pledge from each property owner to maintain the planting in at least a minimum condition. If a property owner wishes to be able to control the nature and height of vegetation and/or the height of dunes, as described in the plan, the property owner will be required to enter into a Memorandum of Agreement (MOA) with the Town for their MBZ and adhere to the program parameters. The MOA process is described in the Town's DMP as follows:

Each MOA will be kept on file at the Town to effect compliance with the timelines, terms, and conditions of the program for current and future property owners. Each MOA will contain at a minimum:

- Property owner name, address, STRAP, number, and signature,
- Aerial photograph (available from www.leepa.org at no charge), plat, or survey of the property,
- Scaled diagram of the area to be planted and including pedestrian walkthroughs or dune walkovers (Town staff can assist by utilizing GPS mapping),
- Plant selection including species, sizes, and quantities,
- Layout and design of any proposed rope and bollard systems,
- Location of any proposed temporary irrigation,

If, at any time the Town inspections reveal that the MBZ is found to be non-compliant with the MOA, then the property owner may be required to bring the MBZ into compliance or reimburse the Town for the cost of the

materials and/or installation.

Attachments:

1. 26-073 Delegation of Authority MOAs Dune Management Plan
2. FDEP Final Order Approving Dune Management Plan
3. Dune Management Plan
4. Sample MOA 1180 Estero Blvd - Margaritaville Managed Beach Zone - Executed

Financial Impact:

None.

6. Alternative Action

7. Management Recommendations:

Autorize the Town Manager to execute MOA's in accordance with the Town's Dune Management Plan.

8. Recommended Approval:

Chadd Chustz, Environmental Projects Manager
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 3/20/2026
Approved - 3/20/2026
Approved - 3/20/2026
Approved - 3/23/2026
Approved - 3/25/2026
Final Approval - 3/25/2026

RESOLUTION NO. 26-073

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, DELEGATING AUTHORITY TO THE TOWN MANAGER TO EXECUTE MEMORANDUMS OF AGREEMENT BETWEEN THE TOWN AND BEACH FRONT PROPERTY OWNERS IN ACCORDANCE WITH THE TOWN OF FORT MYERS BEACH DUNE MANAGEMENT PLAN; 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’s Dune Management Plan (“DMP”) requires property owners wishing to control the nature and height of vegetation and dunes as described in the DMP to enter into a Memorandum of Agreement (“MOA”) with the TOWN to assure plantings and condition of the vegetation and dune will be maintained in accordance with the DMP; and

WHEREAS, The Town of Fort Myers Beach Management Plan is authorized by the Florida Department of Environmental Protection Permit Number 0413684-001-JC and subsequent permit modifications; and

WHEREAS, the Town Council of the TOWN finds it is in the best interest of the residents of the Town to delegate authority to the Town Manager to execute required MOA’s between the Town and individual beach front property owners in accordance with the DMP as described herein.

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

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 delegates authority to the Town Manager to execute Memorandums of Agreement between the Town of Fort Myers Beach and individual beach front property owners in accordance with the Town’s Dune Management Plan.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council

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

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ___ day of April, 2026 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on _____.



FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

CONSOLIDATED JOINT COASTAL PERMIT AND SOVEREIGN SUBMERGED LANDS AUTHORIZATION

PERMITTEE:

Town of Fort Myers
2525 Estero Boulevard
Fort Myers Beach, FL, 33931
chadd@fmbgov.com

AGENT:

Coastal Engineering Consultants
28421 Bonita Springs Boulevard
Bonita Springs, FL, 34135
mpoff@cecifl.com

PERMIT INFORMATION:

Permit Number:0413684-001-JC

Project Name: Estero Island Nourishment
Project

County: Lee

Issuance Date: January 18, 2023

Expiration Date: January 18, 2038

REGULATORY AUTHORIZATION:

This permit is issued under the authority of Chapter 161 which includes consideration of the provisions contained in Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). Pursuant to Operating Agreements executed between the Department of Environmental Protection (Department) and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

PROJECT DESCRIPTION:

The project is to periodically nourish approximately 6.5 miles of critically eroding gulf shoreline along Estero Island in Lee County. The project includes sand placement in three different segments North Fill Segment (Terminal Groin- R-187), which is contiguous with the Central Fill Segment (R-187 – R-198), and the initial restoration and subsequent nourishment of the South Fill Segment (R-203 – R- 207) utilizing offshore sand sources. Upland sand sources will also be used for hot-spot maintenance and post-storm recovery.

The design template for the North and Central Fill Segments includes a 200H:1V beach berm slope to a maximum elevation set at + 3.2 feet NAVD88, a 15H:1V seaward slope from the berm crest to mean low water (MLW), and thence features a seaward slope of 20H:1V below MLW. The design template for the South Fill Segment includes a 200H:1V beach berm slope to a maximum berm crest elevation set at +3.2 feet NAVD88 from R-203 to R-205 and + 1.3 feet NAVD88 from R-205 to R-207, a 15H:1V seaward slope from the berm crest to mean low water (MLW), and thence features a seaward slope of 20H:1V below MLW.

PROJECT LOCATION:

The beach placement site is located in Lee County, Sections 19, 23, 24, 28, 29, 30, and 33, Township 46 South, Range 23 and 24 East, 300 feet north of Department monument R-175 to R-207. The nearshore borrow area is located within Matanzas Pass ebb shoal complex, Gulf of Mexico, Class III Waters. The offshore borrow area is located 30 nautical miles offshore of Estero Island on the Outer Continental Shelf (OCS).

PROPRIETARY AUTHORIZATION:

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands held in trust by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Board of Trustees delegated, to the Department, the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. This proprietary authorization has been reviewed in accordance with Chapter 253, Chapter 18-21 and Section 62-330.075, F.A.C., and the policies of the Board of Trustees.

The Department has also determined that the nourishment activity qualifies for a Letter of Consent to use sovereign, submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. Therefore, consent is hereby granted pursuant to Chapter 253.77, F.S., to perform the activity on the specified sovereign submerged lands.

COASTAL ZONE MANAGEMENT:

This permit constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

WATER QUALITY CERTIFICATION:

This permit constitutes certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341.

OTHER PERMITS:

Authorization from the Department does not relieve you from the responsibility of obtaining other permits (Federal, State, or local) that may be required for the project. When the

Department received your permit application, a copy was sent to the U.S. Army Corps of Engineers (Corps) for review. The Corps will issue their authorization directly to you, or contact you if additional information is needed. If you have not heard from the Corps within 30 days from the date that your application was received by the Department, contact the nearest Corps regulatory office for status and further information. Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency.

AGENCY ACTION:

The above named Permittee is hereby authorized to construct the work that is outlined in the Project Description and Project Location of this permit and as shown on the approved permit drawings, plans and other documents attached hereto. This agency action is based on the information submitted to the Department as part of the permit application, and adherence with the final details of that proposal shall be a requirement of the permit. **This permit and authorization to use sovereign submerged lands are subject to the General Conditions, General Consent Conditions, Specific Conditions, and attached Plans which are a binding part of this permit and authorization.** Both the Permittee and their Contractor are responsible for reading and understanding this permit (including the permit conditions and the approved permit drawings) prior to commencing the authorized activities, and for ensuring that the work is conducted in conformance with all the terms, conditions and drawings.

GENERAL CONDITIONS:

1. All activities authorized by this permit shall be implemented as set forth in the project description, permit drawings, plans and specifications approved as a part of this permit, and all conditions and requirements of this permit. The permittee shall notify the Department in writing of any anticipated deviation from the permit prior to implementation so that the Department can determine whether a modification of the permit is required pursuant to Rule 62B-49.008, F.A.C.
2. If, for any reason, the permittee does not comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department and the appropriate District office of the Department with a written report containing the following information: a description of and cause of noncompliance; and the period of noncompliance, including dates and times; and, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.
3. This permit does not eliminate the necessity to obtain any other applicable licenses or permits that may be required by federal, state, local or special district laws and regulations. This permit is not a waiver or approval of any other Department permit or authorization that may be required for other aspects of the total project that are not addressed in this permit.

4. Pursuant to Sections 253.77 and 373.422, F.S., prior to conducting any works or other activities on state-owned submerged lands, or other lands of the state, title to which is vested in the Board of Trustees, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees shall not be considered received until it has been fully executed.
5. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.
6. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee. The issuance of this permit does not convey any vested rights or any exclusive privileges.
7. This permit or a copy thereof, complete with all conditions, attachments, plans and specifications, modifications, and time extensions shall be kept at the work site of the permitted activity. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
8. The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel with proper identification and at reasonable times, access to the premises where the permitted activity is located or conducted for the purpose of ascertaining compliance with the terms of the permit and with the rules of the Department and to have access to and copy any records that must be kept under conditions of the permit; to inspect the facility, equipment, practices, or operations regulated or required under this permit; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.
9. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall electronically submit to the Department, by email at JCPCCompliance@dep.state.fl.us, and the appropriate District office of the Department a written notice of commencement of construction indicating the actual start date and the expected completion date and an affirmative statement that the permittee and the contractor, if one is to be used, have read the general and specific conditions of the permit and understand them.
10. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, shipwreck remains or anchors, dugout canoes or other physical remains that could be associated with Native American cultures, or early Colonial or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the immediate vicinity of

such discoveries. The permittee, or other designee, shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section at (850)245-6333 or (800)847-7278, as well as the appropriate permitting agency office. Project activities shall not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, F.S.

11. Within 30 days after completion of construction or completion of a subsequent maintenance event authorized by this permit, the permittee shall electronically submit to the Department, by email at JCPCompliance@dep.state.fl.us, and the appropriate District office of the Department a written statement of completion and certification by a registered professional engineer. This certification shall state that all locations and elevations specified by the permit have been verified; the activities authorized by the permit have been performed in compliance with the plans and specifications approved as a part of the permit, and all conditions of the permit; or shall describe any deviations from the plans and specifications, and all conditions of the permit. When the completed activity differs substantially from the permitted plans, any substantial deviations shall be noted and explained on as-built drawings electronically submitted to the Department, by email at JCPCompliance@dep.state.fl.us.

GENERAL CONSENT CONDITIONS:

1. Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.
2. Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.
3. Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.
4. Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.
5. Construction, use or operation of the structure or activity shall not adversely affect any species that is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C.

6. Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.
7. Structures or activities shall not create a navigational hazard.
8. Activities shall not interfere with the public easement for traditional uses of the sandy beaches provided in section 161.141, F.S.
9. Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident or fire.
10. Structures or activities shall be constructed, operated and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(g), F.A.C., or any other applicable law.

SPECIFIC CONDITIONS - ADMINISTRATIVE

1. Pursuant to Chapter 161.141, F.S., prior to construction of the beach nourishment the Board of Trustees may need to establish the line of mean high water for any area affected by this project that does not already have an Erosion Control Line (ECL). This is required to establish the boundary line between sovereignty lands of the state bordering on the Gulf of Mexico and the upland properties not held by the State.
2. Unless otherwise specified in the specific conditions of this permit all submittals required herein (e.g., progress reports, water-quality reports etc.) shall be electronically submitted (via e-mail, file transfer site or hard drive). Email submittals shall be sent to the Department's JCP Compliance Officer (e-mail address: JCPCompliance@dep.state.fl.us). If a file transfer site is used, a link shall be e-mailed to the JCP Compliance Officer. If data are too large to be submitted via e-mail or file transfer site, the Permittee may submit the data via an external hard drive, provided by the Permittee. The external hard drive shall be mailed to:

Department of Environmental Protection
Office of Resilience and Coastal Protection
Attn: JCP Compliance Officer
2600 Blair Stone Road, Mail Station 3544
Tallahassee, FL 32399-2400

3. If the Permittee is unable to complete two maintenance events within the 15-year life of the permit, the Permittee may request (prior to the expiration date of the permit), and the Department shall grant, an extension of the permit expiration date in order to allow completion of the second maintenance event. The extension would be documented through an administrative modification.

SPECIFIC CONDITIONS - PRIOR TO CONSTRUCTION

4. ***Pre-Construction Submittals.*** For each construction event under this permit, no work shall commence until the Permittee has satisfactorily submitted all information noted in this condition. At least 45 days prior to commencement of construction, the Permittee shall submit the following items for review by the Department. Unless otherwise notified by the Department within 15 days of receipt of all information specified below, the Permittee shall assume the submittals are satisfactory:
 - a. An electronic copy of detailed ***final construction plans and specifications*** for all authorized activities. The plans and specifications must be consistent with the project description, conditions and approved drawings of this permit. These documents shall be certified by a professional engineer (P.E.), who is registered in the State of Florida. The Permittee shall point out any deviations from the Project Description of this permit (as stated above) or the approved permit drawings (attached to this permit), and any significant changes that would require a permit modification. The plans and specifications shall include a description of the dredging and construction methods to be utilized and drawings and surveys that show all biological resources and work spaces (e.g., anchoring areas, pipeline corridors, staging areas, boat access corridors, etc.) to be used for this project.
 - b. ***Turbidity Monitoring:*** In order to assure that turbidity levels do not exceed the compliance standards established in this permit, construction at the project site shall be monitored closely by an independent third party with formal training in water quality monitoring and professional experience in turbidity monitoring for coastal construction projects. Also, an individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when turbidity generating activities are occurring. This individual shall have authority to alter construction techniques or shut down the dredging or beach construction operations if turbidity levels exceed the compliance standards established in this permit.
 - i. ***Qualifications.*** The names, credentials (demonstrating experience and qualifications) and 24-hour contact information of those individuals performing these functions;

- ii. A ***Scope of Work*** for the turbidity monitoring to ensure that the right equipment is available to conduct the monitoring correctly at any location, and under any conditions;
- iii. ***Draft turbidity sampling map.*** An example of the geo-referenced map that will be provided with turbidity reports, including aerial photography and the boundaries of biological resources and/or OFW (pursuant to Specific Condition 32)
- c. **Fish & Wildlife Monitoring Qualifications:** To ensure that individuals conducting monitoring of fish and wildlife resources have appropriate qualifications, the Permittee shall provide documentation demonstrating expertise/experience in surveying the types of resources that are present in the project. The Department and the Florida Fish and Wildlife Conservation Commission (FWC) will review this information for confirmation that the monitors are capable of meeting the requirements in Specific Conditions 23 through 24. This documentation shall include the following:
 - i. ***Marine Turtle Protection:*** A list of the names and FWC permit numbers for the Marine Turtle Permit Holders.
 - ii. ***Shorebird Protection:*** A list of Bird Monitors with their contact information, summary of qualifications including bird identification skills, and avian survey experience, proposed locations of shorebird survey routes, and the locations of travel routes.
- d. Documentation from the U.S. Fish and Wildlife Service (FWS) that this work will be covered under a Statewide Programmatic **Biological Opinion** or a Biological Opinions (BO) issued for construction on this project site. If the BO contains conditions that are not already contained herein, a permit modification may be required prior to construction to include those additional conditions.
- e. Documentation confirming authorization for construction activities within the **Little Estero Island Critical Wildlife Area (CWA)** from the Florida Fish and Wildlife Conservation Commission (FWC) pursuant to Specific Condition 27.
- f. Documentation confirming that the approved upland source is currently producing the quantity and quality of the authorized sand product required for the upcoming event, as required by Specific Condition 7.
- g. ***Pre-Construction Conference.*** After all items required by a through f above have been submitted to the Department, the Permittee shall conduct a pre-construction conference to review the specific conditions and monitoring

requirements of this permit with the Permittee's contractors, the engineer of record, those responsible for turbidity monitoring, those responsible for protected species monitoring, staff representatives of the Fish and Wildlife Conservation Commission (FWC) and the JCP Compliance Officer (or designated alternate) prior to each construction event. In order to ensure that appropriate representatives are available, at least twenty-one (21) days prior to the intended commencement date for the permitted construction, the Permittee is advised to contact the Department, and the other agency representatives listed below:

DEP, JCP Compliance Officer
e-mail: JCPCompliance@dep.state.fl.us

FWC Imperiled Species Management Section
e-mail: marineturtle@myfwc.com

FWC, Regional Biologist
Contact list: <http://myfwc.com/conservation/you-serve/wildlife/shorebirds/>

The Permittee is also advised to schedule the pre-construction conference at least a week prior to the intended commencement date. At least seven (7) days in advance of the pre-construction conference, the Permittee shall provide written notification, advising the participants of the agreed-upon date, time and location of the meeting, and also provide a meeting agenda and a teleconference number.

If the actual construction start date is different from the expected start date proposed during the preconstruction conference, at least 48 hours prior to the commencement of each dredging event, the Permittee shall ensure that notification is sent to the FWC, at marineturtle@myfwc.com, indicating the actual start date and the expected completion date. The Permittee shall also ensure that all contracted workers and observers are provided a copy of all permit conditions.

SPECIFIC CONDITIONS – CONSTRUCTION ACTIVITIES

5. The Permittee shall not store or stockpile tools, equipment, materials, etc., within littoral zones or elsewhere within surface waters of the state without prior written approval from the Department. Storing, stockpiling or accessing equipment on, in, over or through areas with benthic biological resources (including beds of submerged aquatic vegetation [SAV], wetlands, oyster reefs or hardbottom) is prohibited unless it occurs within a work area or ingress/egress corridor that is specifically approved by this permit and is shown on the approved permit drawings. Anchoring or spudding of vessels and barges within areas with benthic biological resources is also prohibited.

6. The Permittee shall not conduct project operations or store project-related equipment in, on or over dunes, or otherwise impact dune vegetation, outside the approved staging, beach access and dune restoration areas designated in the permit drawings.
7. Prior to each construction event that will use upland sand, the Permittee (or Permittee's Representative) shall submit documentation confirming that the approved upland sand source(s) is currently producing both the quantity and quality of the approved sand product(s) to meet the needs of the upcoming event. The documentation shall be signed and sealed by a Registered Professional in the State of Florida (i.e., a P.E. or P.G.) and shall indicate the name(s) of the product(s), the upland sand source(s) and the approximate volume (per product per source) needed for the upcoming event. The Permittee shall submit the documentation to the Department as a preconstruction submittal item no later than 45 days prior to construction. *Note: If the upland source(s) is no longer producing a product consistent with the approved Sediment QA/QC plan, a permit modification will be required to authorize an alternate source.*
8. The following upland sand source products were reviewed and authorized for use in this project: non-shelly sand product from Stewart Mining Industries' Immokalee Mine, Vulcan Materials Company's Witherspoon Mine, E.R. Jahna Industries' Ortona Mine, and CEMEX Lake Wales Mine. Any additional upland sand sources will require review and authorization through the permit modification process.
9. Sediment quality will be assessed as outlined in the Sediment QA/QC plan dated December 7, 2021. Placement of material that is not in compliance with the Plan shall be handled according to the protocols set forth in the Sediment QA/QC plans. The sediment testing result shall be submitted to the Department within 90 days following the completion of beach construction. The following requirements are included in the Sediment QA/QC Plan:
 - a. If during construction, the Permittee or Engineer determines that the beach fill material does not comply with the sediment compliance specifications, The Permittee shall take measures to avoid further placement of noncompliant fill, and the sediment inspection results shall be reported to the Department.
 - b. The Permittee will submit post-construction sediment testing results and an analysis report as outlined in the Sediment QA/QC plan to the Department within 90 days following beach construction. The sediment testing results will be certified by a P.E. or P.G. from the testing laboratory. A summary table of the sediment samples and test results for the sediment compliance parameters as outlined in Table 1 of the Sediment QA/QC plan shall accompany the complete set of laboratory testing results. A statement of how the placed fill material compares to the sediment analysis and volume calculations from the geotechnical investigation shall be included in the sediment testing results report.

- c. A post-remediation report containing the site map, sediment analysis, and volume of noncompliant fill material removed and replaced will be submitted to the Department within 7 days following completion of remediation activities.

SPECIFIC CONDITIONS - FISH AND WILDLIFE

10. The pre-construction conference held between the contractors, the engineer and staff representative of the Department (see Specific Condition 4 above) shall also include the Marine Turtle Monitor/permit holder, Bird Monitors and staff representatives of the Florida Fish and Conservation Commission (FWC). The purpose of this portion of the meeting is to ensure that the Permittee/Contractor fully understands the wildlife protection measures and site-specific measures that need to be taken before, during and after construction
11. **In-water Activity.** The Permittee shall adhere to the following requirements for all in-water activity:
 - a. The Permittee shall instruct all personnel associated with the project about the presence of marine turtles and manatees, and the need to avoid collisions with (and injury to) these protected marine species. The Permittee shall be responsible for harm to these resources and shall require their contractors to advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees or marine turtles, which are protected under the Endangered Species Act, the Marine Mammal Protection Act, the Marine Turtle Protection Act and the Florida Manatee Sanctuary Act.
 - b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate project area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels shall follow routes of deep water whenever possible.
 - c. Siltation or turbidity barriers (if used) shall be made of material in which manatees and marine turtles cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers shall not impede manatee or marine turtle movement or travel.
 - d. The Permittee is responsible for all on-site project personnel and shall require them to observe water-related activities for the presence of marine turtles and manatee(s). All in-water operations shall be immediately shut down if a marine turtle or manatee comes within 50 feet of the operation. For unanchored vessels, operators shall disengage the propeller and drift out of the potential impact zone. If drifting would jeopardize the safety of the vessel then idle speed may be used to leave the potential impact zone. Activities shall not resume until the animal(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes

elapses if the animal(s) has not reappeared within 50 feet of the operation. Animals shall not be herded away or harassed into leaving.

- e. Any collision with (or injury to) a marine turtle or manatee shall be reported immediately to the FWC Hotline at 888-404-3922, and to the FWC at ImperiledSpecies@MyFWC.com. Any collision with (and/or injury to) a marine turtle shall also be reported immediately to the Sea Turtle Stranding and Salvage Network (STSSN) at SeaTurtleStranding@MyFWC.com.
- f. Temporary signs concerning manatees shall be prominently posted prior to and during all in-water project activities, at sufficient locations to be regularly and easily viewed by all personnel engaged in water-related activities. Two temporary signs, which have already been approved for this use by the FWC, shall be posted at each location. One sign shall read "Caution Boaters - Watch for Manatees". A second sign measuring at least 8 ½" by 11", shall explain the requirements for "Idle Speed/No Wake" and the shutdown of in-water operations. All signs shall be removed by the Permittee upon completion of the project. These signs can be viewed at MyFWC.com/manatee. Questions concerning these signs can be sent to ImperiledSpecies@MyFWC.com.

12. **Hopper Dredging.** If a hopper dredge is used for this project, the following requirements shall be met:

- a. Handling of captured marine turtles during hopper dredging activities shall be conducted only by persons with prior experience and training in these activities, and who are duly authorized to conduct such activities through a valid Marine Turtle Permit issued by the FWC, pursuant to Chapter 68E-1, F.A.C. The Permittee shall forward documentation of these qualifications to the FWC for review, as required in Specific Condition 4.
- b. In order to minimize impingement or entrainment of marine turtles within the water column, dredging pumps shall be disengaged by the operator, or the draghead bypass valve shall be open and in use when the dragheads are not firmly on the bottom. This precaution is especially important during the cleanup phase of dredging operations.
- c. A state-of-the-art rigid deflector draghead shall always be used on all hopper dredges.
- d. The Sea Turtle Stranding and Salvage Network (STSSN) Coordinator shall be notified of the start-up and completion of hopper dredging operations at 904-573-3930 or via e-mail at Allen.Foley@MyFWC.com. If a marine turtle is captured or marine turtle parts are recovered, the STSSN shall be contacted at SeaturtleStranding@MyFWC.com.

13. **Trawling.** If relocation trawling for marine turtles is required as per applicable NMFS Biological Opinions and Incidental Take authorizations, the following is required:
- a. Any activity involving the use of nets to harass and/or to capture and handle marine turtles in Florida waters requires a Marine Turtle Permit from the FWC prior to trawling.
 - b. The Permittee or their contractor shall e-mail (MTP@MyFWC.com) reports to the FWC's Imperiled Species Management Section on Friday of each week that trawling is conducted in Florida waters. These weekly reports shall include the species and number of turtles captured, their general health, and release information. A summary of all trawling activity (including non-capture trawling) shall be submitted to MTP@MyFWC.com by January 15 of the following year, or at the end of the project. The summary shall be recorded/documented on the FWC-provided Excel spreadsheet (available at <https://myfwc.com/media/3168/trawl-report-template.pdf>), and shall list all turtles captured in Florida waters, the measurements of all captured turtles, the location of captures (latitude and longitude in decimal degrees), the location of tow start-stop points (latitude and longitude in decimal degrees), and times for the start-stop points of the tows (including tows when no turtles are captured).
14. **Construction Area Project Lighting.**

During the marine turtle nesting season (May 1 through October 31), direct lighting of the beach and nearshore waters shall be limited to the immediate area of active construction. Staging areas, if allowed on the nesting beach, shall not be illuminated unless specifically reviewed and authorized by FWC.

Lighting on offshore and onshore equipment shall be minimized by reducing the number of fixtures, shielding, lowering the height and appropriately placing fixtures to avoid excessive illumination of the water's surface and nesting beach. The intensity of lighting shall be reduced to the minimum standard required for general construction area safety. Shields shall be affixed to the light housing on dredge and on land-based lights and shall be large enough to block lamp light from being transmitted outside the construction area or to the adjacent marine turtle nesting beach. (Figure 1 below).

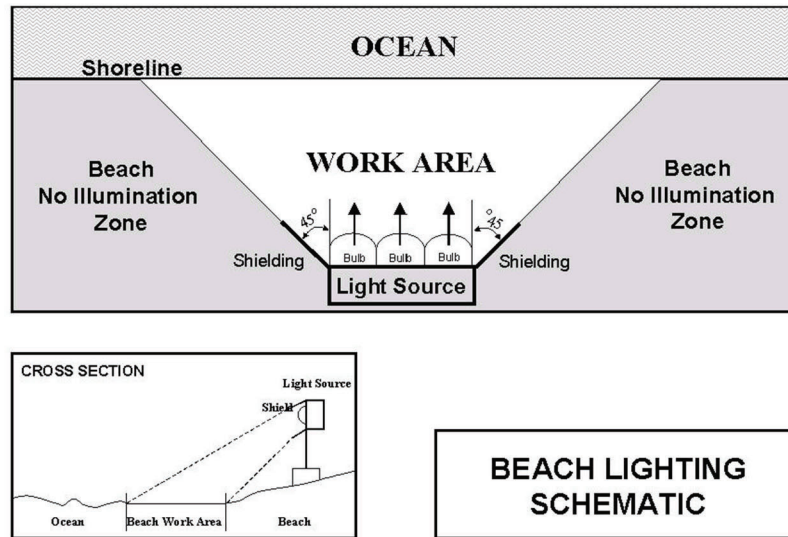


Figure 1

15. **Wildlife Conditions for All Beach Related Activities.** The Permittee shall adhere to the following requirements for all beach-related activities during marine turtle and shorebird nesting/breeding seasons [February 15 through October 31].

a. Beach Maintenance.

- i. The Permittee shall require their contractor and protected species monitors to inspect all work areas that have excavations and temporary alterations of beach topography each day, to determine which areas have deviations (such as depressions, ruts, holes and vehicle tracks) capable of trapping flightless shorebird chicks or marine turtle hatchlings. If so, the deviations outside of the active fill placement area – (see Specific Condition 17) shall be filled or leveled from the natural beach profile prior to 9:00 p.m. each day. The beach surface shall also be inspected subsequent to completion of the project, and all tracks, mounds, ridges or impressions, etc. left by construction equipment on the beach shall be smoothed and leveled.
- ii. All debris, including derelict construction or coastal armoring material, concrete and metal, found on the beach placement site, shall be removed from the beach to the maximum extent practicable prior to any placement of fill material. If debris removal activities will take place during protected species nesting seasons, the work shall be conducted during daylight hours

only, and shall not commence until completion of daily monitoring surveys.

b. **Equipment Storage and Placement.**

- i. Staging areas and temporary storage for construction equipment and pipes shall be located off the beach to the maximum extent practicable. Nighttime storage of construction equipment that is not in use shall be located off the beach. If staging and storage areas off the beach are not possible, then additional marine turtle and shorebird protective measures shall be implemented. Such protective measures shall be determined in coordination with the Department and the FWC prior to beginning of construction. All construction pipes that are in use on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Pipes placed parallel to the dune shall be 5 to 10 feet away from the toe of the dune.
- ii. If it is necessary to extend construction pipes past a known shorebird nesting site, then those pipes shall be placed landward of the site before birds are active in that area. No pipe or sand shall be placed seaward of a shorebird nesting site during the shorebird nesting season. If such placement is not feasible for the project, the FWC's Regional Biologist (or their designee) shall be contacted for alternative measures. See contacts available at <https://myfwc.com/conservation/you- conserve/wildlife/shorebirds/contacts/>.

- g. **Beach Driving.** All vehicles operated on the beach shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you- conserve/wildlife/beach-driving/>). Specifically, the vehicle shall be operated at speeds less than 6 mph and run at or below the high-tide line. All personnel associated with the project shall be instructed about the potential presence of protected species, and the need to avoid injury and disturbance to these species. *Note: when flightless chicks are present within or adjacent to travel corridors, construction-related vehicles shall not be driven through the corridor unless a Bird Monitor is present pursuant to Specific Condition 25.*

16. **Marine Turtle Protection Conditions.**

Construction-related activities are authorized to occur on the nesting beach (sandy beach seaward of existing coastal armoring structures or dune crest and all areas used for beach access) during marine turtle nesting season (May 1 through October 31) under the following conditions:

- a. Daily early morning marine turtle nest surveys shall start two weeks prior to marine turtle nesting season (April 15) or 65 days prior to beach placement

whichever is later. Daily nesting surveys shall continue through November 30, or until two weeks after the last crawl in the project area, whichever is earlier.

- b. Daily nesting surveys shall be conducted beginning ½ hour prior to sunrise, and no construction activity may commence until completion of the marine turtle survey each day.
 - c. The Permittee shall ensure that marine turtle nesting surveys are conducted as required in this authorization, and only conducted by personnel with a valid FWC Marine Turtle Permit, that covers all project activities as required by Chapter 68E-1, F.A.C. For information on the authorized Marine Turtle Permit Holders in the project area, contact FWC at MTP@MyFWC.com.
 - d. Only those nests laid in the area where sand placement will occur shall be relocated, and nest relocation shall cease after the sand placement is completed. Nests requiring relocation shall be moved no later than 9 a.m., the morning following deposition (no longer than 12 hours from the time the eggs are laid), to a nearby self-release beach site in a secure setting, where artificial lighting will not interfere with hatchling orientation. The relocation site shall be determined in conjunction with and approved by the FWC prior to nest relocations. Relocated nests shall not be placed in organized groupings. Relocated nests shall be randomly staggered along the length and width of beach settings that are not expected to experience any of the following: inundation by high tides; severe erosion; previous egg loss; or illumination by artificial lighting.
 - e. Nests deposited within areas where construction activities will not occur for 65 days, or nests laid in the nourished berm prior to tilling, shall be marked and left in place. The Marine Turtle Permit Holder shall install on- beach markers at the nest site to establish a minimum 5- foot radius around the approximate clutch location and shall also install a secondary marker at a point as far landward as possible to assure that the nest can be located should the on- beach marker be lost. No activity shall occur within the marked area, nor shall any activities occur that could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the project activity.
17. **Fill Restrictions.** During the marine turtle nesting season, the contractor shall not advance the beach fill more than 500 feet along the shoreline between dusk and the following day, until the daily nesting survey is completed, and the beach has been cleared for fill advancement. If the 500-foot advancement limitation is not feasible for the project, an alternative distance shall be established during the preconstruction meeting, if a distance can be agreed upon in consultation with the FWC. If the work area is extended, nighttime nesting surveys are required, and a Marine Turtle Permit Holder is required to be present on-site to ensure that no nesting and hatching marine turtles are present. If any

nesting turtles are sighted on the beach within the immediate construction area, activities shall cease immediately until the turtle has returned to the water and the Marine Turtle Permit Holder responsible for nest monitoring has relocated the nest.

18. **Marine Turtle or Nest Encounters.** Upon locating a dead or injured marine turtle adult, hatchling, or egg that may have been harmed or destroyed as a result of the project, the Permittee shall be responsible for notifying the FWC Wildlife Alert at 888-404-FWCC (3922). Care shall be taken in handling injured marine turtles or exposed eggs to ensure effective treatment or disposition, and in handling dead specimens to preserve biological materials for later analysis. If a marine turtle nest is excavated during construction activities, but not as part of the authorized nest relocation process outlined in these specific conditions, the permitted person responsible for egg relocation for the project shall be notified immediately so the eggs can be moved to a suitable relocation site.
19. **Tilling, Compaction and Escarpment Remediation Requirements.** For the years after the first- year sand placement (out- year), compaction monitoring, tilling and escarpment monitoring are not required if placed material no longer remains on the dry beach.
 - a. **Compaction Sampling.** Sand compaction shall be monitored in the area of sand placement immediately after completion of the nourishment event, and two weeks prior to the beginning of marine turtle nesting season, for three (3) subsequent years. The requirement for compaction monitoring may be eliminated if the placed sand is tilled, regardless of post- construction compaction levels. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area shall be tilled prior to the beginning of marine turtle nesting season. If a few values exceeding 500 psi are present randomly within the project area, tilling will not be required. Compaction monitoring shall be in accordance with the following protocol:
 - i. Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area), and one station shall be midway between the dune line and the high-water line (normal wrack line).
 - ii. At each station, the cone penetrometer shall be pushed to depths of 6, 12 and 18 inches three times (i.e., three replicates at each depth). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lie over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth shall be averaged to produce final values for each

depth at each station. Reports shall include all 18 values for each transect line, and the final 6 averaged compaction values.

- iii. If values exceeding 500 psi are distributed throughout the project area, but in no case do those values exist at two adjacent stations at the same depth, then the Permittee shall consult with the FWC to determine if tilling is required. A request for a tilling waiver based on these compaction values shall be submitted to the FWC at MarineTurtle@MyFWC.com.

- b. **Tilling Requirements.** If tilling is performed regardless of post-construction compaction levels or tilling is required based on compaction measurements, the area shall be tilled to a depth of 24 inches. Tilling shall be in accordance with the following protocol:

- i. All tilling activity shall be completed prior to the marine turtle nesting season. If the project is completed during the marine turtle nesting season, tilling shall not be performed in areas where nests have been relocated to or left in place.
- ii. A relatively even surface, with no deep ruts or furrows, shall be created during tilling. To do this, chain-linked fencing or other material shall be dragged over those areas as necessary after tilling. Each pass of the tilling equipment shall be overlapped to allow thorough and even tilling.
- iii. Tilling shall occur landward of the wrack line and shall avoid all naturally vegetated areas that are at least 3 square feet in size, as well as any planted areas that have been authorized by the Department. A 3-foot-wide No-Tilling buffer shall be maintained around vegetated areas. The slope between the mean high- water line and the mean low water line shall be maintained to approximate natural slopes.

- c. **Escarpment Surveys.** Visual surveys for escarpments along the project area shall be made immediately after completion of sand placement, within 30 days prior to April 15 and weekly throughout the marine turtle season for three (3) subsequent years, each year placed sand remains on the dry beach. Escarpment remediation shall be as follows:

- i. Prior to marine turtle nesting season, escarpments that interfere with marine turtle nesting or that exceed 18 inches in height for a distance of at least 100 feet shall be leveled to the natural beach contour or the beach profile shall be reconfigured to minimize scarp formation. Any escarpment removal shall be reported relative to R monument location to the FWC at MarineTurtle@MyFWC.com with a copy sent to the JCP Compliance Officer.

- ii. If weekly surveys during the marine turtle nesting season document escarpments that exceed 18 inches in height for a distance of at least 100 feet and have persisted for more than two weeks, the FWC shall be contacted immediately to determine the appropriate action to be taken. The Permittee shall provide locations and measurements of the escarpments to the closest R monument as well as the coordinates for the location of marine turtle nests located within 20 feet of the escarpments (latitude and longitude in decimal degrees), with photographs when possible. Upon written notification by the FWC that the escarpment needs to be leveled, the Permittee shall level the escarpment. If nests are located nearby, to minimize impacts to any existing nest the Permittee shall also coordinate with the marine turtle permit holder prior to leveling the escarpments. An annual summary documenting weekly escarpment surveys (including dates, presence and height of escarpments) and any remediation actions taken shall be submitted electronically to the FWC (MarineTurtle@MyFWC.com) by December 31 of each year.

Note for Shorebird Protection: If compaction sampling, tilling or escarpment removal occurs during shorebird breeding season, the Shorebird Conditions (including surveys) included in this authorization shall be followed. No heavy equipment shall operate, and no compaction sampling or tilling shall occur within 300 feet of any shorebird nest. If flightless shorebird chicks are present within the work zone or equipment travel corridor, a Bird Monitor shall be present during the operation to ensure that no heavy equipment operates within 300 feet of the flightless young or within a site-specific corridor established per Specific 25. It is the responsibility of the Permittee to ensure that their contractors avoid tilling, scarp removal or dune vegetation planting in areas where nesting birds are present.

20. **Post-Construction Lighting Surveys.** The Permittee shall ensure that lighting surveys be conducted from the renourished berm and the following actions taken to address potential adverse impacts expected with artificial lights visible from any dry portion of the newly elevated beach. The surveys shall be conducted from the top of the foreshore slope (i.e., the seaward edge of the filled berm before it slopes into the water), facing landward. The survey shall follow standard techniques for such a survey, such as including the number and type of visible lights, location of lights, and photo documentation (see additional techniques as per the [2015 USFWS Statewide Programmatic Biological Opinion](#)).
- a. The first survey shall be conducted between May 1 and May 15 for the first nesting season following construction. For each visible light source, the Permittee shall document that the property owners have been notified and has been provided with recommendations for correcting the light as soon as possible.

Recommendations shall be in accordance with local lighting ordinances. A report summarizing all visible lights and the recommendations for correcting the light shall be forwarded to local code enforcement. If no lighting ordinances exist, the recommendations to the property owners shall be consistent with the FWC lighting guidelines, which include no lights or light sources shall be visible from the newly elevated beach. The second survey shall be conducted between July 15 and August 1 to assess any remaining visible lights requiring corrective action.

- b. A summary report of the surveys and what corrective actions or local enforcement actions have been taken shall be submitted to the FWC at MarineTurtle@MyFWC.com and copied to JCPCompliance@dep.state.fl.us by December 31 of the year in which surveys are conducted. Upon request by the FWC, the Permittee shall set up and hold a meeting with the those responsible for code enforcement (when applicable), the FWC and the USFWS to discuss the report and potential additional corrective action needed, as well as any documented marine turtle disorientations in or adjacent to the project area.

21. **Post-Construction Monitoring and Reporting Marine Turtle Protection Conditions.**

- a. For each sand placement event, reports for all required marine turtle nesting surveys shall be provided for the post construction (partial or remaining) nesting season and for two full nesting seasons post construction in accordance with the Table 1 (below). If nesting and reproductive success is less than the criteria in the table below, an additional year of monitoring and reporting may be required. If criteria is not met, additional conditions prior to the next sand placement on this beach may be required by the Department and the FWC.
- b. Data shall be reported and summarized for the nourished areas and reference beach in accordance with Table 1 (below). Reports shall summarize all crawl activity, hatching success of a representative sampling of nests left in place (if any) by species, project name and applicable project permit numbers and dates of construction. Data on nesting activity on the nourished areas and on an equal length of beach that is not nourished shall be submitted in electronic format (Excel spreadsheets) which are available upon request from MarineTurtle@MyFWC.com. Reports shall be sent to the FWC Imperiled Species Management section at MarineTurtle@MyFWC.com and copied to JCPCompliance@dep.state.fl.us. All summaries should be submitted by January 15 of the following year.

Table 1. Marine Turtle Monitoring for Beach Placement of Material.

Date	Duration	Variable	Criterion
Nesting Success	Year of in-season construction and two entire nesting seasons post construction, with possible additional year (for a total of three years) ^{1 & 2}	Number of nests and non- nesting emergences by day by species	40 percent or greater
Hatching success	Year of in-season construction and one entire nesting season post construction, with possible additional year ^{1 & 2}	Number of hatchlings by species to hatch from egg	60 percent or greater (a statistically valid number of loggerhead and green nests, and all leatherback nests)
Emergence Success	Year of in-season construction and one entire nesting season post construction, with possible additional year ^{1 & 2}	Number of hatchlings by species to emerge from nest onto beach	Average must not be significantly different than the average hatching success
Disorientations	Year of in-season construction and two entire nesting seasons post construction ¹	Number of nests and/or individuals that misorient or disorient	
Nests affected by erosion or inundation	Year of construction and two years post construction if placed sand remains on the beach	Number of nests lost and/or affected, by species	

Date	Duration	Variable	Criterion
Lighting Surveys	Two in-season surveys the year following construction; First survey between May 1 and May 15 and second survey between July 15 and August 1 ¹	Number, location and photographs of lights visible from nourished berm, corrective actions recommended, and notifications made	Lighting survey and possible meeting resulting with plan for reduction in lights visible from nourished berm
Compaction	Three nesting seasons beginning with the year of construction. Not required if the beach is tilled prior to nesting season ¹	Shear resistance	Less than 500 psi
Escarpment Surveys	Weekly during nesting season for three years beginning with year of construction ¹	Number of scarps 18 inches or greater extending for more than 100 feet that persist for more than 2 weeks	Successful remediation of all persistent scarps as needed
¹ If placed sand remains on the beach ² Additional years may be required if variable does not meet criterion based on previous year			

22. **Shorebird Protection.** The term “shorebird” is used here to refer to all solitary nesting shorebirds and colonial nesting seabirds that nest on Florida’s beaches. These conditions are intended to avoid direct impacts associated with the construction of the project and may not address all potential take incidental to the operation and use related to this authorization. The Permittee shall adhere to the shorebird protection conditions during the shorebird breeding cycle, which includes nesting.
- a. Shorebird breeding season dates for this project area are **February 15 through September 1** (note that while most species have completed the breeding cycle by September 1, flightless young may be present through September and must be protected if present).

- b. Any parts of the project where “project activities” on the beach take place *entirely outside the breeding season*, do not require shorebird surveys. The term “project activities” includes operation of vehicles on the beach, movement or storage of equipment on the beach, sand placement or sand removal, and other similar activities that may harm or disturb shorebirds. Bird survey routes must be established and monitored throughout the entire breeding season in any parts of the project area where: 1) potential shorebird breeding habitat occurs, and 2) project activities are expected to occur at any time within the breeding season. Breeding season surveys shall begin on the first day of the breeding season or 10 days prior to project commencement (including survey activities and other pre-construction presence on the beach), whichever is later.
- c. Bird surveys shall be conducted in all potential beach-nesting bird habitats within the project boundaries that may be impacted by construction or pre-construction activities. One or more shorebird survey routes shall be established by the Permittee to cover project areas which require shorebird surveys. These routes shall be determined in coordination with the FWC Regional Biologist (or their designee) prior to the initiation of construction. Routes shall not be modified without prior notification to the FWC.
- d. During the pre-construction and construction activities associated with the project, the Permittee shall ensure that surveys for detecting breeding activity and the presence of flightless chicks shall be completed **on a daily basis** by a qualified bird monitor. This shall be completed prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt breeding behavior or cause harm to the birds or their eggs or young. If all project activities are completed and all personnel and equipment have been removed from the beach prior to the end of the breeding season, route surveys shall continue to be conducted at least weekly through the end of the breeding season. If breeding or nesting behavior is confirmed by the presence of a scrape, eggs or young, the Permittee (or their designee) shall establish a buffer in accordance with Specific Condition 23 around the site and shall notify the FWC Regional Biologist (or their designee) within 24 hours. The posts and materials for the shorebird buffer zones shall be removed once all breeding or nesting behavior has ceased.
- e. The Permittee shall require the Bird Monitor to conduct a shorebird education and identification program (and/or provide educational materials) with the on-site staff to ensure protection of precocial (mobile) chicks. All personnel are responsible for watching for shorebirds, nests, eggs and chicks. If the Bird Monitor finds that shorebirds are breeding within the project area, the Permittee shall place and maintain a bulletin board in the construction staging area with the location map of the construction site showing the bird breeding areas and a warning, clearly visible, stating that “NESTING BIRDS ARE PROTECTED BY

LAW INCLUDING THE FLORIDA ENDANGERED AND THREATENED SPECIES ACT AND THE STATE and FEDERAL MIGRATORY BIRD ACTS”.

23. **Shorebird Monitor Requirements.**

- a. The Permittee shall ensure that nesting and breeding shorebird surveys are conducted by trained, dedicated individuals (Bird Monitors) with proven shorebird identification skills and avian survey experience.
- b. Bird Monitor(s) shall be required to review and become familiar with the general information, employ the data collection protocol, and implement data entry procedures outlined on the FWC’s FSD website (<http://www.flshorebirddatabase.org> or [Florida Shorebird Database](#)). They shall use the data-collection protocol and implement data entry procedures as outlined in that website.
- c. The Permittee shall submit a list of Bird Monitors, with their contact information and a summary of qualifications, including bird identification skills and avian survey experience to the FWC Regional Biologist (or their designee) and JCPCompliance@dep.state.fl.us, prior to any construction or shorebird surveys. The determination that the selected Bird Monitor(s) meet the required qualifications shall be coordinated between the Permittee and the FWC Regional Biologist (or their designee) . Once approved, the Permittee shall submit the names and contact information of the Bird Monitor(s) who have been approved by the FWC to JCPCompliance@dep.state.fl.us, prior to any construction or shorebird surveys. The Bird Monitor(s) shall meet the following minimum qualifications:
 - i. Has previously participated in beach-nesting shorebird surveys in Florida (provide references or resume). Experience with previous projects must document the ability to 1) identify all species of beach-nesting birds by sight and sound, 2) identify breeding/territorial behaviors, and find nests of shorebirds that occur in the project area, and 3) identify habitats preferred by shorebirds nesting in the project area.
 - ii. Have a clear working knowledge of, and adhere to, the [Breeding Bird Protocol for Florida’s Seabirds and Shorebirds](#).
<https://app.myfwc.com/crossdoi/shorebirds/PDF-files/BreedingBirdProtocol.pdf>
 - iii. Have completed full-length webinars: Route- Surveyor Training and Rooftop Monitoring Training, including the annual refresher training. Training resources can be found on the [Florida Shorebird Database \(FSD\)](#)

website.

<https://app.myfwc.com/crossdoi/shorebirds/>

- iv. Familiar with the [FWC beach driving guidelines](https://myfwc.com/conservation/you-serve/wildlife/beach-driving/).
<https://myfwc.com/conservation/you-serve/wildlife/beach-driving/>
- v. Experience posting beach-nesting bird sites, consistent with the *Guidelines for Posting Shorebird and Seabird Sites in Florida*.
<https://flshorebirdalliance.org/media/1055/fsapostingguidelines.pdf>
- vi. Has registered as a contributor to the FSD.

24. **Shorebird Survey Protocols.** Bird survey protocols, including downloadable field data sheets, are available on the [FSD website](#). All breeding activity shall be reported to the FSD website within one week of data collection. If the use of this website is not feasible for data collection, the FWC Regional Biologist (or their designee) shall be contacted for alternative methods of reporting. The Permittee shall ensure that the Bird Monitors use the following survey protocols:
- a. Surveys shall be conducted by walking the length of all survey routes and visually surveying for the presence of shorebirds exhibiting breeding behavior, shorebird chicks or shorebird juveniles, as outlined in the FSD Breeding Bird Protocol for Shorebirds and Seabirds. Use of binoculars (minimum 8x40) is required and use of a spotting scope may be necessary to accurately survey the area. If an ATV or other vehicle is needed to cover large survey routes, the Bird Monitor shall stop at intervals of no greater than 600 feet to visually inspect for breeding activity.
 - b. Once breeding or nesting behavior is confirmed by the presence of a scrape, eggs or young, the Permittee (or their designee) shall notify the FWC Regional Biologist (or their designee) within 24 hours.
25. **Shorebird Buffer Zones and Travel Corridors.** The Permittee shall require the Bird Monitor(s) and Contractor(s) to meet the following:
- a. The Bird Monitor(s) shall establish a disturbance-free buffer zone around any location within the project area where the Bird Monitor has observed shorebirds engaged in breeding behavior, including territory defense. A 300-foot buffer shall be established around each nest or around the perimeter of each colonial nesting area. A 300-foot buffer shall also be placed around the perimeter of areas where shorebirds are seen digging nest scrapes or defending nest territories. All construction activities, movement of vehicles, stockpiling of equipment, and pedestrian traffic are prohibited in the buffer zone. **Smaller, site-specific buffers may be established if approved in writing by the FWC Regional Biologist (or**

their designee). Travel corridors shall be designated and marked outside the buffer areas for pedestrian, equipment, or vehicular traffic.

- b. The Bird Monitor(s) shall keep breeding sites under sufficient surveillance to determine if birds appear agitated or disturbed by construction or other activities in adjacent areas. If birds appear to be agitated or disturbed by these activities, then the Bird Monitor(s) shall immediately widen the buffer zone to a sufficient size to protect breeding birds.
- c. The Bird Monitor(s) shall ensure that reasonable and traditional pedestrian access is not blocked in situations where breeding birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beach-goers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be allowed when breeding was initiated within 300 feet of an established beach access pathway. The Bird Monitor(s) shall work with the FWC Regional Species Conservation Biologist to determine if pedestrian access can be accommodated without compromising nesting success. These site-specific buffers must be determined in coordination with the FWC Regional Biologist (or their designee).
- d. The Bird Monitor(s) shall ensure that the perimeters of designated buffer zones shall be marked according to *Guidelines for Posting Shorebird and Seabird Sites in Florida* available at: <https://flshorebirdalliance.org/media/1055/fsapostingguidelines.pdf> with posts, twine and the FWC-approved signs stating “Do Not Enter, Important Nesting Area” or similar language around the perimeter (see example of signage for marking designated buffer zones at <http://myfwc.com/conservation/you-conserve/wildlife/shorebirds/>). Posts shall not exceed 3 feet in height once installed. Symbolic fencing (twine, string or rope) should be placed between all posts at least 2.5 feet above the ground and rendered clearly visible to pedestrians. If pedestrian pathway and/or equipment travel corridor modifications are approved by the FWC Regional Biologist (or their designee), these shall be clearly marked. **Posting shall be maintained in good repair until no active nests, eggs, or flightless young are present.** Although solitary nesters may leave the buffer zone temporarily with their chicks, the posted area continues to provide a potential refuge for the family until breeding is complete. Breeding is not considered to be completed until all chicks have fledged.
- e. The Permittee shall ensure that no construction activities, pedestrians, moving vehicles, or stockpiled equipment are allowed within the buffer area.
- f. The Permittee shall ensure that the Bird Monitor(s) designate and mark travel corridors outside the buffer areas so as not to cause disturbance to breeding birds. Heavy equipment, other vehicles, or pedestrians may transit past breeding areas in these corridors. However, other activities such as stopping or turning heavy

equipment and vehicles shall be prohibited within the designated travel corridors adjacent to the breeding site.

- g. When flightless chicks are present within or adjacent to travel corridors, construction-related vehicles shall not be driven through the corridor unless a Bird Monitor is present to adequately monitor the travel corridor. The Permittee shall require the contractor with the oversight of the Bird Monitor(s) to avoid any chicks that may be in the path of moving vehicles. The Permittee shall also require the contractor with the oversight of the Bird Monitor(s) to level any tracks, ruts, or holes that may be capable of trapping flightless chicks, while avoiding any impacts to the chicks.

Notification. Any injury or death of a shorebird (including crushing eggs or young) resulting from project activities shall be reported immediately to the FWC Regional Biologist (or their designee).

- 26. **Little Estero Island Critical Wildlife Area.** To minimize potential impacts to marine turtles and breeding shorebirds within the Little Estero Island Critical Wildlife Area (CWA), construction-related activities are authorized to occur on the South Beach Fill Segment (R-203 to R-207), commencing after October 31 and completed before March 1. The Permittee shall adhere to the requirements pursuant to Specific Conditions 10 through 25 above for all construction-related activities occurring during marine turtle and shorebird nesting/breeding seasons.
- 27. Pursuant to Chapter 68A-19.005, F.A.C portions of CWA are closed seasonally for the protection of state-listed beach nesting birds. The Permittee shall ensure all necessary authorizations from the FWC are obtained prior to all construction-related activities within the CWA.
- 28. **Dune Planting Conditions.** Planting of dune vegetation is encouraged outside of marine turtle nesting season. However, planting activities may occur during the marine turtle nesting season May 1 through October 31 under the following conditions:
 - a. It is the responsibility of the Permittee to ensure that the project area and access sites are surveyed for marine turtle nesting activity. All nest surveys and activities involving marine turtles shall be conducted only by persons with a valid FWC permit issued pursuant to Florida Administrative Code 68E-1. For information regarding marine turtle permit holders, contact the FWC at MTP@MyFWC.com.
 - b. Marine turtle nest surveys shall be initiated at the beginning of the nesting season or 65 days prior to installation of plants (whichever is later). Surveys shall continue until completion of the project or through October 31 (whichever is earliest). Surveys shall be conducted throughout the project area and all beach access sites.

- c. Any nests deposited in the area shall be left in place. The marine turtle permit holder shall install an on-beach marker at any nest site and a secondary marker located at a point as far landward as possible to ensure that future location of the nest will be possible should the on-beach marker be lost. A series of stakes and survey ribbon or string shall be installed to establish an area of three (3) feet radius surrounding the nest. No planting or other activity shall occur within this area nor shall any activity occur which might cause indirect impacts within this area. Nest sites shall be inspected daily to ensure nest markers have not been removed.
 - d. The use of heavy equipment (including vehicles such as trucks) is not authorized in marine turtle nesting habitat. A lightweight (ATV style) vehicle, with tire pressures of 10 psi or less can operate on the beach if required.
 - e. Any vegetation planting shall be installed by hand labor/tools only.
 - f. All activity shall be confined to daylight hours and shall not occur prior to the completion of all necessary marine turtle surveys and conservation activities within the project area. Nighttime storage of equipment or materials shall be off the beach.
 - g. In the event a nest is disturbed or uncovered during planting activity, the Permittee shall cease all work and immediately contact the marine turtle permit holder responsible for marine turtle conservation measures within the project area. If a nest(s) cannot be safely avoided during construction, all activity within the affected project area shall be delayed until complete hatching and emergence of the nest.
 - h. All planting related activities must avoid marked marine turtle nests including those that may be on the beach before and after the marine turtle nesting season dates (May 1 through October 31). Any impacts to nests or marine turtles that inadvertently occur shall be immediately reported the Florida Fish and Wildlife Conservation Commission (FWC) at MarineTurtle@MyFWC.com, and all work shall stop until authorized to continue by the Department and the FWC.
 - i. All irrigation lines for the dune restoration planting, if proposed, will be temporarily installed along the landward side of the dune only and will be removed once the plants have become established. Any watering necessary along the seaward side of the dune will be done by hand on an “as needed” basis.
29. **Dune Management Plan Conditions.** All dune management activities associated with this project shall adhere to the Fort Myers Beach Dune Management Plan dated **August**

26, 2022. Dune management activities under this plan may occur under the following marine turtle protection conditions:

- a. No dune height modifications involving excavation and/or fill activities shall occur during the marine turtle nesting season (May 1 – October 31).
- b. For all dune height modifications, including vegetation trimming, conducted under this plan, a lighting survey shall be conducted within 30 days prior to construction and within 30 days after construction or by May 15th, whichever is later, to assess lighting impacts from dune height modifications. A summary report of the surveys and what corrective actions or local enforcement actions have been taken shall be submitted to the FWC at MarineTurtle@MyFWC.com and copied to JCPCCompliance@dep.state.fl.us by December 31 of the year in which surveys are conducted.
- c. All activities shall avoid marked marine turtle nests including those that may be on the beach before or after the marine turtle nesting season. Any impacts to nests that may have inadvertently occurred or if a marine turtle nest is exposed, or a dead, injured, or sick marine turtle is discovered, the Permittee shall ensure that the Marine Turtle Permit Holder be notified immediately such that appropriate conservation measures can be taken. Within 24 hours of any such occurrence, the Permittee shall submit a report detailing the incident (e.g., date, time, permit number, location, photos, contact information, incident and response descriptions) to the FWC at MarineTurtle@MyFWC.com.
- d. No installation of fencing is authorized on marine turtle nesting habitat (sandy beach) during the marine turtle nesting season (May 1 – October 31). All post and rope fencing shall be a single strand of rope at a minimum of three (3) feet in height and posts shall be spaced at least seven (7) feet apart.
- e. During the marine turtle nesting season (May 1 to October 31), all mechanical beach cleaning activities conducted under this plan shall be confined to daylight hours (sunrise to sunset) and adhere to the following marine turtle protection conditions:
 - i. During marine turtle nesting season (May 1 to October 31), the permittee is responsible for ensuring that a daily marine turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach cleaning area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach cleaning. The marine turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68E-1 Permit issued by the Florida Fish & Wildlife Conservation Commission

(FWC).

- ii. In the event that mechanical beach cleaning occurs prior to completion of the marine turtle nest survey, protection, and monitoring program, mechanical beach cleaning shall not occur landward of the wrack or debris line on that beach until 65 days have passed or after November 30, whichever is earlier. The permittee shall contact the Marine Turtle Permit Holder prior to reinitiating mechanical beach cleaning in that area.
- iii. All nests left in place shall be marked with a circle of tape or string having a radius of at least three (3) feet, centered at the approximated location of the clutch. An additional marker shall be placed at the base of the dune or seawall to ensure that future location of the nests will be possible should the on-beach markings be lost. No mechanical cleaning equipment is allowed inside of this circle; however, careful removal of material by hand is allowed. All equipment operators should be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.
- iv. In the event that on-beach nest markers are lost for any reason, including vandalism or high water conditions, no mechanical beach cleaning shall be conducted until the marine turtle permit holder identifies the nest and restores the markers. In the event that the nest cannot be found and may have been lost during high water conditions, the permittee shall contact FWC staff at (850) 922-4330 to determine if mechanical beach cleaning can resume. All marine turtle protection conditions shall remain in effect unless specifically waived in writing by FWC.
- v. In order to avoid adverse impacts in the event that cleaning accidentally occurs over a nest, mechanical beach cleaning equipment shall not penetrate more than two inches into the surface of the beach. This permit authorizes the use of a vehicle with a maximum tire pressure of 10 p.s.i. and a rake or cleaning apparatus that limits penetration into the surface of the beach to a maximum of two inches. Box blades and front or rear mounted blades are not authorized. No other types of vehicles may be operated on the beach pursuant to this permit. Mechanized beach cleaning shall be accomplished so that no ruts are formed on the beach.
- vi. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of accumulated debris from the beach must occur immediately after cleaning has been performed.

- vii. Operators of mechanical beach cleaning equipment shall avoid all native, salt tolerant dune vegetation by a minimum of 10 feet. **Any raking within 10 feet of dune vegetation shall be completed by hand labor/tools only.**

SPECIFIC CONDITIONS - MONITORING REQUIRED:

30. Water Quality - Turbidity shall be monitored as follows:

Units: Nephelometric Turbidity Units (NTUs).

Frequency: Monitoring for a pipeline dredge and truck haul placements shall be conducted 3 times daily, approximately 4 hours apart, and at any other time that there is a likelihood of an exceedance of the turbidity standard, during all dredging and sand placement operations.

Monitoring for a hopper dredge shall be conducted for each hopper dredge load during daylight hours. At the dredge site, sampling shall be conducted after overflow from the hopper begins and the associated turbidity plume has reached the edge of the mixing zone. At the fill placement site, sampling shall be conducted after discharge from the hopper begins and the associated turbidity plume has reached the edge of the mixing zone.

Sampling shall be conducted **while the highest project-related turbidity levels are crossing the edge of the mixing zone**. Since turbidity levels can be related to pumping rates, the dredge pumping rates shall be recorded, and provided to the Department upon request. The compliance samples and the corresponding background samples shall be collected at approximately the same time, i.e., background sample shall immediately follow the compliance sample.

Location: **Background:** Sampling shall occur at surface (approximately one foot below the surface), mid-depth (for sites with depths greater than 6 feet), and bottom (approximately 6 feet above the bottom for sites with depths greater than 25 feet). All background sampling shall occur clearly outside the influence of any artificially generated turbidity plume or the influence of an outgoing inlet plume.

Borrow Site: Samples shall be collected at least 300 meters up-current from the source of turbidity at the dredge site.

Beach Site: Samples shall be collected at least 300 meters up-current from any portion of the beach that has been, or is being, filled during

the current construction event, at the same distances offshore as the associated compliance samples.

Compliance: Sampling shall occur at surface (approximately one foot below the surface), mid-depth (for sites with depths greater than 6 feet), and bottom (approximately 6 feet above the bottom for sites with depths greater than 25 feet).

Borrow Site: Samples shall be collected 150 meters down-current from the cutterhead or the hopper dredge overflow point, **and** from any other source of turbidity generated by the dredge, in the densest portion of any visible turbidity plume. If no plume is visible, follow the likely direction of flow.

Beach Site: Samples shall be collected where the densest portion of the turbidity plume crosses the edge of the mixing zone polygon, which measures up to 150 meters offshore and up to 1,000 meters alongshore from the point where the return water from the dredged discharge reenters the Gulf of Mexico. *Note: If the plume flows parallel to the shoreline, the densest portion of the plume may be close to shore, in shallow water. In that case, it may be necessary to access the sampling location from the shore, in water that is too shallow for a boat.*

Calibration and Verification: The instruments used to measure turbidity shall be fully calibrated with primary standards within one month of the commencement of the project, and at least once a month throughout the project. Calibration shall be verified each morning prior to use, after each time the instrument is turned on, and after field sampling using two secondary turbidity “standards” that bracket the anticipated turbidity samples. If the post-sampling calibration verification value deviates more than 8% from the previous calibration value, results shall be reported as estimated and a description of the problem shall be included in the field notes.

Analysis of turbidity samples shall be performed in compliance with DEP-SOP-001/01 FT 1600 Field Measurement of Turbidity:
<http://publicfiles.dep.state.fl.us/dear/sas/sopdoc/2008sops/ft1600.pdf>

If the turbidity monitoring protocol specified above prevents the collection of accurate data, the person in charge of the turbidity monitoring shall contact the JCP Compliance Officer to establish a more appropriate protocol. Once approved in writing by the Department, the new protocol shall be implemented through an administrative permit modification.

31. The **compliance** locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the **compliance** sites that are greater than 29 NTUs above the corresponding background turbidity, construction activities shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the JCP Compliance Officer via email at JCPCCompliance@dep.state.fl.us and include in the subject line, “TURBIDITY EXCEEDANCE”, and the Project Name and Permit Number. Also notify the Department’s Southeast District office.

Any project-associated turbidity source other than dredging or fill placement for beach nourishment (e.g., scow or pipeline leakage) shall be monitored as close to the source as possible. If the turbidity level 29 NTUs above background, the construction activities related to the exceedance shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. This turbidity monitoring shall continue every hour until background turbidity levels are restored or until otherwise directed by the Department. The Permittee shall notify the Department, by separate email to the JCP Compliance Officer, of such an event within 24 hours of the time the Permittee first becomes aware of the discharge. The subject line of the email shall state “OTHER PROJECT-ASSOCIATED DISCHARGE, TURBIDITY EXCEEDANCE”.

- a. When reporting a turbidity exceedance, the following information shall also be included:
 - i. the Project Name;
 - ii. the Permit Number;
 - iii. location and level (NTUs above background) of the turbidity exceedance;
 - iv. the time and date that the exceedance occurred; and
 - v. the time and date that construction ceased.
- b. Prior to re-commencing the construction, a report shall be emailed to the Department with the same information that was included in the “Exceedance Report”, plus the following information:
 - i. turbidity monitoring data collected during the shutdown documenting the decline in turbidity levels and achievement of acceptable levels;
 - ii. corrective measures that were taken; and

iii. cause of the exceedance.

32. **Turbidity Reports:** All turbidity monitoring data shall be submitted within one week of analysis. The data shall be presented in tabular format, indicating the measured turbidity levels at the compliance sites for each depth, the corresponding background levels at each depth and the number of NTUs over background at each depth. Any exceedances of the turbidity standard (29 NTUs above background) shall be highlighted in the table. In addition to the raw and processed data, the reports shall also contain the following information:

- a. time of day samples were taken;
- b. dates of sampling and analysis;
- c. GPS location of sample and source. *When possible, coordinates should be provided in decimal degrees with a 5 decimal level of precision (i.e., 0.00001). Please also indicate the datum;*
- d. depth of water body;
- e. depth of each sample
- f. antecedent weather conditions, including wind direction and velocity;
- g. tidal stage and direction of flow;
- h. water temperature;
- i. a geo-referenced map, overlaid on an aerial photograph, indicating the sampling locations (background and compliance), location of active construction, the visible plume pattern and direction of flow. The map shall also include the boundaries of any benthic resources or OFW. A sample map shall be submitted to and reviewed by the Department prior to construction (Specific Condition 4);
- j. a statement describing the methods used in collection, handling, storage and analysis of the samples;
- k. a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection, calibration of the meter, accuracy of the data and precision of the GPS measurements;
- l. When samples cannot be collected, include an explanation in the report. If unable to collect samples due to severe weather conditions, include a copy of a current report from a reliable, independent source, such as an online weather service.

Monitoring reports shall be submitted by email to the Department's JCP Compliance Officer. In the subject line of the reports, include the Project Name, Permit Number and the dates of the monitoring interval. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the Department's JCP Compliance Officer, on the cover page to the submittal and at the top of each page, please state: **"This information is provided in partial fulfillment of the monitoring requirements in Permit No.0413684-001-JC, for the Estero Island Shore Protection"**

33. **Physical Monitoring.** Monitoring and reporting of the permitted project shall be conducted in accordance with the Physical Monitoring Plan dated December 7, 2021, and the conditions of this permit.
34. The approved Monitoring Plan can be revised at any later time by written request of the Permittee and with the written approval of the Department. If subsequent to approval of the Monitoring Plan there is a request for modification of the permit, the Department may require revised or additional monitoring requirements as a condition of approval of the permit modification.

As guidance for obtaining Department approval, the plan shall generally contain the following items:

- a. Topographic and bathymetric profile surveys of the beach and offshore shall be conducted prior to commencement of construction, immediately following completion of construction, and annually beginning one year following completion of construction for a period of three years. Thereafter, monitoring surveys shall be conducted biennially after the Year Three monitoring until the next beach nourishment event or the expiration of the project design life, whichever occurs first.

A pre-construction survey of the project area to receive beach fill may use surveys conducted for purposes of construction bidding, contracting, or construction management. The post-construction survey of the beach fill may use surveys and other information collected periodically during construction for purposes of construction management and payment. Alternatively, the post-construction survey may consist of a single beach-offshore profile survey event of the project monitoring area conducted within 60 days after completion of beach fill placement.

The monitoring surveys shall be conducted during a spring or summer month and repeated as close as practicable during that same month of the year. If the time period between the immediate post-construction survey and the first annual monitoring survey is less than six months, then the Permittee may at their

discretion postpone the first monitoring survey until the following spring/summer.

The monitoring area shall include profile surveys at each of the Department of Environmental Protection's reference monuments within the bounds of the beach fill area and along at least 5,000 feet of the adjacent shoreline on both sides of the beach fill area. All work activities and deliverables for all monitoring surveys shall be conducted in accordance with the latest update of the Department's *Monitoring Standards for Beach Erosion Control Projects, Sections 01000 and 01100*.

- b. The Permittee shall submit an engineering report and the monitoring data to the Department within 90 days following completion of the construction and each annual and biennial monitoring survey.

The report shall summarize and discuss the data, the performance of the beach fill project, and identify erosion and accretion patterns within the monitored area. Results shall be analyzed for patterns, trends, or changes between annual surveys and cumulatively since project construction. In addition, the report shall include a comparative review of project performance to performance expectations and identification of adverse effects attributable to the project. The report shall specifically include:

- i. A record of the volume and location of all beach fill, including any sand placed from the Estero Island Nourishment Project (FDEP Permit Number: 0413684-001-JC) within the project area;
- ii. The volume and percentage of advance nourishment lost since the last beach nourishment project as measured landward of the mean high water (MHW) line of the most recent survey;
- iii. The most recent MHW shoreline positions (feet) in comparison with the design profile at each individual monument location;
- iv. The MHW shoreline position changes (feet) relative to the pre-construction survey at each individual monument location for all the monitoring periods;
- v. The total measured remaining volume (cubic yards) in comparison with the total predicted remaining volume (cubic yards) above the MHW line and above the Depth of Closure for the entire project area over the successive monitoring periods; and,

- vi. Other shoreline position and volumetric analysis the Permittee or Engineer deem useful in assessing, with quantitative measurements, the performance of the project.

The report shall include computations, tables and graphic illustrations of volumetric and shoreline position changes for the monitoring area. An appendix shall include superimposed plots of the two most recent beach profile surveys, the design profile, and pre- and post-construction beach profile at each individual monument location.

- c. An electronic copy of the monitoring report and the survey data shall be submitted to the Department's JCP Compliance Officer. Failure to submit reports and data in a timely manner constitutes grounds for revocation of the permit. When submitting any monitoring information to the Department, please include a transmittal cover letter clearly labeled with the following at the top of each page: **This monitoring information is submitted in accordance with the approved Monitoring Plan for Permit No. 0413684-001- JC for the monitoring period [XX].**

POST CONSTRUCTION CONDITIONS

- 35. Within 30 days after completion of authorized activities, the Permittee shall submit a notice of completion to the JCP Compliance Officer that includes the following information:
 - a. The permit number (0413684-001-JC) and the project name (Estero Island Beach Nourishment Project).
 - b. A copy of any post-construction As-Built Survey drawings required of the Contractor. If any of the completed activities differ substantially from the permitted plans, any substantial deviations shall be noted and explained.
 - c. A summary of the construction event (the date on which authorized activities began and the date of completion, the volume of sand placed and/or dredged as well as the source of sand and the R-monument locations for construction activities).
 - d. A table identifying any exceedances of turbidity standards that occurred during dredging or disposal, the probable causes of the exceedances, and corrective measures taken to reduce turbidity.

- e. A table identifying any known impacts to biological resources (including SAV and Hardbottom communities) and, the probable causes of the impacts, and corrective measures taken.
 - f. A table identifying any harm or injury to threatened species, endangered species or protected species, endangered status communities, the probable causes of the take and corrective measures taken.
36. **Post-Construction Meeting.** Within 90 days following each construction activity authorized by this permit, the Permittee shall hold a post-construction conference. Attendees shall include at minimum, the Permittee, Agent, Department representative, and FWC representative.

EXECUTION AND CLERKING:

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Gregory W. Garis.
Program Administrator
Beaches, Inlets and Ports Program
Office of Resilience and Coastal Protection

Attachment(s):

1. Approved Permit Drawings (33 pages, dated November 3, 2022)
2. Dune Management Plan (dated August 26, 2022)
3. QA/QC (dated December 7, 2021)
4. Physical Monitoring Plan (dated December 7, 2021)

**Joint Coastal Permit
Estero Island Nourishment Project
Permit No. 0413684-001-JC
Page 39 of 39**

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this permit and all attachments were sent on the filing date below.

FILING AND ACKNOWLEDGMENT

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

Diana Dukhovskaya 01/18/2023
Clerk Date

FORT MYERS BEACH DUNE MANAGEMENT PLAN
August 9, 2022

INTRODUCTION

The Town of Fort Myers Beach proposes the Dune Management Plan (Plan) to incorporate beach and dune vegetation management activities within the Estero Island Shore Protection Project (Project). The Town and Florida Department of Environmental Protection (FDEP) successfully implemented such a Plan with the 2012 original shore protection project. That plan was permitted separate from the beach project under the Coastal Construction Control Line permit process, LE 1361 AW (Appendix 1).

The Plan shall include new dune plantings, existing dune height reduction/replanting, vegetation trimming and maintenance, and installation of rope and bollards. The Plan is an incentive for private property owners to sign easements for the Project. The activities outlined in this document are normally strictly prohibited by the Town Land Development Code. However, the Plan allows property owners who sign an easement to have greater control over their beach and dune vegetation than property owners who do not sign an easement. Increasing the number of properties that sign easements will also increase the likelihood of long-term stability and success of the Project by reducing gaps in the beach fill area. The Plan is consistent with the Comprehensive Plan's of Lee County and Fort Myers Beach which both require dune plantings in association with beach nourishment. It is noted that historically the beachfront property owners have expressed a strong reluctance to sign easements that included new vegetation without a mechanism to maintain it.

All reductions in dune height and vegetation area that take place will be more than offset by the additional plantings of beach and dune vegetation in association with the renourishment project. All dunes that are reduced in height will be replanted so there will be no net loss in vegetated area. The net impact will be an increase in the number and area of native salt tolerant vegetation and dunes.

Areas of existing beach vegetation and vegetation planted for the nourishment project will be hereafter referred to as Managed Beach Zones (MBZ). Ultimately, the Plan will serve as assurance to property owners that they will be able to manage their plantings under certain prescribed criteria outlined in this Plan. The Plan will provide an incentive to encourage property owners to enter into a temporary construction easement with the Town for the Project.

COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE

The following sections from the adopted Town of Fort Myers Beach Comprehensive Plan and Land Development Code (LDC) provide support and guidance for the Plan.

- **OBJECTIVE 5-D BEACHES AND DUNES** — Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches

to counter natural erosion, and reducing negative man-made impacts on beaches and dunes.

- POLICY 5-D-1 ii. Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected and non-native exotics removed. Dune walkovers should be constructed where they do not exist and existing structures should be maintained.
- OBJECTIVE 6-E DUNES AND BEACHES – Protect and improve dunes and beaches as recreation areas, valuable habitat, protection from storms, and areas of high scenic and aesthetic value. The effect of the Town’s efforts may be a noticeable transition from today’s manicured and compacted beach towards a naturally appearing and functioning beach. This transition will be accomplished through education, regulation, and assistance in physical restoration activities.
 - POLICY 6-E-3 The Town will implement the following measures to promote the restoration of beach and dune systems:
 - Initiate a program to recreate a dune line and plant appropriate vegetation such as sea oats wherever sand dunes have been destroyed.
 - Require the use of indigenous plant species for public and private dune restoration or renourishment projects.
- LDC Section 14-8
 - In areas where the beach has experienced erosion, on public land or with the consent of the owner, the Town will establish a dune system consisting of sea oat plantings, a minimum of 10 feet wide, to be planted adjacent to the existing upland vegetation line, and to be planted at existing elevations.
 - In areas that have not experienced erosion, the Town will encourage the establishment of a dune system but will not require same.

MBZ PLANTING GUIDANCE AND CRITERIA

Property Owner Participation

The long-term success of this program is dependent on continuity of each MBZ and the collective efforts of the program. In order for staff and partnering agencies to monitor the long-term progress of the program and for the Town to have a reasonable assurance of success after commitment of funds; it is essential to have a pledge from each property owner to maintain the planting in at least a minimum condition. If a property owner wishes to be able to control the nature and height of vegetation and/or the height of dunes, as described in the plan, the property owner will be required to enter into a Memorandum of Agreement (MOA) with the Town for their MBZ and adhere to the program parameters. Each MOA will be kept on file at the Town to effect compliance with the time lines, terms,

and conditions of the program for current and future property owners. Each MOA will contain at a minimum:

- Property owner name, address, STRAP, number, and signature,
- Aerial photograph (available from www.leepa.org at no charge), plat, or survey of the property,
- Scaled diagram of the area to be planted and including pedestrian walkthroughs or dune walkovers (Town staff can assist by utilizing GPS mapping),
- Plant selection including species, sizes, and quantities,
- Layout and design of any proposed rope and bollard systems,
- Location of any proposed temporary irrigation,

If, at any time Town inspections reveal that the MBZ is found to be non-compliant with the MOA, then the property owner may be required to bring the MBZ into compliance or reimburse the Town for the cost of the materials and/or installation.

Temporary irrigation lines may be installed along the landward side of the dune only and must be removed once the plants have become established. Any watering necessary along the seaward side of the dune may be done by hand on an “as needed” basis.

Without Existing Vegetation

A MBZ that does not have existing vegetation shall be planted as follows.

Managed Beach Zone Alternative #1 “Sea Oat Dune”

Common name	Scientific name	Percentage
Sea oats	(<i>Uniola paniculata</i>)	70%
Dune sunflower	(<i>Helianthus debilis</i> var. <i>vestitus</i>)	15%
Dune panic grass	(<i>Panicum amarum</i>)	10%
Railroad vine	(<i>Ipomoea pes-caprae</i>)	5%

Managed Beach Zone Alternative #2 “Mixed Dune”

Common name	Scientific name	Percentage
Sea oats	(<i>Uniola paniculata</i>)	50%
Dune sunflower	(<i>Helianthus debilis</i> var. <i>vestitus</i>)	20%
Dune panic grass	(<i>Panicum amarum</i>)	10%
Railroad vine	(<i>Ipomoea pes-caprae</i>)	10%

Managed Beach Zone Alternative #3 “Low Dune”

Common name	Scientific name	Percentage
Dune panic grass	(<i>Panicum amarum</i>)	40%
Dune sunflower	(<i>Helianthus debilis</i> var. <i>vestitus</i>)	35%
Sea oats	(<i>Uniola paniculata</i>)	15%
Railroad vine	(<i>Ipomoea pes-caprae</i>)	10%

With Existing Vegetation

Town staff will survey properties where dune vegetation already exists in order to determine if improvements can be made to the dune system through additional plantings. “Vegetation” will be considered to be greater than 20% coverage (e.g. Braun-Blanquet) of native salt tolerant dune vegetation such as sea oats, railroad vine, dune sunflower, and bitter panicum. Coconut palms, Floratam, and any non native vegetation will not be counted towards the 20% coverage. The survey will also record areas of no vegetation and the total length of those areas on each property and record those as “No Vegetation”. Areas that have between 1% and 19% coverage of native salt tolerant dune vegetation will be recorded as “Additional Vegetation Needed”. The Town will only survey the actual outer vegetation line in areas where the vegetation is 10 foot deep or greater. If the vegetation area is less than 10 foot deep (measured perpendicular to the shoreline) it will be recorded as “additional vegetation needed”. On properties that are determined to have less than 75% of the beach-front property width vegetated with beach vegetation, the Town will determine approximately how many feet of vegetation would need to be planted to reach the 75% criteria. The Town will determine which properties have greater than 75% linear beach front footage of property that have vegetation and record those as “no vegetation needed”. The ArcMap 9.0 compatible files with metadata (geo-database or shapefiles) will list “No Vegetation”, “Additional Vegetation Needed” or “Vegetation” and the approximate linear footage of each segment surveyed.

Since entering into an MOA for their MBZ will give property owners ability to control dune vegetation and limit their spread, this privilege will also be extended to property owners who only require additional plantings to bring the MBZ up to design specifications. The planted MBZ should also be planted to connect to adjacent MBZ plantings or existing dune vegetation on neighboring properties. The MBZ boundaries will be mapped using sub-meter GPS systems and this information will be entered into the Town’s GIS system. This information will be utilized for monitoring purposes.

Planting Techniques

Depth of planting will vary between plant species. A water absorbing polymer gel product that has been hydrated according to label directions will be placed in the hole prior to planting. All plants will be fertilized with a controlled slow release granular type fertilizer consistent with the Town’s fertilizer ordinance and watered-in at the time of installation. Plant spacing will average 12” to 18” on plant center. This will allow more sand to blow toward the back where plants are densest. Plants will be staggered in adjacent rows to prevent aisles (lined up spaces between plants), which may erode.

Dune Banking

In order to offset the impacts of minor dune management activities including vegetation trimming and dune lowering, the Town will track the overall gain in beach vegetation that will result from the plantings associated with the beach nourishment project. The new planting areas will offset any minor impacts to beach vegetation or dunes as described in this plan. New planting areas will fill in areas where no vegetation exists and create credits to be used against any debits for significant impacts to the dune system.

MBZ Planting Maintenance

MBZ Survival and Health

The Town will require the dune contractor to maintain at least an 80% survival rate to be evaluated 90 days after planting. If the planting survival rate falls below 80% due to improper installation or inadequate maintenance, the dune contractor will replace the plantings to reach the 80% criteria at *no cost to the property owner*.

Nuisance Vegetation Control

The Town recognizes that some plants have characteristics such as spines and thorns which make them unappealing. Other plants may tend to dominate planted vegetation rapidly and may out compete the planted MBZ. Property owners may remove the plants listed below. Town staff will assist property owners with recognition and suggested control methods for these species. It is not anticipated that FDEP field permits will be necessary for control or removal of these plants since the entirety of each planting area is assumed to mitigate for the loss of any plants. Property owners will be authorized to control all Category 1 and 2 exotic invasive plants.

Species designated for homeowner control on the sandy beach and in newly planted MBZs:

<u>Common name</u>	<u>Scientific name</u>
Nicker bean	(<i>Caesalpinia bonduc</i>)
Sand spur	(<i>Cenchrus spp.</i>)
Coin vine	(<i>Dalbergia ecastaphyllum</i>)
Beach naupaka	(<i>Scaevola sericea</i>)

Species designated for homeowner control on the sandy beach, in newly planted MBZs, and in existing dune vegetation:

<u>Common name</u>	<u>Scientific name</u>
Nicker bean	(<i>Caesalpinia bonduc</i>)
Sand spur	(<i>Cenchrus spp.</i>)
Beach naupaka	(<i>Scaevola sericea</i>)

Raking

Raking will be allowed either within two feet of the MBZ or along a boundary mapped by the Town. The Town strongly encourages hand raking only within 10 feet of the MBZ. For MBZ participating properties only, the 10-foot buffer described in LDC Sec. 14-6 will be reduced to two feet or along the mapped boundary. The boundary for raking can either be mapped by sub-meter GPS systems or by rope and bollard systems. All raking methodologies must be in accordance with Town and State regulations, particularly with regard to sea turtle conservation. Beach raking which results in damage or destruction to sea turtle nests or nesting habitat will result in enforcement action. During the sea turtle nesting season, all marked marine turtle nests shall be avoided; and all raking within 10 feet of dune vegetation may be completed by hand labor/tools only.

Rope and Bollard Systems

Rope and bollard systems (RBS) are used by property owners to designate their ownership lines, protect vegetation, and to prevent public trespass onto their property. RBS systems may not be placed more than one foot seaward of the toe of the most frontal dune line and may not be installed during the nesting season. *However, RBS may not be used to impede public lateral beach access on public beach under Chapter 161 F.S.* RBS would provide assurance to property owners that they would be able to retain control of their beach for the purpose of raking, which is a very common practice on Fort Myers Beach. However, RBS pose a legitimate threat to the health and nesting success of sea turtles and their hatchlings by posing a vertical obstruction. All rope and post fencing may be a single strand of rope at a minimum of three (3) feet in height off the ground, with posts spaced at least seven (7) feet apart. All posts must be installed outside of sea turtle nesting season. Posts may not be seated in the sand with concrete.

Property owners who have signed temporary construction easements to participate in the beach nourishment project will be able to install RBS by right. Property owners who do not sign an easement and who decline to participate in the project may only install RBS by Special Exception with approval contingent upon approval by Town Council in a public hearing. A Special Exception is the only method of approval elsewhere on Fort Myers Beach seaward of the 1978 Coastal Construction Control Line.

Vegetation Trimming

The Town recognizes that property owners may have a concern with the height of dunes plants or their MBZ and this concern has led to many areas on the beaches that are barren of all vegetation. A balanced approach that takes into account riparian views and nurture of the MBZ is critical to encouraging property owner participation and giving them a sense of control of their MBZ.

A vegetation removal permit must be applied for prior to the first MBZ trimming event. This special permit will be good for three years at no cost to the property owner. The vegetation removal permit may be issued at the time of MBZ planting to reduce processing time and effort for Town staff and the property owner. For the purposes of the Plan, sea grapes (*Coccoloba uvifera*) shall be subject to all existing state statutes and will be managed separately from MBZs and are not considered a part of the Plan. Sea grape trees are also listed as protected plants in the Town Land Development Code and permits may be required for trimming or removal. MBZ trimming must meet the following criteria:

- Trimming will not be permitted on Town, County or State property.
- Trimming in the MBZ shall not reduce the overall height of the individual plant to less than four feet above the substrate.
- Dead stems and panicles from the previous year may be removed.
- Post-trimmed appearance of the vegetation should not be hedged or flattened but will emulate a natural growth pattern. This may be accomplished by alternately trimming portions of the vegetation combined with trimming some branches of individual plants while leaving other branches longer.

Dune Height Modification

MBZs, by their nature, can be expected to accumulate sand and build a dune. In fact, a healthy, functioning dune would be at least 18"-24" elevated over surrounding natural grade. This height is important for vigorous root establishment and nutrient cycling. However, there are potentially local conditions which may cause dunes to build significantly higher. The shoreline of Estero Island is an undulating shore with a double crescent shape which can cause some areas to receive more wind and sand transport than others. Some existing dunes may often directly face seasonal prevailing winds which generate the highest Aeolian transport, such as dunes that face northwest and are subject to stronger winter winds. Due to natural recruitment of dune vegetation and historical beach raking practices, some of these existing dunes may align at an angle to the shoreline. Placement of newly planted MBZs may also result in additional areas which face seasonal prevailing winds which, combined with site specific planting strategies may also allow for differential dune growth; some dunes may grow larger than others on neighboring properties. The potential for these situations to impair riparian views may cause enough reticence with property owners that they may not choose to participate in the program. Therefore it is important to allow property owners to control their dune height to some extent. The intent of allowing dune lowering is to give property owners a mechanism to control the height of the dune without creating significant impacts to the dune and beach by conserving sand within the system. However, property owners will be required to place the sand landward of the existing dune and create parallel dune ridges where feasible or it may be spread within 50 feet of the surrounding beach where it is not feasible to place the sand landward of the existing dune.

MBZ dune heights may be lowered according to the following criteria:

- An initial dune lowering event may utilize small mechanized equipment such as tractors with buckets and Bobcat style tracked vehicle provided that the tire or ground pressure of the vehicle does not exceed 10psi with special approval by Town staff.
- Follow up dune lowering events may only utilize hand tools (e.g. shovels).
- When dunes are lowered, the slope from surrounding natural grade to the MBZ grade may not be exceeded by creation of an escarpment.
- Sand may not be removed from the beach area. Site specific conditions will determine where sand may be located to within the immediate area. Sand may be placed landward of the dune to create parallel dune systems where feasible to keep sand within the dune system. Alternatively, sand removed from the MBZ may be spread within 50 feet of the surrounding beach where it is not feasible to place the sand landward of the existing dune.
- Sand which is placed landward to create parallel dunes will be spread into a layer no more than 4" deep to allow salt tolerant vegetation an opportunity to reemerge.
- Where dunes are temporarily disturbed, the area will be allowed to naturally recruit and monitored to ensure 20% coverage (e.g. Braun-Blanquet) of native salt tolerant dune vegetation such as sea oats, railroad vine, dune sunflower, and bitter panicum. Any area where dune lowering take places that does not meet the 20% coverage within 6 months will be replanted with native salt tolerant vegetation such as

described above. Other species of native salt tolerant vegetation such as seashore dropseed may be substituted with approval of Town and FDEP.

- Dunes may not be lowered to 18” or less to ensure a healthy, functioning MBZ/dune system.
- A free permit will be required for each dune lowering event from the Town to ensure that techniques are used that minimizes impacts to the beach. Upon consent of the property owner, the Town may act as an agent to acquire any necessary CCCL permits from the FDEP. Typically, these permits are limited to no more than 18” of lowering per event for planted MBZ’s.
- Dune height modifications shall occur outside of sea turtle nesting season and shorebird nesting season (cumulatively March 1 to October 31).
- When possible, any native salt tolerant vegetation that may be disturbed by dune lowering shall be transplanted.

MEMORANDUM OF AGREEMENT
Managed Beach Zone Maintenance

Property Owner Name: Thomas Torgerson
Property Owner Mailing Address: 251 Crescent St Fort Myers Beach, FL 33931
Property Street Address: 1050 5th St Fort Myers Beach, FL 33931
Property STRAP Number: 19-46-24-W4-40492.2607

THIS MEMORANDUM OF AGREEMENT is made and entered into this 17th day of February, 2026 by and between the TOWN OF FORT MYERS BEACH, FLORIDA (hereinafter "TOWN") and Thomas Torgerson (hereinafter "OWNER").

WHEREAS, the TOWN is implementing the Estero Island Shore Protection Project ("Project") to counter the effects of beach erosion; and

WHEREAS, the Project is also known as the Estero Island Beach Renourishment and Hurricane Recovery Project; and

WHEREAS, the TOWN has adopted a Dune Management Plan ("FMBDMP") to restore and manage dunes which serve as a first line of defense for protection from beach erosion caused by storms; and

WHEREAS, the FMBDMP establishes standards for planting, maintaining, trimming, and managing dune vegetation; and

WHEREAS, the FMBDMP provides property owners with the opportunity to exercise greater flexibility in managing beach nourishment plantings within Managed Beach Zones ("MBZs") than would otherwise be permitted under the Town's Land Development Code; and

WHEREAS, the FMBDMP is intended to encourage property owners to grant temporary construction easements for the Estero Island Shore Protection Project by providing enhanced dune management flexibility within MBZs; and

WHEREAS, the majority of beach property owners in the Town of Fort Myers Beach have executed the Town's Temporary Beach Access, Restoration, and Management Easement; and

WHEREAS, for the TOWN to have reasonable assurance of success of the FMBDMP program, it is essential that each participating property owner pledge that they will maintain the planting in minimum condition as specified in the FMBDMP; and

WHEREAS, pursuant to the FMBDMP, property owners who wish to control the nature and height of vegetation or dunes on their property under criteria outlined in the FMBDMP are required to enter into a Memorandum of Agreement ("MOA") with the Town.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. **Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.

2. **Subject Property.** This Agreement concerns the real property situated at the street address and identified by the STRAP number set forth on page 1 of this Agreement (hereinafter, "OWNER's property").

3. **TOWN's Obligation to Install.** TOWN agrees to install beach vegetation, dunes, and related improvements on OWNER's property as shown on the scaled diagram attached hereto and incorporated herein by reference as Exhibit "A." The diagram attached as Exhibit "A" depicts all areas that are to be planted; all pedestrian walkthroughs or dune walkovers; layout and design of any proposed rope and bollard systems; and the location of any proposed temporary irrigation devices. A list of all approved plants, including species, sizes, and quantities, is attached hereto and incorporated herein as Exhibit "B."

4. **Owner's Obligation to Maintain.** OWNER agrees to maintain OWNER's property, including the beach vegetation, dunes, and related improvements installed by the TOWN on OWNER's property, so that OWNER's property remains in conformity with the conditions depicted on the scaled diagram attached hereto as Exhibit "A" and the plant list attached hereto as Exhibit "B." Owner shall perform all maintenance in accordance with the "MBZ Planting Maintenance" section of the FMBDMP attached hereto as Exhibit "C".

5. **Failure to Maintain.** OWNER's failure to fulfill OWNER's maintenance and other obligations under this Agreement shall result in the issuance of a written notice of non-compliance from the TOWN. Said notice shall identify the specific deficiencies and require OWNER to correct them within thirty (30) days from the date of the notice. If OWNER fails to correct the deficiencies by the deadline set forth in the notice, TOWN or TOWN's agents may enter upon OWNER's property to perform the work necessary to bring the property into compliance with OWNER's obligations under this Agreement, including but not limited to reinstallation or maintenance of the beach vegetation, dunes, and related improvements in accordance with the conditions depicted in Exhibit "A," the plant list in Exhibit "B," and the "MBZ Planting Maintenance" standards in Exhibit "C." OWNER shall reimburse TOWN for the cost of any plant materials and/or installation necessary to achieve compliance. In addition, TOWN may utilize any other legal remedies available to enforce compliance.

6. **Destruction Resulting from Force Majeure.** OWNER shall not be required to perform any restoration or replacement of vegetation that has been damaged or destroyed due to storm events, extreme wind conditions or other acts of God beyond the control of the OWNER.

7. **Waiver.** Failure of the TOWN to require strict performance of any provision of this Agreement shall not be construed as a waiver by the TOWN of its right to enforce any subsequent default, nor shall it be construed as a modification of this Agreement.

8. **Entire Agreement.** This Agreement, including any Exhibits attached hereto, incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and constitutes the complete and entire agreement and understanding between the parties regarding the subject matter herein and may only be modified in writing and executed by both the authorized TOWN representative(s) and OWNER.

9. **Binding Nature of Agreement.** All covenants and agreements contained in this Agreement shall be construed as covenants running with the land and shall be binding upon the OWNER, and his or her grantees, lessees, transferees, successors and assigns for the benefit and in favor of the TOWN.

10. **Recordation.** OWNER shall record this Agreement in the Public Records of Lee County, Florida within 30 days of execution by OWNER and TOWN, at OWNER's expense.

11. **Headings.** All headings in this Agreement are for convenience only and are not to be used in any judicial construction or interpretation of this Agreement or any paragraph.

12. **Law; Venue; Attorney's Fees.** This Agreement shall be governed according to the laws of the State of Florida. Venue for any action brought to enforce the provisions hereof shall be in Lee County, Florida. In any such action, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees.

13. **Compliance with Laws.** OWNER shall comply with all federal, state and local laws, codes, ordinances, rules and regulations in performing its obligations related to this Agreement.

14. **Severability.** If any term or provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remainder shall remain in full force and effect.

15. **Sovereign Immunity.** Nothing contained herein shall constitute a waiver by TOWN of its sovereign immunity or the provisions of Florida Statutes § 768.28. Nothing herein shall be construed as a consent by either party to be sued by third parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 17th day of February, 2026.

OWNER:

By: 

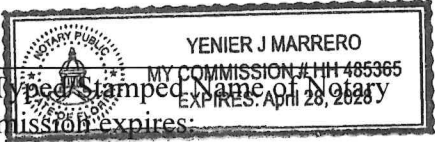
Printed name: Thomas Torgerson

STATE OF Florida
COUNTY OF Lee

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 17 day of February, 2020, by Thomas Torgesen, and he/she is personally known to me or has produced Passport ID as identification.

Yenier J Marrero

Signature of Notary Public - State of Florida

Printed/Typed Stamped Name of Notary
My commission expires: 

TOWN OF FORT MYERS BEACH, a Florida
municipal corporation

By: _____

Printed Name: _____

Title: _____

ATTEST:

AMY BAKER, TOWN CLERK

Date signed by TOWN: _____

EXHIBIT A

Scaled Diagram of Managed Beach Zone & Maintenance Configuration

Legend

1. FISH POISON TREE
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Maintenance Configuration

•Seagrass: The resort will maintain the Seagrass height not less than one foot above the seawall level, in the area without a seawall, a minimum height of not less than 4 feet

•Fish Poison Tree: The resort will maintain the height of the Fish Poison tree not less than 30 feet

•Blue Mobi Mat: The resort will keep the surface in good condition (free of tears, cracks, curling edges or delamination), Ensure stakes/anchors are secure and not creating trip hazards, Reset sections that have shifted, buckled, or developed gaps due to sand movement

Mobi Mats dimensions: Width: 3' 25ft, Length: 44ft

EXHIBIT B

Dune Plant Species List

Managed Beach Zone Alternative #3 “Low Dune”

- Dune panic grass (*Panicum amarum*) 40%
- Dune sunflower (*Helianthus debilis* var. *vestitus*) 35%
- Sea oats (*Uniola paniculata*) 15%
- Railroad vine (*Ipomoea pes-caprae*) 10%

Additional Plantings

- Seagrape (*Coccoloba uvifera*) Hedge Approximately 450 LF
- Blanket Flower (*Gaillardia pulchella*) and Dune sunflower (*Helianthus debilis* var. *vestitus*) Groundcover Approximately 450 LF
- Expanded MBZ from 10 feet wide to 30 feet wide

EXHIBIT C

FORT MYERS BEACH DUNE MANAGEMENT PLAN

August 9, 2022

INTRODUCTION

The Town of Fort Myers Beach proposes the Dune Management Plan (Plan) to incorporate beach and dune vegetation management activities within the Estero Island Shore Protection Project (Project). The Town and Florida Department of Environmental Protection (FDEP) successfully implemented such a Plan with the 2012 original shore protection project. That plan was permitted separate from the beach project under the Coastal Construction Control Line permit process, LE 1361 AW (Appendix 1).

The Plan shall include new dune plantings, existing dune height reduction/replanting, vegetation trimming and maintenance, and installation of rope and bollards. The Plan is an incentive for private property owners to sign easements for the Project. The activities outlined in this document are normally strictly prohibited by the Town Land Development Code. However, the Plan allows property owners who sign an easement to have greater control over their beach and dune vegetation than property owners who do not sign an easement. Increasing the number of properties that sign easements will also increase the likelihood of long-term stability and success of the Project by reducing gaps in the beach fill area. The Plan is consistent with the Comprehensive Plan's of Lee County and Fort Myers Beach which both require dune plantings in association with beach nourishment. It is noted that historically the beachfront property owners have expressed a strong reluctance to sign easements that included new vegetation without a mechanism to maintain it.

All reductions in dune height and vegetation area that take place will be more than offset by the additional plantings of beach and dune vegetation in association with the renourishment project. All dunes that are reduced in height will be replanted so there will be no net loss in vegetated area. The net impact will be an increase in the number and area of native salt tolerant vegetation and dunes.

Areas of existing beach vegetation and vegetation planted for the nourishment project will be hereafter referred to as Managed Beach Zones (MBZ). Ultimately, the Plan will serve as assurance to property owners that they will be able to manage their plantings under certain prescribed criteria outlined in this Plan. The Plan will provide an incentive to encourage property owners to enter into a temporary construction easement with the Town for the Project.

COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE

The following sections from the adopted Town of Fort Myers Beach Comprehensive Plan and Land Development Code (LDC) provide support and guidance for the Plan.

- **OBJECTIVE 5-D BEACHES AND DUNES** — Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches

to counter natural erosion, and reducing negative man-made impacts on beaches and dunes.

- POLICY 5-D-1 ii. Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected and non-native exotics removed. Dune walkovers should be constructed where they do not exist and existing structures should be maintained.
- OBJECTIVE 6-E DUNES AND BEACHES – Protect and improve dunes and beaches as recreation areas, valuable habitat, protection from storms, and areas of high scenic and aesthetic value. The effect of the Town’s efforts may be a noticeable transition from today’s manicured and compacted beach towards a naturally appearing and functioning beach. This transition will be accomplished through education, regulation, and assistance in physical restoration activities.
 - POLICY 6-E-3 The Town will implement the following measures to promote the restoration of beach and dune systems:
 - Initiate a program to recreate a dune line and plant appropriate vegetation such as sea oats wherever sand dunes have been destroyed.
 - Require the use of indigenous plant species for public and private dune restoration or renourishment projects.
- LDC Section 14-8
 - In areas where the beach has experienced erosion, on public land or with the consent of the owner, the Town will establish a dune system consisting of sea oat plantings, a minimum of 10 feet wide, to be planted adjacent to the existing upland vegetation line, and to be planted at existing elevations.
 - In areas that have not experienced erosion, the Town will encourage the establishment of a dune system but will not require same.

MBZ PLANTING GUIDANCE AND CRITERIA

Property Owner Participation

The long-term success of this program is dependent on continuity of each MBZ and the collective efforts of the program. In order for staff and partnering agencies to monitor the long-term progress of the program and for the Town to have a reasonable assurance of success after commitment of funds; it is essential to have a pledge from each property owner to maintain the planting in at least a minimum condition. If a property owner wishes to be able to control the nature and height of vegetation and/or the height of dunes, as described in the plan, the property owner will be required to enter into a Memorandum of Agreement (MOA) with the Town for their MBZ and adhere to the program parameters. Each MOA will be kept on file at the Town to effect compliance with the time lines, terms,

and conditions of the program for current and future property owners. Each MOA will contain at a minimum:

- Property owner name, address, STRAP, number, and signature,
- Aerial photograph (available from www.leepa.org at no charge), plat, or survey of the property,
- Scaled diagram of the area to be planted and including pedestrian walkthroughs or dune walkovers (Town staff can assist by utilizing GPS mapping),
- Plant selection including species, sizes, and quantities,
- Layout and design of any proposed rope and bollard systems,
- Location of any proposed temporary irrigation,

If, at any time Town inspections reveal that the MBZ is found to be non-compliant with the MOA, then the property owner may be required to bring the MBZ into compliance or reimburse the Town for the cost of the materials and/or installation.

Temporary irrigation lines may be installed along the landward side of the dune only and must be removed once the plants have become established. Any watering necessary along the seaward side of the dune may be done by hand on an “as needed” basis.

Without Existing Vegetation

A MBZ that does not have existing vegetation shall be planted as follows.

Managed Beach Zone Alternative #1 “Sea Oat Dune”

<u>Common name</u>	<u>Scientific name</u>	<u>Percentage</u>
Sea oats	(<i>Uniola paniculata</i>)	70%
Dune sunflower	(<i>Helianthus debilis</i> var. <i>vestitus</i>)	15%
Dune panic grass	(<i>Panicum amarum</i>)	10%
Railroad vine	(<i>Ipomoea pes-caprae</i>)	5%

Managed Beach Zone Alternative #2 “Mixed Dune”

<u>Common name</u>	<u>Scientific name</u>	<u>Percentage</u>
Sea oats	(<i>Uniola paniculata</i>)	50%
Dune sunflower	(<i>Helianthus debilis</i> var. <i>vestitus</i>)	20%
Dune panic grass	(<i>Panicum amarum</i>)	10%
Railroad vine	(<i>Ipomoea pes-caprae</i>)	10%

Managed Beach Zone Alternative #3 “Low Dune”

<u>Common name</u>	<u>Scientific name</u>	<u>Percentage</u>
Dune panic grass	(<i>Panicum amarum</i>)	40%
Dune sunflower	(<i>Helianthus debilis</i> var. <i>vestitus</i>)	35%
Sea oats	(<i>Uniola paniculata</i>)	15%
Railroad vine	(<i>Ipomoea pes-caprae</i>)	10%

With Existing Vegetation

Town staff will survey properties where dune vegetation already exists in order to determine if improvements can be made to the dune system through additional plantings. “Vegetation” will be considered to be greater than 20% coverage (e.g. Braun-Blanquet) of native salt tolerant dune vegetation such as sea oats, railroad vine, dune sunflower, and bitter panicum. Coconut palms, Floratam, and any non native vegetation will not be counted towards the 20% coverage. The survey will also record areas of no vegetation and the total length of those areas on each property and record those as “No Vegetation”. Areas that have between 1% and 19% coverage of native salt tolerant dune vegetation will be recorded as “Additional Vegetation Needed”. The Town will only survey the actual outer vegetation line in areas where the vegetation is 10 foot deep or greater. If the vegetation area is less than 10 foot deep (measured perpendicular to the shoreline) it will be recorded as “additional vegetation needed”. On properties that are determined to have less than 75% of the beach-front property width vegetated with beach vegetation, the Town will determine approximately how many feet of vegetation would need to be planted to reach the 75% criteria. The Town will determine which properties have greater than 75% linear beach front footage of property that have vegetation and record those as “no vegetation needed”. The ArcMap 9.0 compatible files with metadata (geo-database or shapefiles) will list “No Vegetation”, “Additional Vegetation Needed” or “Vegetation” and the approximate linear footage of each segment surveyed.

Since entering into an MOA for their MBZ will give property owners ability to control dune vegetation and limit their spread, this privilege will also be extended to property owners who only require additional plantings to bring the MBZ up to design specifications. The planted MBZ should also be planted to connect to adjacent MBZ plantings or existing dune vegetation on neighboring properties. The MBZ boundaries will be mapped using sub-meter GPS systems and this information will be entered into the Town’s GIS system. This information will be utilized for monitoring purposes.

Planting Techniques

Depth of planting will vary between plant species. A water absorbing polymer gel product that has been hydrated according to label directions will be placed in the hole prior to planting. All plants will be fertilized with a controlled slow release granular type fertilizer consistent with the Town’s fertilizer ordinance and watered-in at the time of installation. Plant spacing will average 12” to 18” on plant center. This will allow more sand to blow toward the back where plants are densest. Plants will be staggered in adjacent rows to prevent aisles (lined up spaces between plants), which may erode.

Dune Banking

In order to offset the impacts of minor dune management activities including vegetation trimming and dune lowering, the Town will track the overall gain in beach vegetation that will result from the plantings associated with the beach nourishment project. The new planting areas will offset any minor impacts to beach vegetation or dunes as described in this plan. New planting areas will fill in areas where no vegetation exists and create credits to be used against any debits for significant impacts to the dune system.

MBZ Planting Maintenance

MBZ Survival and Health

The Town will require the dune contractor to maintain at least an 80% survival rate to be evaluated 90 days after planting. If the planting survival rate falls below 80% due to improper installation or inadequate maintenance, the dune contractor will replace the plantings to reach the 80% criteria at *no cost to the property owner*.

Nuisance Vegetation Control

The Town recognizes that some plants have characteristics such as spines and thorns which make them unappealing. Other plants may tend to dominate planted vegetation rapidly and may out compete the planted MBZ. Property owners may remove the plants listed below. Town staff will assist property owners with recognition and suggested control methods for these species. It is not anticipated that FDEP field permits will be necessary for control or removal of these plants since the entirety of each planting area is assumed to mitigate for the loss of any plants. Property owners will be authorized to control all Category 1 and 2 exotic invasive plants.

Species designated for homeowner control on the sandy beach and in newly planted MBZs:

<u>Common name</u>	<u>Scientific name</u>
Nicker bean	(<i>Caesalpinia bonduc</i>)
Sand spur	(<i>Cenchrus spp.</i>)
Coin vine	(<i>Dalbergia ecastaphyllum</i>)
Beach naupaka	(<i>Scaevola sericea</i>)

Species designated for homeowner control on the sandy beach, in newly planted MBZs, and in existing dune vegetation:

<u>Common name</u>	<u>Scientific name</u>
Nicker bean	(<i>Caesalpinia bonduc</i>)
Sand spur	(<i>Cenchrus spp.</i>)
Beach naupaka	(<i>Scaevola sericea</i>)

Raking

Raking will be allowed either within two feet of the MBZ or along a boundary mapped by the Town. The Town strongly encourages hand raking only within 10 feet of the MBZ. For MBZ participating properties only, the 10-foot buffer described in LDC Sec. 14-6 will be reduced to two feet or along the mapped boundary. The boundary for raking can either be mapped by sub-meter GPS systems or by rope and bollard systems. All raking methodologies must be in accordance with Town and State regulations, particularly with regard to sea turtle conservation. Beach raking which results in damage or destruction to sea turtle nests or nesting habitat will result in enforcement action. During the sea turtle nesting season, all marked marine turtle nests shall be avoided; and all raking within 10 feet of dune vegetation may be completed by hand labor/tools only.

Rope and Bollard Systems

Rope and bollard systems (RBS) are used by property owners to designate their ownership lines, protect vegetation, and to prevent public trespass onto their property. RBS systems may not be placed more than one foot seaward of the toe of the most frontal dune line and may not be installed during the nesting season. *However, RBS may not be used to impede public lateral beach access on public beach under Chapter 161 F.S.* RBS would provide assurance to property owners that they would be able to retain control of their beach for the purpose of raking, which is a very common practice on Fort Myers Beach. However, RBS pose a legitimate threat to the health and nesting success of sea turtles and their hatchlings by posing a vertical obstruction. All rope and post fencing may be a single strand of rope at a minimum of three (3) feet in height off the ground, with posts spaced at least seven (7) feet apart. All posts must be installed outside of sea turtle nesting season. Posts may not be seated in the sand with concrete.

Property owners who have signed temporary construction easements to participate in the beach nourishment project will be able to install RBS by right. Property owners who do not sign an easement and who decline to participate in the project may only install RBS by Special Exception with approval contingent upon approval by Town Council in a public hearing. A Special Exception is the only method of approval elsewhere on Fort Myers Beach seaward of the 1978 Coastal Construction Control Line.

Vegetation Trimming

The Town recognizes that property owners may have a concern with the height of dunes plants or their MBZ and this concern has led to many areas on the beaches that are barren of all vegetation. A balanced approach that takes into account riparian views and nurture of the MBZ is critical to encouraging property owner participation and giving them a sense of control of their MBZ.

A vegetation removal permit must be applied for prior to the first MBZ trimming event. This special permit will be good for three years at no cost to the property owner. The vegetation removal permit may be issued at the time of MBZ planting to reduce processing time and effort for Town staff and the property owner. For the purposes of the Plan, sea grapes (*Coccoloba uvifera*) shall be subject to all existing state statutes and will be managed separately from MBZs and are not considered a part of the Plan. Sea grape trees are also listed as protected plants in the Town Land Development Code and permits may be required for trimming or removal. MBZ trimming must meet the following criteria:

- Trimming will not be permitted on Town, County or State property.
- Trimming in the MBZ shall not reduce the overall height of the individual plant to less than four feet above the substrate.
- Dead stems and panicles from the previous year may be removed.
- Post-trimmed appearance of the vegetation should not be hedged or flattened but will emulate a natural growth pattern. This may be accomplished by alternately trimming portions of the vegetation combined with trimming some branches of individual plants while leaving other branches longer.

Dune Height Modification

MBZs, by their nature, can be expected to accumulate sand and build a dune. In fact, a healthy, functioning dune would be at least 18"-24" elevated over surrounding natural grade. This height is important for vigorous root establishment and nutrient cycling. However, there are potentially local conditions which may cause dunes to build significantly higher. The shoreline of Estero Island is an undulating shore with a double crescent shape which can cause some areas to receive more wind and sand transport than others. Some existing dunes may often directly face seasonal prevailing winds which generate the highest Aeolian transport, such as dunes that face northwest and are subject to stronger winter winds. Due to natural recruitment of dune vegetation and historical beach raking practices, some of these existing dunes may align at an angle to the shoreline. Placement of newly planted MBZs may also result in additional areas which face seasonal prevailing winds which, combined with site specific planting strategies may also allow for differential dune growth; some dunes may grow larger than others on neighboring properties. The potential for these situations to impair riparian views may cause enough reticence with property owners that they may not choose to participate in the program. Therefore it is important to allow property owners to control their dune height to some extent. The intent of allowing dune lowering is to give property owners a mechanism to control the height of the dune without creating significant impacts to the dune and beach by conserving sand within the system. However, property owners will be required to place the sand landward of the existing dune and create parallel dune ridges where feasible or it may be spread within 50 feet of the surrounding beach where it is not feasible to place the sand landward of the existing dune.

MBZ dune heights may be lowered according to the following criteria:

- An initial dune lowering event may utilize small mechanized equipment such as tractors with buckets and Bobcat style tracked vehicle provided that the tire or ground pressure of the vehicle does not exceed 10psi with special approval by Town staff.
- Follow up dune lowering events may only utilize hand tools (e.g. shovels).
- When dunes are lowered, the slope from surrounding natural grade to the MBZ grade may not be exceeded by creation of an escarpment.
- Sand may not be removed from the beach area. Site specific conditions will determine where sand may be located to within the immediate area. Sand may be placed landward of the dune to create parallel dune systems where feasible to keep sand within the dune system. Alternatively, sand removed from the MBZ may be spread within 50 feet of the surrounding beach where it is not feasible to place the sand landward of the existing dune.
- Sand which is placed landward to create parallel dunes will be spread into a layer no more than 4" deep to allow salt tolerant vegetation an opportunity to reemerge.
- Where dunes are temporarily disturbed, the area will be allowed to naturally recruit and monitored to ensure 20% coverage (e.g. Braun-Blanquet) of native salt tolerant dune vegetation such as sea oats, railroad vine, dune sunflower, and bitter panicum. Any area where dune lowering take places that does not meet the 20% coverage within 6 months will be replanted with native salt tolerant vegetation such as

described above. Other species of native salt tolerant vegetation such as seashore dropseed may be substituted with approval of Town and FDEP.

- Dunes may not be lowered to 18” or less to ensure a healthy, functioning MBZ/dune system.
- A free permit will be required for each dune lowering event from the Town to ensure that techniques are used that minimizes impacts to the beach. Upon consent of the property owner, the Town may act as an agent to acquire any necessary CCCL permits from the FDEP. Typically, these permits are limited to no more than 18” of lowering per event for planted MBZ’s.
- Dune height modifications shall occur outside of sea turtle nesting season and shorebird nesting season (cumulatively March 1 to October 31).
- When possible, any native salt tolerant vegetation that may be disturbed by dune lowering shall be transplanted.

1. **Request:**

Meeting Date: April 6, 2026

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ADMINISTER A GRANT FROM THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION THROUGH THE FY25-26 STATE APPROPRIATIONS FOR THE FORT MYERS BEACH STORMWATER DOWNTOWN MITIGATION PHASE I PROJECT IN THE AMOUNT OF \$292,500.00; AUTHORIZING THE TOWN MANAGER TO EXECUTE RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE GRANT AND PROGRAMS; PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Authorizes the Town Manager to execute and administer a grant agreement to utilize State appropriated funds within the current year State budget.

What the action accomplishes:

Authorizes the Town Manager to execute and administer a grant agreement to utilize State appropriated funds within the current year State budget.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jeff Hauge, Community
Services Director

5. **Background:**

The Town of Fort Myers Beach, Florida submitted a state appropriation request through the Florida legislature and the Town's local delegation for the FY25-26 budget for downtown stormwater mitigation efforts; and the Town's appropriation request was included in the State Budget for FY25-26.

As part of the process to utilize this funding, the State of Florida Department of Environmental Protection has created a grant agreement numbered L0195 ("the Grant") to administer these funds attached as Exhibit A.

Attachments:

1. 26-072, L0195 Downtown Stormwater Mitigation Grant Approval
2. Exhibit A FDEP Grant Agreement L0195

Financial Impact:

\$292,500 from FDEP through this grant awarded with a previously budgeted Town match of \$292,500 from the Stormwater Fund reserve

6. **Alternative Action**

Do not approve of the grant agreement.

7. **Management Recommendations:**

Approve and authorize.

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
Jeff Hauge, Community Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 3/18/2026
Approved - 3/18/2026
Approved - 3/26/2026
Approved - 3/29/2026
Approved - 3/30/2026
Final Approval - 3/30/2026

RESOLUTION NUMBER 26-072

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ADMINISTER A GRANT FROM THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION THROUGH THE FY25-26 STATE APPROPRIATIONS FOR THE FORT MYERS BEACH STORMWATER DOWNTOWN MITIGATION PHASE I PROJECT IN THE AMOUNT OF \$292,500.00; AUTHORIZING THE TOWN MANAGER TO EXECUTE RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE GRANT AND PROGRAMS; 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 empowers the Town to adopt, amend, or repeal such ordinances and resolution as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach, Florida (the “Town”) submitted a state appropriation request through the Florida legislature and the Town’s local delegation for the FY25-26 for stormwater mitigation efforts to the Town’s downtown area; and

WHEREAS, the Town’s appropriation request was included in the State Budget for FY25-26 in the amount of \$292,500.00 with a match of \$292,500.00; and

WHEREAS, as part of the process to utilize this funding, the State of Florida Department of Environmental Protection has created a grant agreement numbered L0195 (“the Grant”) to administer these funds attached as Exhibit A; and

WHEREAS, the Town Council finds and determines that it is in the best interest of the Town and its citizens to authorize the execution of the Grant and the administration thereof upon execution; and

WHEREAS, the Town desires to authorize the Town Manager to execute and administer the Grant for an on behalf of the Town; and

WHEREAS, the Town Council desires to authorize the Town Manager to execute and deliver all documents necessary to carry out the administration of the Grant.

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

Section 1. That above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein.

Section 2. That the Town Council hereby authorizes and instructs the Town Manager to execute and to administer the Grant on behalf of the Town attached as Exhibit A.

Section 3. That Town Manager William McKannay is hereby authorized to execute and deliver any documents necessary to receive and administer the Grant award on behalf of the Town.

Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this 6th day of April 2026 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, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2026.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to section 215.971, Florida Statutes:

1. Project Title (Project): Agreement Number:

Fort Myers Beach Stormwater Downtown Mitigation Phase 1 L0195

2. Parties **State of Florida Department of Environmental Protection,
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000** (Department)

Grantee Name: **Town of Fort Myers Beach** Entity Type: **Local Government**

Grantee Address: **6231 Estero Boulevard, Fort Myers Beach, FL 33931** FEID: **65-0632342**

(Grantee)

3. Agreement Begin Date: **07/01/2025** Date of Expiration: **December 31, 2027**

4. Project Number: Project Location(s): **Lat/Long: (26.455879, -81.956387)**
(If different from Agreement Number)

Project Description: **The Grantee will construct repairs or improvements as needed to existing stormwater infrastructure, and will also install new baffle boxes and a new outfall structure and related appurtenances.**

5. Total Amount of Funding: \$ 292,500.00	Funding Source?	Award #s or Line-Item Appropriations:	Amount per Source(s):
	☒ State ☐ Federal	LP, GAA LI 1555, FY 25-26, WPSPTF	\$ 292,500.00
	☐ State ☐ Federal		\$
	☐ State ☐ Federal		\$
	☐ Grantee Match		\$ 0.00
Total Amount of Funding + Grantee Match, if any:			\$ 292,500.00

6. Department's Grant Manager Name: Emma Stein or successor Address: Florida Dept. of Environmental Protection 3900 Commonwealth Blvd., MS 3570 Tallahassee, FL 32399-3000 Phone: 850-245-2928 Email: Emma.Stein@FloridaDEP.gov	Grantee's Grant Manager Name: Joe Onzick or successor Address: Town of Fort Myers Beach 6231 Estero Boulevard Fort Myers Beach, FL 33931 Phone: 239-765-0202 Email: jonzick@fmbgov.com
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7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

☒ Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
☒ Attachment 2: Special Terms and Conditions
☒ Attachment 3: Grant Work Plan
☒ Attachment 4: Public Records Requirements
☒ Attachment 5: Special Audit Requirements
☐ Attachment 6: Program-Specific Requirements
☐ Attachment 7: Grant Award Terms (Federal) *Copy available at https://facts.fldfs.com , in accordance with section 215.985, F.S.
☐ Attachment 8: Federal Regulations and Terms (Federal)
☐ Additional Attachments (if necessary):
☒ Exhibit A: Progress Report Form
☐ Exhibit B: Property Reporting Form
☒ Exhibit C: Payment Request Summary Form
☐ Exhibit D: Quality Assurance Requirements
☐ Exhibit E: Advance Payment Terms and Interest Earned Memo
☐ Exhibit F: Common Carrier or Contracted Carrier Attestation Form PUR1808 (State)

☐ Exhibit H: Non-Profit Organization Compensation Form (State)	
☐ Exhibit I: Forced Labor Attestation Form	
☐ Additional Exhibits (if necessary):	
8.	The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331 (a) (1):
Federal Award Identification Number(s) (FAIN):	
Unique Entity Identifier (UEI):	
Federal Award Date to Department:	
Federal Award Project Description:	
Total Federal Funds Obligated by this Agreement:	
Federal Awarding Agency:	
Award R&D?	☐ Yes ☐ N/A

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date unless another date is specified in the grant documents.

Town of Fort Myers Beach

GRANTEE

Grantee Name

By _____
(Authorized Signature) Date Signed

William McKannay, Town Manager

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection

DEPARTMENT

By _____
Secretary or Designee Date Signed

Angela Knecht, Director, Division of Water Restoration Assistance

Print Name and Title of Person Signing

☒ Additional signatures attached on separate page.

DWRA Additional Signatures

Emma Stein, DEP Grant Manager

Amanda Peck, DEP QC Reviewer

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:

- i. Standard Grant Agreement
- ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
- iii. Attachment 1, Standard Terms and Conditions
- iv. The Exhibits in the order designated in the Standard Grant Agreement

b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.

c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.

d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:

- (1) an increase or decrease in the Agreement funding amount;
- (2) a change in Grantee's match requirements;
- (3) a change in the expiration date of the Agreement;
- (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department; and/or
- (5) any changes to the terms and conditions of the Agreement other than the specific instances enumerated below when a change order may be used.

A change order to this Agreement may be used when:

- (1) task timelines within the current authorized Agreement period change;
- (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
- (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
- (4) fund transfers between budget categories for the purposes of meeting match requirements.

This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.

e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the

Attachment 1

1 of 14

execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subrecipients shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Invoice reduction
If Grantee does not meet a deadline for any deliverable, the Department will reduce the invoice by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.
- c. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.

- ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.
- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>.
- e. Rural Communities and Rural Areas of Opportunity. If Grantee is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" (RAO) as defined in subsection 288.0656(2), F.S., such Grantee may request from the Department that all invoice payments under this Agreement be directed to the relevant county or municipality or to the RAO itself. The Department will agree to Grantee's request if:
 - i. Grantee demonstrates that it is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" under subsection 288.0656(2), F.S.;
 - ii. Grantee demonstrates current financial hardship using one (1) or more of the "economic distress" factors defined in subsection 288.0656(2)(c), F.S.;
 - iii. Grantee's performance has been verified by the Department, which has determined that Grantee is eligible for invoice payments and that Grantee's performance has been completed in accordance with this Agreement's terms and conditions; and
 - iv. Applicable federal and state law(s), rule(s) and regulation(s) allow for such payments.

This subsection may not be construed to alter or limit any other applicable provisions of federal or state law, rule, or regulation. A current list of Florida's designated RAOs can be accessed at the following web address: <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity>.
- f. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- g. State Funds Documentation. Pursuant to section 216.1366, F.S., if Grantee meets the definition of a non-profit organization under section 215.97(2)(m), F.S., Grantee must provide the Department with documentation that indicates the amount of state funds:

Attachment 1

3 of 14

- i. Allocated to be used during the full term of the contract or agreement for remuneration to any member of the board of directors or an officer.
- ii. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer.

The documentation must indicate the amounts and recipients of the remuneration. Such information must be posted on the State's the contract tracking system and maintained pursuant to section 215.985, F.S., and must be posted on the Grantee's website, if Grantee maintains a website.

- h. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- i. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- j. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- k. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: <https://www.myfloridacfo.com/division/aa/local-governments/judgement-interest-rates>.
- l. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual/Subaward Costs (Subcontractors/Subrecipients). Match or reimbursement requests for payments to subcontractors/subrecipients must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts/subawards which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor/subrecipient exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract/subaward is subject to the requirements set forth in chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. For grants funded with federal funds, nonconsumable and/or nonexpendable personal property or equipment costing \$10,000 or more purchased for the Project under a subcontract/subaward is subject to the requirements set forth in 2 CFR 200. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts/subawards that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts/subaward issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors/subrecipients.

Attachment 1

4 of 14

- i. For fixed-price (vendor) subcontracts/subawards, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts/subawards to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted/subawarded activities shall be supported with a copy of the subcontractor/subrecipient's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract/subaward. The Grantee may request approval from Department to award a fixed-price subcontract/subaward resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor/subrecipient. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract/subaward.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S., or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with section 112.061, F.S.
- e. Direct Purchase Equipment. For grants funded fully or in part with state funds, equipment is defined as capital outlay costing \$5,000 or more. For grants funded fully with federal funds, equipment is defined as capital outlay costing \$10,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department and does not include any equipment purchased under the delivery of services to be completed by a subcontractor/subrecipient. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
- f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor/subrecipient, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.

Attachment 1

5 of 14

- b. If Grantee fails to perform the requested work or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Insurance Requirements for Subrecipients and/or Subcontractors. The Grantee shall require its subrecipients and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its subrecipients and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Subrecipients and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.

- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
 - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts

of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors/subrecipients or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchase may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, and subcontractors/subrecipients and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, and subcontractors/subrecipients; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to

other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts/Subawards.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor/subrecipient knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts/subawards with private organizations issued as a result of this Agreement.
- b. Pursuant to sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
 - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
 - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
 - iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Development, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts/subawards issued as a result of this Agreement.
- b. The Grantee, its subrecipients, subcontractors and agents must also comply with the following civil rights laws and regulations:
 - i. Title VI of the Civil Rights Act of 1964 as amended (prohibiting discrimination in federally assisted programs on the basis of race, color, or national origin in the delivery of services or benefits);

- ii. Section 13 of the 1972 Amendment to the Federal Water Pollution Control Act (prohibiting discrimination on the basis of sex in the delivery of services or benefits under the Federal Water Pollution Control Act as amended);
- iii. Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination in federally assisted programs on the basis of disability, both in employment and in the delivery of services and benefits);
- iv. Age Discrimination Act of 1975 (prohibiting discrimination in federally assisted programs on the basis of age in the delivery of services or benefits);
- v. 40 C.F.R. Part 7, (implementing Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of the Rehabilitation Act of 1973);
- vi. Florida Civil Rights Act of 1992 (Title XLIV Chapter 760, Sections 760.01, 760.11 and 509.092, F.S.), including Part I, chapter 760, F.S. (prohibiting discrimination on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status).
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Build America, Buy America Act (BABA) - Infrastructure Projects with Federal Funding.

This provision does not apply to Agreements that are wholly funded by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act. Also, this provision does not apply where there is a valid waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.

If applicable, Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

25. Investing in America

Grantees of an award for construction projects in whole or in part by the Bipartisan Infrastructure Law or the Inflation Reduction Act, including the following provision:

- a. Signage Requirements
 - a. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at:
<https://www.epa.gov/invest/investing-america-signage>.

b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

26. Scrutinized Companies.

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in section 287.135, F.S. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

27. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with sections 11.062 and 216.347, F.S.

28. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted or subawarded, Grantee shall similarly require each subcontractor/subrecipient to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

29. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its subrecipients and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its subrecipients and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.
 - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
 - iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

30. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

31. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

32. Subcontracting/Subawards.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.

Attachment 1

12 of 14

- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor/subrecipient, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor/subrecipient, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract/subaward. The Department shall not be liable to any subcontractor/subrecipient for any expenses or liabilities incurred under any subcontract/subaward, and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract/subaward.
- e. The Department will not deny Grantee's employees, subcontractors/subrecipients, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Development at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor/subrecipient at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s)/subrecipient(s), and without the fault or negligence of either, unless the subcontracted/subawarded products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

33. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

34. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

35. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract/subaward, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

36. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

37. Grantee's Employees, Subcontractors/Subrecipients and Agents.

All Grantee employees, subcontractors/subrecipients, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors/subrecipients, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

38. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

39. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for

the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

40. Disclosure of Gifts from Foreign Sources.

If the value of the grant under this Agreement is \$100,000 or more, Grantee shall disclose to Department any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern, as defined in section 286.101, F.S., if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous 5 years. Such disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract or grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. If the disclosure requirement is applicable as described above, then within 1 year before applying for any grant, Grantee must also provide a copy of such disclosure to the Department of Financial Services.

41. Food Commodities.

To the extent authorized by federal law, the Department, its grantees, contractors and subcontractors/subrecipients shall give preference to food commodities grown or produced in this state when purchasing food commodities, including farm products as defined in section 823.14, F.S., of any class, variety, or use thereof in their natural state or as processed by a farm operation or processor for the purpose of marketing such product.

42. Anti-human Trafficking.

If the Grantee is a nongovernmental entity, the Grantee must provide the Department with an affidavit signed by an officer or a representative of the Grantee under penalty of perjury attesting that the Grantee does not use coercion for labor or services as defined in section 787.06, F.S.

43. Iron and Steel for Public Works Projects.

If this Agreement funds a "public works project" as defined in section 255.0993, F.S., or the purchase of materials to be used in a public works project, any iron or steel permanently incorporated in the Project must be "produced in the United States," as defined in section 255.0993, F.S. This requirement does not apply if the Department determines that any of the following circumstances apply to the Project:

- (1) iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality;
- (2) the use of iron or steel products produced in the United States will increase the total cost of the project by more than twenty percent (20%); or
- (3) complying with this requirement is inconsistent with the public interest.

Further, this requirement does not prevent the Contractor's minimal use of foreign steel and iron materials if:

- (1) such materials are incidental or ancillary to the primary product and are not separately identified in the project specifications; and
- (2) the "cost" of such materials, as defined in section 255.0993, F.S., does not exceed one-tenth of one percent (1%) of the total Project Cost under this Agreement or \$2,500, whichever is greater.

Electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system that are necessary for operation or concealment (excepting transmission and distribution poles) are not considered to be iron or steel products and are, therefore, exempt from the requirements of this paragraph.

This provision shall be applied in a manner consistent with and may not be construed to impair the state's obligations under any international agreement.

44. Complete and Accurate information.

Grantee represents and warrants that all statements and information provided to DEP are current, complete, and accurate. This includes all statements and information in this Grant, as well as its Attachments and Exhibits.

45. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

Attachment 1

14 of 14

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. L0195**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is the Fort Myers Beach Stormwater Downtown Mitigation Phase 1. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement is the same as the term of the Agreement.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur as indicated in Attachment 3.
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
☐	☐	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☐	☐	a. Fringe Benefits, N/A.
☐	☐	b. Indirect Costs, N/A.
☒	☐	Contractual/Subaward (Subcontractors/Subrecipients)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☐	☐	Rental/Lease of Equipment
☐	☐	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.

No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.

There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements

There is no match required on the part of the Grantee under this Agreement.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy

maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

a. Commercial General Liability Insurance.

The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.

b. Commercial Automobile Insurance.

If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation and Employer's Liability Coverage.

The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Grant.

d. Other Insurance. None.

9. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Agreement.

10. Retainage.

Retainage is permitted under this Agreement. Retainage may be up to a maximum of insert percentage amount of the total amount of the Agreement.

11. Subcontracting/Subawards.

The Grantee may subcontract/subaward work under this Agreement without the prior written consent of the Department's Grant Manager except for certain fixed-price subcontracts/subawards pursuant to this Agreement, which require prior approval. Regardless of any subcontract/subaward, the Grantee is ultimately responsible for all work to be performed under this Agreement. Upon request by the Department's Grant Manager, the Grantee will submit a copy of the executed subcontract.

12. State-owned Land.

The work will not be performed on State-owned land.

13. Office of Policy and Budget Reporting.

The Grantee will identify the expected return on investment for this project and provide this information to the Governor's Office of Policy and Budget (OPB) within three months of execution of this Agreement. For each full calendar quarter thereafter, the Grantee will provide quarterly update reports directly to OPB, no later than 20 days after the end of each quarter, documenting the positive return on investment to the state that results from the Grantee's project and its use of funds provided under this Agreement. Quarterly reports will continue until the Grantee is instructed by OPB that no further reports are needed, or until the end of this Agreement, whichever occurs first. All reports shall be submitted electronically to OPB at env.roi@laspbs.state.fl.us, and a copy shall also be submitted to the Department at legislativeaffairs@floridaDEP.gov.

14. Common Carrier.

- a. Applicable to contracts/subawards with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor/Subrecipient must also fill out and return PUR 1808 before contract/subaward execution. If Contractor/Subrecipient is a common carrier pursuant to section 908.111(1)(a), Florida Statutes, the Department will terminate this Agreement immediately if Contractor/Subrecipient is found to be in violation of the law or the attestation in PUR 1808.
- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.

15. Financial Assistance and Payment of Invoices to Rural Communities or Rural Areas of Opportunity

This agreement does not provide federal or state financial assistance to a county or municipality that is a rural community or rural area of opportunity as those terms are defined in s. 288.0656(2).

16. Additional Terms.

None.

ATTACHMENT 3 GRANT WORK PLAN

PROJECT TITLE: Fort Myers Beach Stormwater Downtown Mitigation Phase 1

PROJECT LOCATION: The Project will be located in the Town of Fort Myers Beach within Lee County; Lat/Long (26.455879, -81.956387).

PROJECT BACKGROUND: Historically, the downtown area of Fort Myers Beach (Grantee) experiences flooding during storms and high tide events, which can lead to issues with public safety, transportation, and flood mitigation. This project will install new baffle boxes and an additional outfall, thus reducing flooding and moving water quickly from roadways.

PROJECT DESCRIPTION: The Grantee will construct repairs or improvements as needed to existing stormwater infrastructure, and will also install new baffle boxes and a new outfall structure and related appurtenances. This funding will result in a completed first phase of mitigation improvements.

TASKS: All documentation should be submitted electronically unless otherwise indicated and should be submitted prior to the expiration of the grant agreement.

Task #1: Construction

Deliverables: The Grantee will construct Fort Myers Beach Stormwater Downtown Mitigation Phase 1 in accordance with the final design. Project management activities, including field engineering services, construction observation and inspections, site meetings with construction contractor(s) and design professionals, and overall construction coordination and supervision, are eligible under this task.

Documentation: The Grantee will submit: 1) a copy of the final design; 2) a signed summary of activities completed for the period of work covered in the payment request, using the format provided by the Department's Grant Manager. Upon request by the Department's Grant Manager, the Grantee will provide additional supporting documentation relating to this task.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, a payment request may be processed.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

PROJECT TIMELINE & BUDGET DETAIL: The tasks must be completed by the corresponding task end date. Cost reimbursable grant funding must not exceed the budget amounts as indicated below.

For payment requests that include Contractual Services, the Grantee shall provide documentation of the procurement process, as consistent with Attachment 1, Section 9.c.

Task No.	Task Title	Budget Category	Grant Amount	Task Start Date	Task End Date
1	Construction	Contractual Services	\$292,500	07/01/2025	06/30/2027
Total:			\$292,500		

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements**

Attachment 4

1. Public Records.

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution and section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. 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 term and following completion of the contract if the contractor does not transfer the Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department’s custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

f. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (850) 245-2118
Email: public.services@floridadep.gov
Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department 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 Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$1,000,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$1,000,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$1,000,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from non-federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://sam.gov/content/assistance-listings>.

Attachment 5

1 of 6

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(1)(n), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and the current Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and the current Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <https://www.myfloridacfo.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and the current Rules of the Auditor General, as applicable.
5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or the current Rules of the Auditor

Attachment 5

3 of 6

General, should indicate the date and time the reporting package was delivered to the recipient and any correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program A	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	
Federal Program B	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	Florida Department of Environmental Protection	2025-2026	37.039	Statewide Water Quality Restoration Projects	\$292,500.00	149950
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award					\$292,500.00	
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Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<https://sam.gov/content/assistance-listings>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [<https://apps.fldfs.com/fsaa/compliance.aspx>]). The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

¹ Subject to change by Change Order.

² Subject to change by Change Order.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit A
Progress Report Form**

The current **Exhibit A, Progress Report Form** for this grant can be found on the Department's website at this link:

<https://floridadep.gov/wra/wra/documents/progress-report-form>

Please use the most current form found on the website, linked above, for each progress report submitted for this project.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit C
Payment Request Summary Form**

The **Payment Request Summary Form** for this grant can be found on our website at this link:

<https://floridadep.gov/wra/wra/documents/payment-request-summary-form>

Please use the most current form found on the website, linked above, for each payment request.

1. **Request:**

Meeting Date: April 6, 2026

Termination of Easement with Castle Beach Condo Assoc. and entering into Maintenance Agreement. (Documents to follow.)

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 3/31/2026
Approved - 3/31/2026
Approved - 3/31/2026
Final Approval - 3/31/2026