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MEMORANDUM

TO: Matt Feeney and Jerry Murphy
FROM: Bill Spikowski
DATE: February 28, 2005
SUBJECT: **LAND DEVELOPMENT CODE AMENDMENTS
CHAPTERS 14 and 27**

Attached is a draft ordinance that would amend Chapters 14 and 27 of the Land Development Code.

During the LPA's public hearing on January 18, 2005, the LPA remanded these two chapters to the Marine Resources Task Force for further consideration. (LDC amendments to the other chapters are going forward to public hearings in April 2005.)

The attached draft incorporates all prior directions from the MRTF through their meeting on January 12, 2005.

Based on our prior discussions on this draft, please consider the following points when evaluating changes to these chapters:

- If the LDC uses the phrase "landward line of dune vegetation" as proposed in this draft of Chapter 14, its context may need to be modified to exclude any land outside the EC zoning district (because some land supports dune vegetation but is actually landward of the old CCCL and therefore lies between existing buildings).
- This draft breaks the previous definition of "beach furniture and equipment" into "beach furniture" and "beach equipment." Some fairly innocuous items such as canoes and Sunfish are still included in the "beach equipment" definition, even though they cannot cause some of the problems that other beach equipment might cause (tractors leaking oil; personal watercraft leaking gasoline; etc.). Another alternative would be to move anything that could leak petroleum products into a third definition and regulate it separately.

- Another item of continuing controversy is whether to use 7:00 or 8:00 or 9:00 AM as the earliest time for allowing tractors and equipment onto the beach during the sea turtle nesting season even if sea turtle monitoring has not been completed by that hour.

The original sea turtle ordinance defined the nesting season as ending at 7:00 AM even during the turtle season (May–October). When adopting the new LDC, the Town Council selected 8:00 instead of the proposed 9:00 as the time when *beach raking* could begin; then in Ordinance 02-19 they decided to go back to 9:00 for beach raking only (see 14-6(c)(4) and 14-78(b)(2)).

In the 2004-2005 “glitch ordinance,” I left those two beach raking references at 9:00 AM, and left 7:00 AM in the definition of “sea turtle nesting season” in 14-72, but suggested changing several other provisions to settle on 8:00 as the compromise time for most other purposes. For instance, 27-49(4) would go from 9:00 to 8:00 for moving personal watercraft across the beach, and 14-5(a) would go from 7:00 to 8:00 for moving beach furniture and equipment (which includes personal watercraft); this was an obvious conflict in the code.

On January 18, the LPA repeatedly heard the message “if it’s not broke, don’t fix it.” Their response was a unanimous vote to reject all changes from 7:00 to 8:00. However, LPA members may not have been aware that other provisions of this same ordinance already used 8:00, or even 9:00, as the beginning time.

My best advice is to keep in mind that the existing code contains many inconsistencies on this subject, and although we must eliminate all conflicts, it may still be reasonable to have different times for different purposes (for instance, requiring beach raking to begin later than the movement of beach furniture).

Here are the relevant sections of the code to keep in mind:

- A. 14-5(a)(1)
- B. 14-5(b)
- C. 14-5(e)(1)
- D. 14-6(c)(4) (beach raking only)
- E. 14-11(d)(4)
- F. 14-72 (definition of “nesting season”)
- G. 14-77(b)(4) (proposed, not in existing code)
- H. 14-78(b)(2) (beach raking only)
- I. 27-49(4)
- J. 27-49(9)
- K. 34-3151(f)

The following summary briefly explains the changes to the existing code that are proposed in this draft ordinance:

CHAPTER 14

HISTORY: The original version of Chapter 14 of the Land Development Code was also Lee County's version of that chapter. Its sea turtle lighting regulations in Article II were amended by Ordinance 98-03. Chapter 14 was then completely revised by Fort Myers Beach Ordinance 02-01 in February 2002, which added a new Article I titled "Beach and Dune Management" that incorporated the substance of Ordinance 00-10. Minor changes were also made by Ordinance 02-29.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 14:

- **§ 14-1:** This section now contains the definitions for "beach," "dune," and "dune vegetation" that are used here and in several other chapters of the code. The terms "vegetation line" and "seaward line of vegetation" are being eliminated as they are ambiguous and/or are no longer used in this code.
- **§ 14-3:** The list of prohibited activities would now be clear that mowing dune vegetation and applying herbicides are illegal types of destruction of that vegetation.
- **§ 14-5:** This section needs to be amended to resolve a number of interpretation and enforcement problems with the existing regulations. Two alternatives are proposed for § 14-5(a):
 - "Alternative A" would make only minor changes. The time in subsection (a)(1) would be changed to eliminate the inconsistency with subsection (e)(1), and a new subsection (a)(4) would be added to correspond with existing regulations in § 14-11(d)(4).
 - "Alternative B" would eliminate the confusing format in the existing code and would provide clearer regulations and cross-references for the following categories: beach furniture; vehicles; concessionaires; beach equipment; and special events. The removal of beach furniture and equipment from the beach at night has been inconsistently treated in subsection (a) and in §§ 27-49 and 27-51; this alternative would use a newly defined term, "landward line of dune vegetation." Subsection (a)(3) would allow one free-standing structure for each beach vendor to use during the day; this structure must be moved from the beach after business hours the same as is now required by § 27-51(c)(3) for parasail operators and personal watercraft vendors. Subsection (a)(6) would correspond with existing regulations in § 14-11(d)(4). Alternative B was formulated for the Marine Resources Task Force and was endorsed by task force vote on January 12, 2005.
- **§ 14-6:** This section would clarify the requirement for DEP permits for beach raking and would require insurance for beach raking equipment. It would also eliminate 4x4 lumber from being dragged behind beach raking equipment, an activity that smooths and compacts the sand rather than removing litter and debris.
- **§ 14-7:** Two new sentences would clarify the regulations for research and patrol vehicles driving on the beach.
- **§§ 14-9, 14-10, 14-384, 14-453, and 14-354:** Ordinance 03-12 established a "special master" to replace the former "hearing examiner" system of code enforcement. The changes in these sections reflect the new terminology.
- **§ 14-10(b)(4):** Temporary irrigation would be forbidden within 50 feet of a sea turtle nest.

- **§ 14-12:** This section details the new insurance requirement for beach raking; it parallels the current insurance requirements in § 27-56 for personal watercraft rentals and parasailing operators.
- **§ 14-72:** This section now refers to definitions found in § 14-1 rather than using different definitions.
- **§ 14-75:** New language would remove some redundancies and clarify the responsibilities of existing development with regard to lighting that may affect sea turtle nesting habitat.
- **§ 14-76:** Technical requirements for lighting permits are being clarified. The standards provided here are those currently being used in the permitting process.
- **§ 14-78:** The rule against fires on the beach during sea turtle nesting season is being strengthened due to enforcement problems with the previous wording.
- **§ 14-118:** An obsolete reference to “notice of clearing” is being eliminated.
- **§ 14-374:** A reference to Chapter 10 is being corrected.

CHAPTER 27

HISTORY: The original version of Chapter 27 of the Land Development Code was adopted by Fort Myers Beach Ordinance 96-27 shortly after incorporation. At that time it only contained personal watercraft regulations. A separate Chapter 28 was adopted by Ordinance 97-02 containing parasailing regulations (later amended by Ordinance 99-4). The two chapters were combined into Chapter 27 by Ordinance 01-05 in September 2001.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 27:

- **§ 27-45:** This section now refers to definitions found in § 14-1 rather than using different definitions.
- **§ 27-49:** The times in subsections (4) and (9) are being changed to match the time requirements in § 14-5. Subsection (9) is being modified to resolve conflicts on nighttime removal of personal watercraft from the beach; the regulations in § 14-5 would now apply without being repeated here. (Please note that some changes to language shown for § 27-49 may change as a result of ongoing discussions at the Marine Resources Task Force.)
- **§ 27-51:** The requirements for nighttime storage of rental kiosks are being clarified to become the same as § 14-5 without being repeated here.

ORDINANCE No. 05-__

AN ORDINANCE AMENDING REGULATIONS IN CHAPTERS 14 AND 27 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 14 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “ENVIRONMENT AND NATURAL RESOURCES”; ADOPTING AMENDMENTS TO CHAPTER 27 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “PERSONAL WATERCRAFT AND PARASAILING”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 14 OF THE LAND DEVELOPMENT CODE. Chapter 14 of the Town of Fort Myers Beach land development code is titled “ENVIRONMENT AND NATURAL RESOURCES.” Chapter 14 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 14:

Article I. Beach and Dune Management

- Sec. 14-1. Definitions.
- Sec. 14-3. Destruction or diminishment of dune or beach system.
- Sec. 14-5. Beach furniture and equipment.
- Sec. 14-6. Beach raking and wrack line policy.
- Sec. 14-7. Vehicular traffic on the beach.
- Sec. 14-9. Enforcement.
- Sec. 14-10. Restoration standards for dune vegetation alteration violations.
- Sec. 14-12. Insurance.

Article II. Sea Turtle Conservation

- Sec. 14-72. Definitions.
- Sec. 14-75. Existing development.
- Sec. 14-76. New development.
- Sec. 14-78. Additional regulations affecting sea turtle nesting habitat.

Article III. Southern Bald Eagle

- Sec. 14-118. Notification procedure.

Article V. Tree Protection

- Sec. 14-374. Definitions.
- Sec. 14-384. Restoration standards.

Article VI. Mangrove Enforcement

- Sec. 14-453. Enforcement.
- Sec. 14-454. Restoration standards.

SECTION 3. ADOPTION OF AMENDMENTS TO CHAPTER 27 OF THE LAND DEVELOPMENT CODE. Chapter 27 of the Town of Fort Myers Beach land development code is titled “PERSONAL WATERCRAFT AND PARASAILING.” Chapter 27 is hereby amended as shown in Exhibit B. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 27:

Article I. Definitions and Enforcement

Sec. 27-45. Definitions.

Article II. Personal Watercraft

Sec. 27-49. Regulations and locations for personal watercraft rentals.

Article IV. Additional Rules and Procedures Applying To Both Personal Watercraft and Parasailing

Sec. 27-51. Additional rules applying to both PWVL and PAL businesses.

SECTION 4. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 5. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____; upon being put to a vote, the result was as follows:

Bill Thomas _____
Garr Reynolds _____
Howard Rynearson _____
W. H. “Bill” Van Duzer _____
Don Massucco _____

DULY PASSED AND ENACTED this ___ day of _____, 2005.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Marsha Segal-George, Town Clerk

By: _____
Bill Thomas, Mayor

Approved as to form by:

Richard V.S. Roosa, Town Attorney

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 14 — ENVIRONMENT AND NATURAL RESOURCES

ARTICLE I. BEACH AND DUNE MANAGEMENT ²

Sec. 14-1. Definitions.

For the purposes of this article, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word “shall” is always mandatory.

~~*Beach* has the same meaning given it in § 14-72.~~

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low water line to the place where there is a marked change in material or physiographic form, usually the effective limit of storm waves. Beaches include dunes and dune vegetation.

~~*Beach furniture or equipment* means any man-made apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: chairs, tables, cabanas, lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.~~

Beach furniture means furniture that is placed on the beach for passive recreational use. Examples include chairs, tables, cabanas, lounges, and umbrellas.

² *Cross reference(s)*—Sea turtle conservation, article II of ch.14; personal watercraft and parasailing, ch. 27; water-oriented rentals activities, div. 41 of ch. 34.

Beach equipment means any man-made apparatus or paraphernalia, except for beach furniture, that is designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: sailboats up to 16 feet in length, personal watercraft, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, vehicles allowed on the beach (see § 14-7), and equipment used by concessionaires such as tables, podiums, booths, or storage boxes.

...

Dune means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (reference 161.54 F.S., 62B-33.002 F.A.C.). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the town or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

Dune vegetation means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore dropseed, seashore paspalum, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morningglory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, ~~green buttonwood, cabbage palm, cocoplum, and seagrape, and southern wax myrtle.~~

Landward line of dune vegetation means the location furthest from the mean high water line containing, or suitable for, dune vegetation. If no dune vegetation is present, this line shall be assumed to be a straight line between the landward line of dune vegetation on the nearest properties that have dune vegetation.

Mechanical beach raking means the cleaning of the sandy beach seaward of the dune and vegetation line of to remove trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing ambient grade and results in no removal of in situ sand.

~~Seaward line of vegetation~~ means the location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

...

Sec. 14-3. Destruction or diminishment of dune or beach system.

(a) It is unlawful and prohibited for any person to do, conduct, or permit any of the following on a beach, upon a dune, or in the water adjacent to a beach:

- (1) harass, molest, or disturb wildlife;
- (2) plant vegetation other than dune vegetation;
- (3) destroy or harm a dune, or mow, herbicide, harm, or remove dune vegetation;
- (4) maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings, or debris (see § 14-4);
- (5) deposit and leave human or animal waste (see § 14-4);
- (6) destroy or grossly interfere with the natural wrack line as by grooming or non-selective raking except as authorized in § 14-6;
- (7) operate any air-powered or any engine-powered non-watercraft vehicle, machine, or implement, including any battery or electrical powered vehicle, machine, or implement, except for a wheelchair or approved conveyance for a person with a disability which is actually being used by the person with a disability or as authorized in § 14-7;
- (8) excavate, mine, and remove, or haul sand or soil from the beach or dune except in emergency situations as declared by the Town Council;
- (9) detonate any explosive devices, including fireworks;
- (10) discharge any firearms;
- (11) light or maintain any open fire on Mulholland Point (Little Estero Island);
- (12) temporarily reside, camp, or sleep overnight;
- (13) deposit/install rocks, concrete, or other shoreline stabilization materials without a permit from DEP and the town;
- (14) deposit/add sand to the beach and dune system without a permit from DEP. All fill material shall be sand that is similar to the existing beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter; or
- (15) conduct any commercial activities not explicitly authorized by this code or by other town ordinances.

Sec. 14-5. Beach furniture and equipment.

ALTERNATIVE A for § 14-5(a):

(a) From May 1 through October 31, all beach furniture and equipment must be removed from the beach as follows:

- (1) All beach furniture and equipment must be removed from the beach to a location behind the landward line of dune vegetation between the hours of 9:00 P.M. until 7:00 8:00 A.M.
- (2) The beach furniture and equipment must be moved daily either behind the permanent dune line; or where no dune line is present; and the beach is wide, then 200 feet from the mean high water line; or where the beach is narrow to the adjacent permanent structure and landward of any seawall. Where compliance with the foregoing provisions would cause an undue hardship, the town manager may, after determining the minimum variance from the requirements of this ordinance, designate the storage location.
- (3) Beach furniture and equipment that is removed from the beach as specified in § 14-5(a)(2) shall then be safely stacked in areas no larger than 10 feet by 10 feet and each stack must be at least 50 feet removed or apart from the next stack.
- (4) For special events where beach furniture and equipment must be on the beach earlier than 8:00 A.M., the town's special events permit may authorize a different schedule provided arrangements have been made with the FWC-authorized marine turtle permit holder to monitor the area prior to setup.

**ALTERNATIVE B for § 14-5(a):
(MRTF RECOMMENDATION)**

~~(a)~~ *[existing subsection (a) deleted]*

(a) This code regulates the placement and storage of beach furniture and beach equipment.

(1) Beach furniture.

- a. During the sea turtle nesting season (from May 1 through October 31), all beach furniture must be removed from the beach to a location behind the landward line of dune vegetation between the hours of 9:00 P.M. and 8:00 A.M. The only exception is that until May 1, 2006, cabanas may remain on the beach at night provided they are at least 500 feet from the mean high water line.
- b. During the non-nesting season, beach furniture may remain on the beach at night (see § 14-5(a)(4) regarding removal of beach equipment).

(2) Vehicles. Vehicular traffic on the beach is regulated by §§ 14-5(e), 14-6, and 14-7. Vehicles that are not in use may not be stored on the beach at any time.

(3) Concessionaires. A business that rents beach furniture may place one free-standing structure on the beach during its regular business hours only. This structure may be a table, podium, booth, or storage box and it must meet the same requirements as set forth in § 27-51(c), including removal from the beach after business hours to a location behind the landward line of dune vegetation.

(4) Beach equipment. Unless allowed by a specific provision of this code, beach equipment must be removed from the beach between the hours of 9:00 P.M. and 8:00 A.M. year around and placed behind the landward line of dune vegetation.

(5) Administrative variances. Where compliance with the foregoing provisions would cause an undue hardship, the town manager may, after determining the minimum variance from the requirements of this ordinance, designate an alternative storage location.

(6) Special events. Special events on the beach are regulated by § 14-11. For special events where beach furniture and equipment must be on the beach earlier than 8:00 A.M., the town's special events permit may authorize a different schedule provided arrangements have been made with the FWC-authorized marine turtle permit holder to monitor the area prior to setup.

(b) Trash containers are not included in the definition of beach furniture and equipment and may be left in place on the beach between the hours of 9:00 P.M. and ~~7:00~~ 8:00 A.M.

(c) No later than the first day of June, beach properties that have more than 5 cabanas or offer beach equipment for use shall file a hurricane action plan with the town each year prior to the beginning of hurricane season and provide a contact person with current phone number.

(d) All beach furniture and equipment (such as chairs, umbrellas, and cabanas, and rental podium, but excluding water-dependent equipment) shall be set landward of the mean high water line and at least 10 feet from a sea turtle nest or dune vegetation. A business that rents chairs, umbrellas, cabanas, or similar equipment may place one free-standing structure on the beach during its regular business hours only. This structure may be a table, podium, booth, or storage box and it must meet the same requirements as set forth in § 27-51(c), including removal from the beach after business hours.

[final two sentences would be unnecessary if Alternative #3 is selected]

(e) Vendors wishing to use a vehicle to transport furniture and equipment to and from the beach must obtain a permit from the town through the permit process described in § 14-6(c) and must abide by the same restrictions. If a beach raking permit is also applied for, the permits will be incorporated into one permit. The following additional restrictions apply to all transport permits:

- (1) Equipment shall not be set out in the morning before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked, whichever occurs first.
- (2) Transporting vehicles shall not travel within 10 feet of a sea turtle nest or dune vegetation.
- (3) The vehicle, trailer, and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the formula in § 14-6(c)(4)d.1. Beach furniture and equipment may be placed on a vehicle or on a wheeled trailer but may not be dragged or pushed by a vehicle.

Sec. 14-6. Beach raking and wrack line policy.

(a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP, where required, and upon filing that approval with the town manager and meeting any other requirements set by the town.

(b) Under normal circumstances, the raking of the wrack line is prohibited. The only exceptions require town approval and the appropriate DEP permit based on is necessary for determinations that health or safety issues have been confirmed that would allow:

- (1) A larger than normal wrack line resulting from extraordinary circumstances may be raked if the wrack line is at least 10 feet landward of the normal high tide line.
- (2) If health or safety issues are present such as a large fish kill or a red tide event, the wrack line may be raked up to 10 feet landward of the normal high tide line.
- (3) If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the specific conditions in § 14-6(c)(4).

(c) Any mechanical beach raking requires the appropriate DEP permit and a permit from the town in accordance with the following requirements:

- (1) Application for a permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director, in writing, on a form provided by the director. As part of this application, a site plan will be submitted depicting the property corners, the dimensions of the area to be raked, and the location of existing vegetation and structures. Proof of insurance in accordance with § 14-12 must also be submitted with the application.
- (2) Prior to the granting or denying of the application, the director will conduct an on-site inspection to determine if the proposed raking conforms to the requirements of this article and if any native vegetation exists to be protected.
- (3) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.

(4) The director shall attach site specific conditions to the permit relating to identifying, designating, and protecting that existing vegetation and other natural features which are not to be removed in accordance with this ordinance. These conditions are in addition to the following standard permit conditions for all mechanical beach raking permits:

- a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)).
- b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach raking. The sea 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 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Protected Species Management, at (561) 575-5407.
- c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators shall 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.
- d. Mechanical beach raking equipment shall meet the following standards:
 1. The vehicle and equipment cannot exceed a maximum ground-to-tire

pressure of 10 PSI (pounds per square inch) using the following formula:

-a- $PSI = \frac{\text{vehicle weight in pounds (includes person and equipment)}}{\text{divided by the footprint in square inches}}$

-b- EXAMPLE: $404 \text{ lbs. (ATV weight)} + 200 \text{ (person + equipment)} \div 198 \text{ square inches (ATV with 6" x 8.25" footprint x 4 tires)} = 3.1 \text{ PSI}$

2. Raking shall be accomplished with a pronged rake that limits penetration into the surface of the beach to a maximum of two inches. Box blades, front- or rear-mounted blades, or other sand sifting/filtering vehicles are not allowed. A piece of chain link fence ~~or pressure treated lumber not to exceed two pieces 4" by 4" by 10' in size~~ may be pulled behind the rake.
3. The beach raking vehicle and equipment must be removed from the beach when not in use.
4. Beach raking equipment shall be inspected periodically by the town to insure compliance with these standards.
5. Operators of mechanical beach raking equipment shall avoid all native salt-tolerant dune vegetation and staked sea turtle nests by a minimum of 10 feet.
6. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site.
7. Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one

- raking area to another, and shall not disturb any dune or dune vegetation.
- e. A violation of the special or standard conditions shall automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

Sec. 14-7. Vehicular traffic on the beach.

It is unlawful and prohibited to operate any engine-powered vehicle, machine, or implement, including any electrical powered vehicle, machine, or implement, on the beach, dune, or on sea turtle nesting habitat as defined in § 14-72, except for the following:

- (1) **Research or patrol vehicles**, only for authorized permittees of the FWC, DEP officials, law or code enforcement officers, EMS and firefighters, scientific monitoring, and town-approved service vehicles. These vehicles must travel below the previous night's mean high tide line and avoid riding on vegetation. Vehicular travel in the Critical Wildlife Area at Mulholland Point (Little Estero Island) should be severely limited to avoid disturbing wildlife and vegetation.
- (2) **Mechanical beach raking**. Vehicles operating under permits issued pursuant to § 14-6(c).
- (3) **Beach furniture and equipment transport**. Vehicles operating under permits issued pursuant to § 14-5(e).
- (4) **Jet-ski transport and storage**. Jet-ski transport and storage, when in accordance with § 27-49(1) and (9) even for jet-skis that are not available for rental in accordance with ch. 27.
- (5) **Wheelchairs**. A wheelchair, or other conveyance with prior approval from the town, for a person with a disability, which is actually being used by the person with a disability. Handicap access to the beach is encouraged through use of wheelchairs equipped with special beach friendly tires that are available for rent or purchase.
- (6) **Maximum tire pressure**. Any vehicle authorized to drive on the beach cannot exceed a ground-to-tire pressure of 10 PSI as computed in accordance with § 14-4(c)(4)d.1, except for wheelchairs permitted in accordance with subsection (4) above.

- (7) **Sea turtle nesting season**. See § 14-78(b) for additional restrictions during the sea turtle nesting season.

Sec. 14-9. Enforcement.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

(b) When imposing a sentence or penalty, the court, special master, ~~hearing examiner~~, or any other appropriate body may, in mitigation, consider the successful replacement of dune vegetation illegally removed, and the restoration of the subject area when deemed by the court, the special master, ~~hearing examiner~~, or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the dune system to recover or perform those functions for which it is being protected.

Sec. 14-10. Restoration standards for dune vegetation alteration violations.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon action by the court or special master, ~~hearing examiner~~, a restoration plan shall be ordered using the standards in this section. Such a restoration plan shall set forth replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or special master, ~~hearing examiner~~.

(b) The restoration plan shall include the following minimum standards:

- (1) Restoration plantings for vegetation other than trees must be nursery grown, containerized, and planted at a minimum density of no less than one and one half feet on center. The number of replacement plantings will be computed by the square footage of the area destroyed. The replacement stock shall be one and two inch size container. Higher density plantings may be required at the discretion of the director based upon density and size of the vegetation on the site prior to the violation. If the density or species of the vegetation cannot be determined where the violation occurred,

- then an assumption shall be made that the density and the species were the same as on similar properties. It shall be within the discretion of the director to allow a deviation from the above specified ratio. When such deviation is sought, the total size shall equal or exceed that specified in the above standards.
- (2) Dune vegetation alteration violations due to raking, excavation, and/or clearing shall be restored to natural ground elevation and soil conditions prior to commencement of replanting.
 - (3) Replacement plantings shall have a guaranteed minimum of 80 percent survivability for a period of no less than five years; however, success will be evaluated on an annual basis.
 - (4) Only temporary above ground irrigation may be installed and must be removed no later than one year from the date of planting. Temporary irrigation must be turned off within 50 feet of a sea turtle nest.
 - (5) The plan shall specify that within 90 days of completion of the restoration, a written report shall be submitted to the town. This report shall include the date of completion, copies of the nursery receipts, a drawing showing the locations of the plantings, and color photographs of the planting areas from fixed reference points.
 - (6) The restoration plan shall include a maintenance provision of no less than five years for the control of invasive exotic vegetation, with annual monitoring and maintenance of the restored area to include the following:
 - a. Removal of all exotic and nuisance vegetation in the area without disturbing the existing dune vegetation.
 - b. Replacement of dead vegetation that was planted in order to assure at least 90 percent coverage at the end of the five-year period. Replacement vegetation shall be nursery grown and of the same species and at least the same size as those originally planted.
 - c. Submittal of an annual monitoring report to the director for five years following the completion of the restoration describing the conditions of the restored site. The monitoring report shall include mortality estimates, causes for mortality

- (if known), growth, invasive exotic vegetation control measures taken, and any other factors which would indicate the functional health of the restored area.
- d. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Failure to submit the report in a timely manner shall constitute a violation of this ordinance.
 - e. To verify the success of the mitigation efforts and the accuracy of the monitoring reports, the director shall periodically inspect the restoration.

Sec. 14-12. Insurance.

(a) No person shall operate mechanical beach raking equipment unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation or use of beach raking equipment. At a minimum, the policy shall provide coverage of not less than \$500,000 per occurrence and \$1,000,000 aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, shall provide that coverage not be canceled or materially altered except after 30 days' written notice has been received by the town, and shall be written through insurers licensed and authorized to do business in the State of Florida. The town shall also require a copy of the declaration page of the operator's insurance policy with a listing of all insured beach raking equipment.

Secs. 14-13 ~~12~~--14-70. Reserved.

**ARTICLE II.
SEA TURTLE CONSERVATION**

Sec. 14-72. Definitions.

When used in this article, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

...

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Beach has the same meaning given it in § 14-1.

...

~~***Dune*** means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach and deposited by any natural or artificial mechanism.~~

Dune has the same meaning given it in § 14-1.

...

~~***Mechanical beach raking*** means the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing ambient grade and results in no removal of in situ sand.~~

Mechanical beach raking has the same meaning given it in § 14-1.

New development means construction of new buildings or structures as well as renovation or remodeling of existing development, and includes the alteration of exterior lighting including lighted signs occurring after January 31, 1998.

...

Sec. 14-75. Existing development.

Existing development must ensure that sea turtle nesting habitat is not directly or indirectly illuminated by artificial lighting originating from the existing development during the nesting season. ~~Artificial lighting from existing development must not directly or indirectly illuminate sea turtle nesting habitat during the nesting season.~~ Existing development must incorporate and follow the measures outlined in § 14-79 to reduce or eliminate interior light emanating from doors and windows visible from the beach, a dune, or other sea turtle nesting habitat.

Sec. 14-76. New development.

New development must comply with the following requirements:

- (a) Artificial lighting must conform to the general requirements of § 14-75.
- (b) A lighting plan must be submitted for review prior to the earlier of building permit or development order issuance for all new development, as follows:
 - (1) ~~For new development~~ Seaward of the 1991 coastal construction control line, as defined in § 6-333 (CCCL), ~~a copy of a DEP-approved~~ lighting plan is required for all new development.
 - (2) ~~For new development~~ Landward of the 1991 CCCL, a lighting plan is required for all commercial ~~and industrial~~ development; and for all multi-story developments in multi-family zoning districts.
 - (3) The location, number, wattage, elevation, orientation, fixture cut sheets, and ~~all~~ types of all proposed exterior artificial light sources, including landscape lighting, must be included on the lighting plan. An approved lighting plan is required before a building permit will be issued and final inspections for a certificate of occupancy or certificate of compliance will be performed by the town.
 - (4) Tinted glass, or any window film applied to window glass which meets the definition for tinted glass in § 14-72, must be installed on all windows and glass doors visible from the beach and must be so indicated on the building permit plans.

- (5) Exterior light fixtures visible from the beach must meet all of the following criteria to be considered appropriately designed:
 - a. Completely shielded downlight-only fixtures or recessed fixtures having 25-watt yellow bug type bulbs and non-reflective interior surfaces are used. Other fixtures that have appropriate shields, louvers, or cutoff features may also be used, if they comply with § 14-75.
 - b. All fixtures are mounted as low as possible through the use of low-mounted wall fixtures, low bollards, and ground level fixtures.
 - c. All exterior lighting must be installed in such a manner and be so shielded that the cone of light will fall substantially within the perimeter of the property. Through the use of shielding and limitations on intensity, artificial light traveling outward and upward producing a sky glow must be reduced to the greatest extent possible without unduly interfering with the purpose of the exterior lighting.
 - d. If ceiling fans are placed on balconies or porches that are visible from the beach, no lighting may be installed on the fans.
 - e. Artificial lighting, including but not limited to uplighting, is not permitted in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see § 34-652).
- (6) Parking lot lighting must use:
 - i. Poles no higher than twelve feet in height;
 - b. Shoebox-style fixtures containing high pressure sodium or low pressure sodium bulbs 150 watts or less; and
 - c. Opaque shields with a non-reflective black finish on the inside that completely surround each fixture and extend below each fixture at least 12 inches.
- (7) Low profile artificial lighting is encouraged, such as step lighting or bollards with louvers and shields that are no taller than 48 inches with bulbs of 35 watts or less. Opaque shields must surround 180 degrees of each fixture to keep direct light off the beach.

(c) Prior to the issuance of a certificate of occupancy (CO), the exterior lighting of new development must be inspected after dark by the town, with all exterior lighting turned on, to determine compliance with an approved lighting plan and this article.

Sec. 14-78. Additional regulations affecting sea turtle nesting habitat.

(a) ~~*Fires.*~~ ~~Fires that directly or indirectly illuminate sea turtle nesting habitat~~ are prohibited on the beach during the sea turtle nesting season.

(b) *Driving on the beach.* [no changes to this subsection]

(c) *Parking.* Vehicle headlights in parking lots or areas on or adjacent to the beach must be screened utilizing ground-level barriers to eliminate artificial lighting directly or indirectly illuminating sea turtle nesting habitat. This screening must be completed by May 1, 2005.

ARTICLE III. SOUTHERN BALD EAGLE³

Sec. 14-118. Notification procedure.

The town will notify the FWC and the U.S. Fish and Wildlife Service upon receipt of any application for a planned development rezoning, a development order, ~~a notice of clearing~~, or a building permit for any property located within 750 feet of a bald eagle nest. The notice must include any available information gathered by the eagle technical advisory committee regarding the behavior of the eagles who are occupying the nest.

ARTICLE V. TREE PROTECTION⁴

Sec. 14-374. Definitions.

(a) The following words, terms and phrases, and their derivations, when used in this article, shall

have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. When not inconsistent with the context, words in the present tense include the future and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

...

Indigenous vegetation means those plants which are characteristic of the major plant communities, as listed in § 10-413 ~~10-701~~.

...

(b) Unless specifically defined in this article, the words or phrases used in this article and not defined in subsection (a) of this section shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-384. Restoration standards.

(a) If a violation of this article has occurred and upon agreement of the director and the violator, or, if they cannot agree, then upon conviction by the court or order of the special master, hearing examiner, a restoration plan shall be ordered in accordance with the following standards:

- (1) The restoration plan shall include the following minimum planting standards: *[no changes to subsection (1)]*
- (2) Massing of replacement stock shall be subject to agreement of the parties or, if appropriate, then by approval of the court or the special master, hearing examiner, as long as the minimum number of trees and/or seedlings are provided. Replacement stock, with the exception of palms, shall be Florida No. 1 or better grade. Replacement stock shall have a guaranteed 80 percent survivability for a period of no less than five years. A maintenance provision of no less than five years must be provided in the restoration plan to control invasion of exotic vegetation. Replacement stock shall not be located on any property line, or in any utility easement that prohibits such plantings. The director may at his/her discretion allow the replacement stock to be planted off-site

where approved development displaces areas to be restored. In these situations, off-site plantings shall be on lands under the control of a public agency. The off-site location is subject to the approval of the director.

(3) *[no further changes to this section]*

**ARTICLE VI.
MANGROVE ENFORCEMENT ⁵**

Sec. 14-453. Enforcement.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

(b) When imposing a sentence or penalty, the court, special master, hearing examiner, or any other appropriate body may, in mitigation, consider the successful replacement of mangroves illegally removed, and the restoration of the subject area when deemed by the court, the special master hearing examiner, or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the mangrove system to recover or perform those functions for which it is being protected.

(c) In any enforcement action under this article, each mangrove, so altered, will constitute a separate violation.

Sec. 14-454. Restoration standards.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon conviction by the court or order of the special master, hearing examiner, a restoration plan shall be ordered pursuant to the standards contained in subsection (b) of this section. Such a restoration plan shall set forth replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or special master, hearing examiner.

(b) The restoration plan shall include the following minimum planting standards: *[no further changes to this section]*

EXHIBIT B
FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 27 — PERSONAL WATERCRAFT AND PARASAILING

**ARTICLE I. DEFINITIONS
AND ENFORCEMENT**

Sec. 27-45. Definitions.

For the purposes of this chapter, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

Beach means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.

Beach has the same meaning given it in § 14-1.

...

Dune has the same meaning given it in § 14-1.

Dune vegetation has the same meaning given it in § 14-1.

...

FWCE means the Florida Fish & Wildlife Conservation Commission or its successor.

...

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

**ARTICLE II.
PERSONAL WATERCRAFT**

Sec. 27-49. Regulations and locations for personal watercraft rentals.

Any business engaged in the rental, leasing, bailment for consideration, or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (1) A business is required to obtain a Lee County occupational license which shall be issued to the personal watercraft operations office.
 - a. The operations office shall be located at a land-based site; and,
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access. That direct access will be used for all necessary business-related beach access that is customary in the course and operation of the personal watercraft business at the particular licensed land-based site; and,
 - c. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment, or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the occupational license is issued; and,
 - d. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the occupational license is issued until

- the personal watercraft travels beyond the 500 feet offshore slow speed limit.
- (2) A business must have and maintain a telephone and an operable marine radio at its land-based operations office.
 - (3) A business may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age (see also F.S. § 327.54)). No person under the age of 14 may operate any personal watercraft.
 - (4) During the sea turtle nesting season (May 1 through October 31), personal watercraft may not be moved across the beach unless:
 - a. any state permits that may be required for this activity have been issued;
 - b. such movement begins only after 9:00 8:00 A.M., or after completion of daily monitoring for turtle nesting activity by a FWCE-authorized marine turtle permit holder, whichever occurs first; and
 - c. the movement does not disturb any sea turtle or sea turtle nest (see also § 14-74(c)).
 - (5) Businesses may not allow their personal watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water.
 - (6) Personal watercraft rental businesses shall have a motorized chase vessel with an operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation. The chase vessel may be a personal watercraft reserved for this purpose.
 - (7) Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
 - (8) Identification markings shall be placed on each personal flotation device worn by operators of the personal watercraft which distinguishes the business from other businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the town upon issuance of the PWVL, shall be not less than 9" by 5" in size and of a contrasting color to the personal flotation device.
 - (9) Personal watercraft may be moored in the water during the operating hours of the business, but under no circumstances may a person place or arrange any personal watercraft vessel or associated equipment in any manner which blocks pedestrian traffic on the beach. Between the hours of 9:00 P.M. and 7:00 8:00 A.M. ~~from May 1 until October 31~~, all personal watercraft and associated beach equipment must be removed from the beach in accordance with § 14-5. and placed behind the dune line:
 - a. ~~If there is no dune line and the beach is wide, personal watercraft and associated equipment must be moved to a point that is at least 200 feet from the water line at all times.~~
 - b. ~~If there is no dune line and the beach is less than 200 feet wide, personal watercraft and associated equipment must be moved to the adjacent permanent structure and landward of any seawall.~~
 - c. ~~Where compliance with the foregoing provisions would cause an undue hardship, the town manager may designate a different storage location after determining the minimum changes from the requirements of this subsection.~~
 - (10) In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.
 - (11) Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state, and local fire, safety, and environmental regulations are met.
 - (12) Fueling of personal watercraft on the beach or in the water shall require a spillproof nozzle or other acceptable device designed for prevention of fuel overflow. Any spillage of fuel onto the beach or into the water is a violation of this code.
 - (13) Except in locations which have permanent 500-foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the

personal watercraft vendor no later than a half hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:

- a. To travel at slow speed until past said markers;
 - b. To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft;
 - c. To travel at slow speed when returning to the shore; and
 - d. To not travel within environmentally sensitive areas (within the 1000-foot territorial limits of the town) except with an eco-tour operator or guide associated with a business with a valid PWVL permit.
- (14) Each operator shall provide a buoy lane consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet.
- (15) Each PWVL (jet ski) operator is limited to 8 rentals per location plus one chase vehicle. When 6 or more rentals are in use, the chase vehicle must be manned and in the water. An operator may request a variance to allow additional rentals per location by using the standards and procedures in ch. 34.
- (16) *Safe handling instructions.*
- a. Each patron shall receive standardized rules provided by the operator translated in four languages. All owners, operators, PWVL license holders, and employees will obey the same standardized rules. Such rules are included in § 27-58.
 - b. If the FWCE adopts safe handling instructions in accordance with F.S. § 327.39(6)(b), operators must comply with those regulations, which shall be deemed as equivalent to complying with the previous subsection, provided the state instructions are translated into the same four languages.
- (17) Operators must also comply with all other applicable boating and personal watercraft provisions of state law such as those found in F.S. § 327.39.
- (18) No person shall offer for rent, lease, or bailment for consideration, a personal watercraft within the Town of Fort Myers Beach except from a personal watercraft rental business which fully complies with the regulations set forth in this code and this chapter.

- (19) No person shall conduct any personal watercraft rental business within the Town of Fort Myers Beach except from a business holding a valid PWVL and which fully conforms to the terms of this chapter.
- (20) No person shall offer for rent, lease, or bailment for consideration a personal watercraft which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

ARTICLE IV. ADDITIONAL RULES AND PROCEDURES APPLYING TO BOTH PERSONAL WATERCRAFT AND PARASAILING

Sec. 27-51. Additional rules applying to both PWVL and PAL businesses.

(a) Businesses holding a valid PWVL or PAL shall be situated together with their vessels where appropriate upon a site authorized by the remainder of this code plus the provisions of this chapter to have such business and shall not:

- (1) be located within 500 feet of any other business offering personal watercraft for rent or lease or parasailing activities, except for businesses that are co-located in accordance with § 27-54(e); or
- (2) be located on any beach or land north of or beyond an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or inland of the Big Carlos Pass Bridge.

(b) Businesses holding both a valid PWVL and a valid PAL may rent personal watercraft and operate a parasailing activity business from a single location provided the location meets all requirements for both licenses.

(c) Businesses holding a valid PWVL or PAL must meet the following requirements:

- (1) ***Other boating regulations.*** All businesses and their vessels are required to comply with the town's Vessel Control and Water Safety

- Ordinance (Ordinance 96-26 as amended) and with Florida Statutes Chapter 327.
- (2) **Insurance.** A business must have and maintain comprehensive third-party liability insurance in accordance with § 27-56.
 - (3) **Structures on the beach.** During its regular business hours only, a business may place one free-standing structure on the beach at its land-based site to conduct business with the public.
 - a. This structure may be a table, podium, booth, or storage box.
 - b. The total horizontal dimension of this structure may not exceed a horizontal dimension of 4 feet by 6 feet, except for any awning, umbrella, or integral roof whose sole purpose is to provide shade.
 - c. This structure must be portable and must be kept at least 10 feet from a sea turtle nest and from a dune or dune vegetation at all times. The structure must ~~and~~ never be left on the beach before or after regular business hours and must be removed from the beach between the hours of 9:00 P.M. and 8:00 A.M. in accordance with § 14-5.
 - (4) **Signs on the beach.** This structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one of which can exceed 8 square feet as measured in accordance with § 30-91.
 - a. Any rate charts or state-mandated informational signs smaller than 2 square each shall not be counted as part of the signage limitation above.
 - b. No signs or other advertising for the business are permitted on the beach other than the signage permitted on a table, podium, booth, or storage box.
 - (5) **Signs off the beach.** A business may also have one portable sandwich-board sign displayed at its land-based site during regular business hours if such signs are otherwise permitted by ch. 30 of this code at that site. However, any such sign:
 - a. must be placed indoors after business hours;
 - b. must not be illuminated; and
 - c. must not be placed on the beach at any time.
 - (6) **Removing nonconforming structures from the beach.** Any legal nonconforming tables, podiums, booths, storage boxes, signs, or other structures on the beach as of September 24, 2001, may remain for up to twelve additional months but immediately thereafter must be removed or modified to be in conformance with this section.