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MEMORANDUM

TO: Matt Feeney, Fort Myers Beach Public Services Director
FROM: Bill Spikowski
DATE: October 28, 2004
SUBJECT: LAND DEVELOPMENT CODE AMENDMENTS, CHAPTERS 6 – 14 – 27 – 34

Attached are drafts of proposed amendments to the Land Development Code for parts of Chapters 6, 14, 27, and 34. Please circulate these drafts to members of the Marine Resources Task Force so that they can discuss them at their November 10th meeting.

These drafts will become part of a major ordinance amending the Land Development Code. The code was overhauled chapter by chapter between 2000 and 2003. Now that the code is complete, we have been discovering minor problems with implementation and also a number of inconsistencies between chapters. The pending ordinance attempts to resolve such problems.

The Local Planning Agency is charged with preparing amendments and updates to the Land Development Code. They have already reviewed these drafts back in June but they will want to hear any comments from the Marine Resources Task Force before they take final action. Formal public hearings on this ordinance will not take place until later this fall or this winter.

The amendments that are attached this memorandum are limited to those directly affecting marine resources. Before the ordinance is complete, there may be other changes that address these issues as well.

CHAPTER 6

The original version of Chapter 6 of the Land Development Code was Lee County's version of that chapter, which was adopted by the Town Charter as the code existed on the date of incorporation. Chapter 6 was then completely revised by Fort Myers Beach Ordinance 00-12 in June 2000. Additional amendments were made to Chapter 6 through Ordinance 02-01 to clarify various provisions and to maintain consistency between Chapter 6 and other chapters of the code as they were being revised.

The proposed changes attached to this memorandum affect only Article III of Chapter 6, which contains the coastal construction codes mandated by state law. Much of the content of this article is controlled by the state as a result of the Coastal Zone Protection Act of 1985, whose relevant provisions are found in F.S. 151.52 et seq. The original legislation required local building codes to include certain provisions of the act and required local officials to enforce those provisions during the permitting process.

During the 2000 legislative session, the Coastal Zone Protection Act was modified significantly. In part due to the adoption of the Florida Building Code, many parts of the statutes were overhauled to centralize authority over building-related matters into the new code and to forbid, rather than require, local amendments to building codes. This overhaul eliminated the requirement for local land development regulations to recite portions of the Coastal Zone Protection Act, but still requires local governments to enforce the remaining rules.

Since it is difficult to enforce rules that are not published in official code books, the proposed amendments to Chapter 6 will continue to recite the remaining statutory requirements but would eliminate those that have been repealed or moved to the Florida Building Code. The remaining requirements have also been modified in a number of ways to ensure consistency with the remainder of the Land Development Code.

The proposed changes attached to this memorandum affect the following sections of Chapter 6:

- **§ 6-331:** The introductory statement for Article III has been updated to reflect the 2000 legislation.
- **§ 6-332:** In addition to minor editing, this section has been updated to include a reference to the beach debris regulations in Chapter 14 and to conform the state regulations to certain stricter rules at Fort Myers Beach that do not allow hardened seawalls or rip-rap revetments along the beach.
- **§ 6-333:** This article uses many terms such as “beach” and “dune” that are defined in the Beach and Dune Management article of Chapter 14. To reduce confusion, the definitions of these terms would now become the same and would be contained in § 14-1. Other terms that had been defined here are no longer used in the code or have been modified slightly to be consistent with Chapters 14, 27, or 34.
- **§ 6-362:** This section had been mandated by state law but has now been rendered obsolete by the new Florida Building Code.
- **§ 6-364:** This section has been made consistent with the 2000 amendments to the Coastal Zone Protection Act and other state regulations.
- **§ 6-366:** This section has been made consistent with the 2000 amendments to the Coastal Zone Protection Act and other portions of the Land Development Code. Subsection (b) has been added to clarify what kind of “minor structures” will be permitted by the town in the EC zoning district either “by right” or upon approval of a special exception. Subsection (e) has been added as a reminder of a related rule found in Chapter 10 (a rule that was mandated by Policy 6-E-3 of the Fort Myers Beach Comprehensive Plan).
- **§ 6-368:** Obsolete references have been deleted.

CHAPTER 14

The original version of Chapter 14 of the Land Development Code was also Lee County's version of that chapter as it existed on the date of incorporation. 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. A few minor changes were also made by Ordinance 02-29.

The proposed changes attached to this memorandum affect only 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" have been eliminated as they were both ambiguous and non-essential.
- **§ 14-5:** This section is now being amended to resolve a number of interpretation and enforcement problems with the existing regulations. The rules for placement and stacking of beach furniture and equipment are being clarified so that it will be stacked and moved off the beach each night, with a delayed effective date for existing wooden cabanas. The time is being changed in subsections (a)(1) and (b) to match the time requirement in (e).
- **§ 14-6:** This section would clarify the requirement for DEP permits for beach raking, require insurance for beach raking equipment, and eliminate 4x4 lumber from being dragged behind beach raking equipment (an activity that simulates a box blade).
- **§ 14-7:** Two new sentences would clarify the regulations for research or patrol vehicles driving on the beach.
- **§§ 14-9, 14-10, 14-384, 14-453, 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:** 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 clarify the responsibilities of existing development with regard to lighting on sea turtle nesting habitat.
- **§ 14-76:** Technical requirements for lighting permits have been clarified.
- **§ 14-78:** The rule against fires on the beach during sea turtle nesting season in subsection (a) has been strengthened due to enforcement problems with the previous wording. The requirement in subsection (c) to screening parking lots to block headlights from shining on sea turtle nesting habitat was adopted in 1998, but no date was included by which existing parking lots must be retrofitted; this draft adds a compliance date of May 1, 2005.
- **§ 14-118:** An obsolete reference to "notice of clearing" has been eliminated.
- **§ 14-374:** A reference to Chapter 10 has been corrected.

CHAPTER 27

The original version of Chapter 27 of the Land Development Code was adopted by the Town of Fort Myers Beach by 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 (and later amended by Ordinance 99-4). The two chapters were combined into Chapter 27 by Ordinance 01-05 in September 2001.

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 time in subsections (4) and (9) are being changed to match the time requirements in § 14-5.
- **§ 27-51:** The requirements for storage of parasailing and personal watercraft rental kiosks are being changed to match the requirements in § 14-5.

CHAPTER 34

The original version of Chapter 34 of the Land Development Code was also Lee County's version of that chapter as it existed on the date of incorporation. Chapter 34 was completely revised by Fort Myers Beach Ordinance 03-03 in March 2003.

The only portions of Chapter 34 included with this memorandum affect the beachfront as far inland as far as the 1978 coastal construction control line. These regulations overlap the regulations in Chapters 6, 14, and 27 and so are being included here.

The proposed changes attached to this memorandum affect the following sections of Chapter 34:

- **§ 34-652:** The regulations for the EC (Environmentally Critical) zoning district, would now refer to § 3-366 for details on allowable uses on the beachfront.
- **§ 34-1575:** Chapter 34's general regulations on environmentally sensitive areas now contain cross references to Chapters 6 and 10.

EXHIBIT C [partial]

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 6 MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS

ARTICLE III. COASTAL CONSTRUCTION CODE

DIVISION 1. GENERALLY

Sec. 6-331. Origin.

The Florida legislature adopted a Coastal Zone Protection Act in 1985 (F.S. § 161.52 et seq.), as later amended by Laws of Florida 2000-141, with requirements for enforcement by local governments. This article contains relevant the requirements of that act plus other local regulations, which will reduce the harmful consequences of natural disasters on sensitive coastal areas including the entire Town of Fort Myers Beach.

Sec. 6-332. Intent of article; applicability of article.

The purpose of this article is to provide minimum standards for the design and construction of buildings and structures to reduce the harmful effects of hurricanes and other natural disasters throughout the town. These standards are intended to specifically address design features which affect the structural stability of the beach, dunes and topography of adjacent properties. In the event of a conflict between this article section and other portions sections of this code, article, the requirements resulting in the more restrictive design will apply. No provisions in this article will be construed to permit any construction in any area where prohibited by state or federal regulation.

(a) **Applicability generally.** The requirements of this article will apply to the following types of construction:

- (1) New construction as defined herein;
- (2) Substantial improvements to existing structures as defined in § 6-405 of this code; and
- (3) Any construction which would change or alter the character of the shoreline, e.g., excavation, grading, or paving. This article does not apply to minor work in the nature of normal beach cleaning or debris removal, which is regulated by article I of ch. 14.

(b) **Construction seaward of mean high water.** Structures or construction extending seaward of the mean high-water line which are regulated by F.S. § 161.041, e.g. groins, jetties, moles, breakwaters, ~~seawalls, revetments~~, beach nourishment, inlet dredging, etc., are specifically exempt from the provisions of this article. In addition, this article does not apply to those portions of piers, pipelines, or outfalls which are located seaward of the mean high-water line and are regulated pursuant to the provisions of F.S. § 161.053.

(c) **Certification of compliance.** All plans for buildings must be signed and sealed by an architect or engineer registered in the state. Upon completion of the building and prior to the issuance of a certificate of occupancy, a statement must be filed with the director signed and sealed by an architect or engineer registered in the state in substantially the following form: "To the best of my knowledge and belief the above-described construction of all structural loadbearing components complies with the permitted documents and plans submitted to the Town of Fort Myers Beach."

Sec. 6-333. Definitions.¹

(a) The following words, terms and phrases, when used in this article, will have the meanings ascribed to them in this section, except where the

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

context clearly indicates a different meaning; Words or phrases not defined will be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

~~**Beach or shore** means the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.~~

Beach or shore has the same meaning given the word "beach" 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 means.~~

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

Major structure includes, but is not limited to, residential, commercial, institutional, or other public buildings and other construction having the potential for substantial impact on coastal zones (also see definitions of minor structures and nonhabitable major structure below).

...

Minor structure includes, but is not limited to, pile-supported elevated dune and beach walkover structures; beach access ramps and walkways; stairways; pile-supported elevated viewing platforms, gazebos, and boardwalks; lifeguard support stands; public and private bathhouses; sidewalks, driveways, parking areas, shuffleboard courts, tennis courts, handball courts, racquetball courts and other uncovered paved areas; earth retaining walls; and sand fences, privacy fences, ornamental walls, ornamental garden structures, aviaries, and other ornamental construction. It shall be characteristic of minor structures that they are those structures considered expendable under design wind, wave, and storm forces.

Mobile home or manufactured home means housing which conforms to the Federal Manufactured Housing Construction and Safety

~~Standards pursuant to F.S. § 320.823. However, a mobile home or manufactured home is not a manufactured building as defined in F.S. ch. 553, pt. IV.~~

~~**National Geodetic Vertical Datum (NGVD)**, as corrected in 1929, is a vertical control used as a reference for establishing varying elevations within the floodplain.~~

Nonhabitable major structure includes, but is not limited to, swimming pools; parking garages; pipelines; and public piers; canals, lakes, ditches, drainage structures, and other water-retention structures; water and sewage treatment plants; electrical power plants, transmission and distribution lines, transformer pads, vaults and substations; roads, bridges, streets and highways; underground or aboveground storage tanks; communications buildings and towers; and flagpoles and signs over 15 feet in height.

...

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

Sec. 6-334. Conflicting provisions:

~~Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the most restrictive requirements shall apply.~~

~~Secs. 6-335--6-337. Reserved.~~

Sec. 6-3348. Variances.

(a) Requests for variances from the provisions of this article shall be processed and decided in the same manner as for variances under ch. 34 of this code.

~~Secs. 6-3359--6-360. Reserved.~~

DIVISION 2. COASTAL CONSTRUCTION STANDARDS

Sec. 6-361. Generally.

The following minimum standards will apply to all construction in the Town of Fort Myers Beach.

Sec. 6-362. Reserved. Structural requirements for major structures.

~~(a) *Design and construction generally.* Major structures must conform to the minimum building code standards adopted in § 6-111.~~

~~(b) *Mobile homes and manufactured homes.* Mobile homes and manufactured homes must conform to the Federal Mobile Home Construction and Safety Standards pursuant to F.S. § 320.823, as well as the requirements of subsection (c) of this section.~~

~~(c) *Elevation, floodproofing and siting.* Structures must be designed, constructed and located in compliance with the floodplain regulations found in article IV of this chapter.~~

~~(d) *Velocity pressure.* Major structures, except mobile homes and manufactured homes, must, at a minimum be designated and constructed in accordance with chapter 16, section 1606 of the 1997 Standard Building Code using a fastest-mile wind speed of 110 miles per hour.~~

~~(e) *Foundation design.* Foundation design and construction of a major structure must consider all anticipated loads resulting from a 100-year storm event, including wave, hydrostatic, and hydrodynamic loads acting simultaneously with live and dead loads. Erosion computations for foundation design must account for all vertical and lateral erosion and scour-producing forces, including localized scour due to the presence of structural components. Foundation design and construction must provide for adequate bearing capacity taking into consideration the anticipated loss of soil above the design grade as a result of localized scour. The erosion computations required by this section do not apply landward of the 1994 coastal construction control line.~~

Sec. 6-363. Reserved.

Sec. 6-364. Structural Special requirements near beaches. for nonhabitable major structures.

~~(a) *Major structures.* Nonhabitable major structures must satisfy the structural requirements of § 6-362(c) and the applicable provisions of the Standard Building Code as required by article II of this chapter. However, these structures are not required to meet the balance of specific structural requirements set out in § 6-362. Such structures must be designed to produce the minimum adverse impact on the beach and dune system.~~

~~(1) Locational criteria for major structures are found in § 6-366(b).~~

~~(2) Structural and permitting criteria for major structures are found in ch. 31 of the Florida Building Code and in ch. 62B of the Florida Administrative Code.~~

~~(3) All sewage treatment and public water supply systems must be floodproofed to prevent infiltration of surface water anticipated from a 100-year storm event.~~

~~(4) Underground utilities, excluding pad transformers and vaults, must be floodproofed to prevent infiltration of surface water expected from a 100-year storm event, or must otherwise be designed to function when submerged under such storm conditions.~~

Sec. 6-365. Structural requirements for minor structures.

~~(b) *Minor structures.* Minor structures must satisfy the structural requirements of § 6-362(c) and the applicable provisions of the Standard Building Code as required by article II of this chapter. However, these structures are not required to meet the balance of the specific structural requirements set out in § 6-362. Such structures must be designed to produce the minimum adverse impact on the beach and dune system and adjacent properties and to reduce the potential for water and wind blown material.~~

~~(1) Locational criteria for minor structures are found in § 6-366(b).~~

~~(2) Construction of a rigid coastal or shore protection structure designed primarily to protect a minor structure is not permitted; see article II of ch. 26 for detailed regulations.~~

Sec. 6-365. Reserved.

Sec. 6-366. Location of construction near beaches.

(a) Except for beach renourishment and for minor structures such as ~~elevated walkways, lifeguard support stands, piers, and beach access ramps, and gazebos, and coastal or shore protection structures,~~ all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. ~~(b) In addition to complying with all other provisions of this code, At a minimum,~~ Major structures must shall be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line which is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development: and as the landward edge of the Recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district.

(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51.

(1) Other provisions of this code provide for certain other minor structures in the EC zoning district:

- a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b).
- b. Some temporary structures such as tents may be permitted through a temporary use permit for special events held on the beach, in accordance with § 14-11.
- c. Under certain circumstances, licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, ch. 27, and § 34-3151 of this code.

(2) Minor structures that are not permitted by right may be approved in the EC zoning district through the special exception process

or as deviations in the planned development rezoning process. Such minor structures may include stairways, walkways, ramps, fences, walls, decks, bathhouses, viewing platforms, gazebos, chickees, patios, and other paved areas. These structures should be located as close to the landward edge of the EC zoning district as possible and must minimize adverse effects on the beach and dune system. See §§ 34-88, 34-932(b), and 34-652 for details.

(3) Minor structures not qualifying by right, by special exception, or through another provision of this code are not permitted in the EC zoning district. See § 34-652 for details.

(c) When existing major structures that were built partially or fully seaward of the 1978 coastal construction control line are reconstructed, they shall be rebuilt landward of this line. Exceptions to this rule may be permitted through the planned development zoning process only where it can be scientifically demonstrated that the 1978 coastal construction control line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. Exceptions must also comply all state laws and regulations regarding coastal construction.

(d) New and expanded beachfront development must construct state-approved dune walk-over structures at appropriate crossing points (see § 10-415(b).)

(e) For newly created lots and parcels, a 50-foot separation between structures and dunes is required by § 10-415(b).

Sec. 6-367. Public access.

Development or construction activity may not interfere with accessways established by the public through private lands to lands seaward of mean high tide line or mean high-water line by prescription, prescriptive easement or any other legal means, unless the developer provides a comparable alternative accessway. The developer has the right to improve, consolidate or relocate such public accessways if the accessways provided are:

- (1) Of substantially similar quality and convenience to the public;

- (2) Approved by the town council;
- (3) Consistent with the Fort Myers Beach Comprehensive Plan; and
- (4) Approved by the Florida Department of Environmental Protection whenever changes are proposed seaward of the 1991 coastal construction control line.

Sec. 6-368. References:

~~Assistance in determining the design parameters and methodologies necessary to comply with the requirements of this article may be obtained from:~~

- ~~(1) Shore Protection Manual, U.S. Army Corps of Engineers, fourth edition, 1984.~~
- ~~(2) U.S. Department of the Army, Coastal Engineering Research Center's Technical Papers and Reports.~~
- ~~(3) State department of environmental protection, division of beaches and shores, technical and design memoranda.~~
- ~~(4) Naval Facilities Engineering Command Design Manual, NAVFACDM-26, U.S. Department of the Navy.~~

Secs. 6-3689--6-400. Reserved.

EXHIBIT E

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.

...

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.

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.

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.~~

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.

~~*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. 14-5. Beach furniture and equipment.

(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~~ EC zoning district (seaward of the 1978 coastal construction control line) 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.~~

- (1) Where compliance with the foregoing provisions would cause an undue hardship due to a physical barrier such as a tall seawall, the town manager may, after determining the minimum variance from the requirements of this ordinance to reflect the physical barrier, designate the storage location. ~~(3) Beach furniture and equipment that is removed from~~ allowed to remain on the beach pursuant to a variance must be the maximum distance from the water, at least 10 feet from a sea turtle nest and from a dune or dune vegetation, and 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. Stacking is not required for personal watercraft; all wooden cabanas must be stacked after May 1, 2006.
- (2) 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. Any legal nonconforming tables, podiums, booths, storage boxes, signs, or other structures on the beach as of *[insert date of adoption]* may remain for up to twelve additional months but immediately thereafter must be removed or modified to be in conformance with this section.

(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: $404 \text{ lbs. (ATV weight)} + 200 \text{ (person + equipment)} \text{ divided by } 198 \text{ square inches (ATV with 6" x 8.25" footprint x 4 tires)} = 3.1 \text{ PSI}$
 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. Shoobox-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 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 EAGLE ³

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 PROTECTION ⁴

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 F
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 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.

EXHIBIT H [partial]

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 34 — ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

ARTICLE III. ZONING DISTRICT REGULATIONS

DIVISION 4. CONVENTIONAL ZONING DISTRICTS

Sec. 34-652. EC (Environmentally Critical) zoning district.

- (a) [this subsection unchanged]
- (b) [this subsection unchanged]
- (c) [this subsection unchanged]

(d) *Permitted uses.* In the EC district, no land or water use shall be permitted by right except for those uses and developments permitted by the Fort Myers Beach Comprehensive Plan in wetlands, beaches, or critical wildlife habitats, as applicable, including:

- (1) Boating, with no motors permitted except electric trolling motors.
- (2) Fishing.
- (3) Removal of intrusive exotic species or diseased or dead trees, and pest control.
- (4) Hiking and nature study, including pedestrian boardwalks and dune crossovers.
- (5) Outdoor education, in keeping with the intent of the district.
- (6) Recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and ~~that~~ active recreation that requires requiring no permanent structures or alteration of the natural landscape (except as may be permitted by special exception (see § 6-366 and subsection (e) below). Any temporary structure used in conjunction with such uses must comply with all provisions of this code

(for instance, see chapters 14 and 27).

Artificial lighting may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see §§ 6-366 and 14-76).

- (7) Wildlife management, as wildlife preserves.

(e) *Special exception uses and structures.* Upon a finding that the proposed use or structure is consistent with the standards set forth in § 34-88, as well as all other applicable town regulations, the town council may permit any specific use or structure from the following list as a special exception, subject to conditions set forth in this chapter and in the resolution of approval:

- (1) Accessory structures, to include any building, structure, or impervious surface area which is accessory to a use permitted by right or by special exception in the EC district (see § 6-366).
- (2) Nature study center, noncommercial, and its customary accessory uses.
- (3) Single-family residence and its customary accessory uses at a maximum density of one dwelling unit per twenty acres.

- (f) [this subsection unchanged]

**ARTICLE IV.
SUPPLEMENTAL REGULATIONS**

**DIVISION 13.
ENVIRONMENTALLY SENSITIVE AREAS**

Sec. 34-1575. Coastal zones.

(a) Development, other than minor structures as defined in § 6-333, is prohibited seaward of the 1978 coastal construction control line as established by the state department of environmental protection, as such line existed in 1988. This line has been incorporated into the future land use map of the Fort Myers Beach Comprehensive Plan as the landward boundary of the beachfront Recreation category (see also Policy 5-D-1.v), and as the landward boundary of the EC zoning district (see § 34-652).

Regulations for minor structures in the EC zoning district (seaward of the 1978 coastal construction control line) are found in § 6-366.

~~(b) For purposes of this section, minor structures mean:~~

- ~~(1) pile-supported elevated dune and beach walk-over structures;~~
- ~~(2) beach access ramps and walkways;~~
- ~~(3) stairways;~~
- ~~(4) fences, and~~
- ~~(5) pile-supported viewing platforms, boardwalks, and lifeguard support stands.~~

~~(b) (c)~~ Minor structures do not include structures supported by or extensions of the principal structure. The minor structures identified as acceptable in this section are considered expendable under design wind, wave, and storm forces.

~~(c) (d)~~ No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers (see § 10-415(b)).

~~(d) (e)~~ No development will be permitted which alters the dune system, except for excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection.