Mayor

Joe Coviello **Council Members** <u>District 1</u>: John Gunter <u>District 2</u>: John M. Carioscia Sr. <u>District 3</u>: Marilyn Stout <u>District 4</u>: Jennifer I. Nelson <u>District 5</u>: Dave Stokes <u>District 6</u>: Richard Williams <u>District 7</u>: Jessica Cosden



City Manager John Szerlag City Attorney Dolores Menendez City Auditor Andrea R. Butola City Clerk Rebecca van Deutekom

1015 Cultural Park Blvd. Cape Coral, FL

AGENDA FOR THE REGULAR MEETING OF THE CAPE CORAL CITY COUNCIL

June 4, 2018

4:30 PM

Council Chambers

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree. We will direct all comments to the issues. We will avoid personal attacks.

VIDEO

1. MEETING CALLED TO ORDER

A. MAYOR COVIELLO

2. INVOCATION/MOMENT OF SILENCE

A. MAYOR COVIELLO

3. PLEDGE OF ALLEGIANCE

A. ALEXANDRA SOUTO - TRAFALGAR ELEMENTARY

4. ROLL CALL

A. MAYOR COVIELLO, COUNCIL MEMBERS CARIOSCIA, COSDEN, GUNTER, NELSON, STOKES, STOUT, WILLIAMS

5. CHANGES TO AGENDA/ADOPTION OF AGENDA

6. RECOGNITIONS/ACHIEVEMENTS

A. Recognition of Receipt of the Volunteer Agency Service Award -Presented to the Cape Coral Community Response Team

7. APPROVAL OF MINUTES

- A. Regular Meeting May 7, 2018
- B. Regular Meeting May 14, 2018

8. BUSINESS

A. PUBLIC COMMENT - CONSENT AGENDA

A maximum of 60 minutes is set for input of citizens on matters concerning the Consent Agenda; 3 minutes per individual.

B. CONSENTAGENDA

- Resolution 67-18 Approval of the Continuance of the Existence and Functions of the Golf Course Advisory Board, Transportation Advisory Commission, and the Cape Coral Youth Council; Department: City Clerk; Dollar Value: N/A; (Fund: N/A)
- (2) Resolution 93-18 Approve the single source purchase with Trinova Inc., for the purchase and service of Ultrasonic transmitters & sensor set, parts, preventative maintenance, troubleshooting, repairs, chemical pumps, system parts, level indicators or flow meters, and remote terminal units (RTU's) from Endress + Hauser Inc., Telog Instruments, Inc. and Prominent Fluid Controls, Inc. for the Utilities Department for Fiscal Year 2018 and Fiscal Year 2019, not to exceed budgetary limits and authorize the City Manager or Designee to execute the purchase orders and Single Source. Trinova is the only authorized representative for Endress +Hauser (E+H), Prominent Fluid Control Inc and Telog Instruments Inc. products and is the only authorized service repair and warranty organization in the State of Florida; Department: Utilities; Combined Total Dollar Amount: \$354,762; (Water & Sewer Fund-FY2018 \$177,381 and FY2019 \$177,381).
- (3) Resolution 95-18 Award ITB-PW18-43/AP, for the Purchase of Aggregate Materials, to the following contractors: Florida Dirt Source, LLC.; Grippo Pavement Maintenance, Inc.; and Stan Weeks and Associates, Inc., as the lowest responsive, responsible bidder for their respective awarded items, at the unit price bid, for an estimated annual dollar value of \$100,000 not to exceed budgetary limits and authorize the City Manager or Designee to execute the contracts, amendments, and any future renewals; Departments: Public Works; Estimated Annual Dollar Value: \$100,000; (Stormwater Fund)
- (4) Resolution 96-18 Award Bid # ITB-CW18-18/GL, for Citywide Pest Control Services, to Hulett Environmental Services Inc., as the lowest responsive responsible bidder to provide Pest Control Services for the City of Cape Coral and Charter School Facilities at the unit prices bid for an estimated annual amount of \$18,000 annually, City cost is \$13,188 (74%) and the Charter School is \$4,608 (26%) respectively, not to exceed budgetary limits and authorize the City Manager or Designee to execute the contract, amendments, and any future renewals. The term of the contract is for five (5) years with three (3)

additional one (1) year renewal periods – the term of the contract dollar value, if monies appropriated in the subsequent fiscal years, is a total of \$90,000; Department: Public Works; Estimated Annual Dollar Value: \$18,000; {total contract \$90,000}; (General Fund)

- (5) Resolution 108-18 Award Bid #UT18-57/MC to Shrieve Chemical, as the lowest responsive, responsible, bidder for the purchase of Sulfuric Acid, at the unit price bid of \$112.00 per ton, for an estimated annual cost of \$336,000, not to exceed budgetary limits, and authorize the City Manager or Designee to execute the contract, amendments, purchase orders and all required documents; Department: Utilities; Estimated Annual Dollar Value: \$336,000; (Water & Sewer Fund).
- (6) Resolution 116-18: Memorandum of Understanding Between the City of Cape Coral and Faith Presbyterian Church for a First Responder Shelter Base; Department: Fire; Dollar Value: N/A; (Fund: N/A).
- (7) Resolution 124-18 Approval of reduction of wastewater charges and fees at the City-owned Sunsplash Waterpark, resulting from an engineering analysis of the excess water usage, and authorizing the reimbursement of excess payments from 2014; Department: City Manager; Dollar Value: \$236,735; (Unrestricted reserves of Water and Sewer Fund)
- (8) Resolution 128-18 Approve the recommendations presented at the May 22nd Committee of the Whole meeting to determine best practices for the Charter Schools to assure competitive sustainability.
- (9) Resolution 129-18 Approve D&D Boat Ramp Conceptual Site Plan Option 1A/1B (Phased) with P3 Restaurant / Bait Shop and authorization for the City Manager to execute all associated grants, permits, designs, and construction contracts.

C. CITIZENS INPUT TIME

A maximum of 60 minutes is set for input of citizens on matters concerning the City Government to include Resolutions appearing in sections other than Consent Agenda or Public Hearing; 3 minutes per individual.

- D. PERSONNEL ACTIONS
 - (1) NONE
- E. PETITIONS TO COUNCIL
 - (1) NONE
- F. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS
 - (1) Youth Council 2 Vacancies

9. ORDINANCES/RESOLUTIONS

- A. Public Hearings
 - (1) Ordinance 32-18 Public Hearing (Continued from 5/14 Regular Meeting)

WHAT THE ORDINANCE ACCOMPLISHES: An ordinance amending Cape Coral Code of Ordinances, Chapter 23, Protected Species, Article I, Bald Eagle Protection, to amend definitions; to reduce the size of the Eagle Nest Management Zone; to provide that any development, other than a single-family home or duplex within an Eagle Nest Management Zone shall require the submission of an Eagle Nest Management Plan; to reduce the distance from an active eagle nest prohibiting any development to occur during nesting period; to provide for removal of nest trees if authorized by federal permits; to update the Monitoring Protocol to the current United States Fish and Wildlife Service Bald Eagle Monitoring Guidelines dated September 2007. (Applicant: Brought forward by City Management)

(2) Ordinance 9-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES: An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 8, Fire Prevention and Emergency Management, Article II, Fire Prevention, by amending Section 8-10, City of Cape Coral Fire Prevention and Protection Code Adopted: Amendments to Fire Codes, to be consistent with the current edition of the National Fire Codes; Establishing Section 8-14, Burn Ban Implementation Procedures, providing procedures to ban open burning when extreme dry conditions warrant a ban; by amending Article IV, Emergency Management, to provide for the declaration of a state of local emergency in preparation for or response to an emergency or disaster; to prohibit the sale of beer in the Alcoholic Beverage Prohibition: to amend Removal of Debris to include conditions affecting public health and safety; amending termination provisions. (Applicant: Brought forward by City Management)

- (3) Ordinance 34-18 Public Hearing WHAT THE ORDINANCE ACCOMPLISHES: The ordinance amends the Code of Ordinances, Chapter 12, "Offenses and Miscellaneous Provisions", Article II, "Offenses Creating Nuisances", Section 12-23 to provide regulations for parking commercial vehicles and trailers on certain public streets posted with signs. (Applicant: Brought forward by Councilmember Gunter.)
- (4) Ordinance 37-18 Public Hearing WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance authorizing the Mayor to grant to Lee County Electric Cooperative, Inc., a perpetual easement for a right-ofway to be used for the construction, operation and maintenance of one or more overhead and underground electric distribution lines across property owned by the City that is in the area of the Fire Station #11 project, located at 1038 Burnt Store Road North. (Applicant: Brought forward by City Management)

- (5) Resolution 94-18 Public Input Uniform Collection Agreement with Lee County Tax Collector for North 2 Assessment Area WHAT THE RESOLUTION ACCOMPLISHES: A resolution approving a Uniform Collection Agreement between the City of Cape Coral and the Office of the Lee County Tax Collector for use of the statutory uniform methodology of collection for certain non-ad valorem special assessments for North 2 Wastewater, Potable Water, Irrigation, Capital Facility Expansion Charge Water, Capital Facility Expansion Charge Wastewater, and Capital Facility Expansion Charge Irrigation. (Applicant: Brought forward by City Management.)
- (6) Resolution 123-18 1st Public Hearing Adopting the Program Year 2018-2019 Community Development Block Grant Action Plan

WHAT THE RESOLUTION ACCOMPLISHES: A resolution adopting the 2018-2019 One-Year Action Plan for the Community Development Block Grant (CDBG) Entitlement Program, authorizing and directing the City Manager to prepare and submit the One-Year Action Plan for the 2018-2019 fiscal year, to the United States Department of Housing and Urban Development (HUD); authorizing the City Manager or his designee to accept and execute the Grant Agreement for the 2018-2019 CDBG program when received from HUD; authorizing the City Manager or his designee to accept and execute Grant Agreements with subrecipients. (Applicant: Brought forward by City Management.)

- B. Introductions
 - Ordinance 25-18 (LU 17-0010) Set Public Hearing Date for July 23, 2018

WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the Future Land Use Map from Commercial/Professional (CP) to Multi-Family Residential (MF) Land Use for property located at 236 NE 16th Place.
(Applicant: Francesca Nappi, Trustee)
Planning and Zoning recommendation: At their May 16, 2018
Special Meeting, the Planning & Zoning Commission voted unanimously to recommendation: City Management recommends approval. (2) Ordinance 38-18 Set Public Hearing Date for June 18, 2018 WHAT THE ORDINANCE ACCOMPLISHES:

An Ordinance ordering and calling for a Bond Referendum Election to be held on November 6, 2018 in the City of Cape Coral, Florida to determine if the gualified electors residing in the City approve the issuance by the City of General Obligation Bonds which shall mature not later than Fifteen (15) Years from their date of issuance in an aggregate principal amount not exceeding \$60,000,000 payable from Ad Valorem Taxes levied in amounts sufficient to pay Debt Service on such Bonds on all taxable property within the City to finance costs relating to the acquisition, construction and equipping of Various Parks, Natural Areas, Recreational and Athletic Facilities; Trails, Boating, Fishing and Swimming Facilities, and Wildlife Habitat and Shoreline Protection Improvements; providing severability and an effective date. (Applicant: Brought forward by City Management.)

(3) Ordinance 39-18 Set Public Hearing for Transmittal Date for June 18, 2018

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending Policy 1.15 of the Future Land Use Element to establish the Seven Islands Sub-District Land Use Classification. (Applicant: City of Cape Coral) Planning & Zoning Recommendation: This recommendation will be added after the Planning and Zoning Commission public hearing on 6/6/2018.

City Management Recommendation: City Management recommends approval.

(4) Ordinance 40-18 (LU 18-0002) Set Public Hearing for Transmittal Date for June 18, 2018

WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the City of Cape Coral
Comprehensive Plan by amending the Future Land Use Map to
designate a parcel of land classified as Mixed Use (MX) Land
Use as comprising the Seven Islands Sub-District. (Applicant:
City of Cape Coral)
Planning & Zoning Recommendation: This recommendation
will be added after the Planning and Zoning Commission public
hearing on 6/6/2018.
City Management Recommendation: City Management

(5) Ordinance 41-18 Set Public Hearing Date for June 18, 2018 WHAT THE ORDINANCE ACCOMPLISHES: An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 10, "Land, Waterway Use Restrictions," by establishing Article V, "Mooring Fields"; providing for General Conditions, Bimini Basin Mooring Field Rules, Responsibilities of Tenants for All Mooring Fields, Amenities and Services for All Mooring Fields, Leasing Requirements for All Mooring Fields, Speed Limits, Severe Storm or Hurricane Plans for All Mooring Fields, Plans for Future Expansion for all Mooring Fields, and Managed Mooring Areas. (Applicant: Brought forward by City Management.)

10. UNFINISHED BUSINESS

- A. Water Quality Update
- B. Follow Up Items for Council

11. NEW BUSINESS

- A. Commercial Recycling Youth Council Recommendation to Council-Carsyn Baxter
- B. Park Project at Oasis Elementary School Janet Altini, Oasis Elementary

12. REPORTS OF THE MAYOR AND COUNCIL MEMBERS

13. REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

14. TIME AND PLACE OF FUTURE MEETINGS

- A. CANCELED A Regular Meeting of the Cape Coral City Council is Scheduled for Monday, June 11, 2018 at 4:30 p.m. in Council Chambers
- B. CANCELED A Committee of the Whole Meeting is Scheduled for Monday, June 18, 2018 at 4:30 p.m. in Council Chambers
- C. A Special Meeting of the Cape Coral City Council is Scheduled for Monday, June 18, 2018 at 4:30 p.m. in Council Chambers

15. MOTION TO ADJOURN

GENERAL RULES AND PROCEDURES REGARDING THE CAPE CORAL CITY COUNCIL AGENDA

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary. All speakers <u>must</u> have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

Any citizen may appear before the City Council at the scheduled PUBLIC HEARING/INPUT to comment on the specific agenda item being considered. No prior scheduling is necessary.

When recognized by the presiding officer, a speaker shall address the City Council from the designated speaker's lectern, and shall state his or her name and whom, if

anyone, he or she represents. An address shall only be required if necessary to comply with a federal, state of local law.

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You are asked to refrain from removing any documentation. If you desire copies, please request they be made for you. Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.

*PUBLIC HEARINGS

DEPARTMENT OF COMMUNITY DEVELOPMENT CASES

In all public hearings for which an applicant or applicants exist and which would affect a relatively limited land area, including but not limited to PDPs, appeals concerning variances or special exceptions, and small-scale rezonings, the following procedures shall be utilized in order to afford all parties or their representatives a full opportunity to be heard on matters relevant to the application:

- 1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.
- 2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then members of the public.
- 3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.
- 4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.
- 5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.

6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Item Number: ^{6.A.} Meeting Date: ^{6/4/2018} Item RECOGNITIONS/ACHIEVEMENTS Type:

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Recognition of Receipt of the Volunteer Agency Service Award - Presented to the Cape Coral Community Response Team

REQUESTED ACTION:

Informational

STRATEGIC PLAN INFO:

ELEMENT E: INCREASE QUALITY OF LIFE FOR OUR CITIZENS BY DELIVERING PROGRAMS AND SERVICES THAT FOSTER A SAFE COMMUNITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

The Cape Coral Community Emergency Response Team (CERT) Program was selected by the Florida Governor's Hurricane Conference Awards Committee to receive this year's Volunteer Agency Service Award. The award will be presented to the CERT Program at the Annual Florida Governor's Hurricane Conference on Thursday, May 17, 2018.

This award is presented to an individual staff member or volunteer of a non-government organization (NGO) or a unit of an NGO that has made an outstanding contribution to the fulfillment of hurricane preparedness, response, recovery or mitigation activities in the State of Florida.

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Linda A. Division- Administration Department- Fire

SOURCE OF ADDITIONAL INFORMATION:

Ryan W. Lamb, Fire Chief

Item 7.A. Number: 7.A. Meeting 6/4/2018 Date: APPROVAL OF MINUTES

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE: Regular Meeting - May 7, 2018

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS: Regular Meeting minutes - May 7, 2018

PREPARED BY:

Kimberly Bruns

Division- Managerial

Department- City Clerk's Department

SOURCE OF ADDITIONAL INFORMATION:

Kimberly Bruns Assistant City Clerk 1-239-242-3243

ATTACHMENTS:

Description

Regular Meeting Minutes - May 7, 2018

Type Backup Material

SUBJECT TO APPROVAL

MINUTES FOR THE REGULAR MEETING OF THE CAPE CORAL CITY COUNCIL

May 7, 2018

Council Chambers

4:30 p.m.

Meeting called to order by Mayor Coviello at 4:31 p.m.

Invocation/Moment of Silence - Councilmember Carioscia

Pledge of Allegiance - Teryn Laymance - Diplomat Elementary

Roll Call: Mayor Coviello, Council Members Carioscia, Cosden, Gunter, Nelson, Stokes, and Williams were present. Councilmember Stout was excused.

CHANGES TO AGENDA/ADOPTION OF AGENDA

Mayor Coviello inquired if there were any changes to the agenda.

Councilmember Cosden requested that Item 10 C be held directly after Citizens Input.

Councilmember Cosden moved, seconded by Councilmember Gunter to adopt the agenda, as amended.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

RECOGNITIONS/ACHIEVEMENTS

The Westin Tarpon Point Ballroom Recognition

<u>Mayor Coviello</u> recognized Chris Cahill, Lee County Commissioners Cecil Pendergrass and Brian Hamman, as well as City Manager John Szerlag. This recognition was an investment in excess of \$12 million by Freeman and Hasselwander for the development of a new ballroom facility at the Westin Resort at Tarpon Point. Cape Coral City Council authorized \$200,000 of Economic Development Incentive Funds in 2016 and 2017 to pay impact fees related to the development of the ballroom facility and the addition of 30 hotel rooms. The Lee County Board of County Commissioners partnered with the City to fund the \$500,000 Economic Development Incentive to repave Pelican Boulevard. This new development creates another asset to bring in new visitors to our community and to boost our economic development in the area.

Fleet Recognition

City Manager Szerlag recognized the following employees: Paul Clinghan, Marilyn Rawlings, Pete Milana, Tracy Robertson, Gary Manning, Bob Taylor, Doug Lynch, Aaron Phillips, Bob Olson, Keith Laris, and Lorie Sampson. He read a press release about Cape Coral's Fleet Management Division earning another Top Award Ranking 42nd among 100 Best Fleets for 2018 which was recently announced at the Annual NAFA Institute and Expo. This is the second consecutive year the City of Cape Coral is among the Top 100 Fleets in the Nation. Earlier this month, the City's Fleet was recognized by Government Fleet Magazine and the American Public Works Association for earning a spot on the list of Top 50 Leading Fleets.

APPROVAL OF MINUTES

Regular Meeting - April 16, 2018

Councilmember Williams moved, seconded by Councilmember Stokes to approve the minutes for the April 16, 2018 regular meeting as presented. Voice Poll: All "ayes." Motion carried.

BUSINESS

PUBLIC COMMENT - CONSENT AGENDA

No speakers.

CONSENT AGENDA

Councilmember Williams pulled item 8(B)(6).

- <u>Resolution 58-18 Approve PB-FIN18-39CV piggybacking The Cooperative Purchasing Network (TCPN) contract #R142104 with Lowe's Home Centers, LLC for the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis at an estimated annual cost of \$120,000.00 not to exceed budgetary limits, and authorize the City Manager or Designee to execute the contract, amendments, and renewals; Department: Citywide; Dollar Value; \$120,000; (General Fund)
 </u>
- 2) <u>Resolution 79-18 Award RFP-FIN17-78/KS Actuarial Services to Madison Consulting Group, Inc., for Self-Insurance Funds Incurred but Not Reported (IBNR) and Bolton Partners, Inc., for Other Post-Employment Benefits; Retiree Drug Subsidy Medicare Part D and Self-Funded Health Insurance, at the unit prices stated in the contract at an estimated annual cost of \$22,000 not to exceed budgetary limits and authorize the City Manager or Designee to execute the contracts, amendments, renewals and all required documents. The term of the contract is for three (3) years with two (2) additional one (1) year renewal periods the term of the contract dollar value, if monies appropriated in the subsequent fiscal years, is a total of \$66,000; Department: Finance; Estimated Annual Dollar Value: \$22,000; {total of \$66,000} (General Fund)</u>
- 3) <u>Resolution 85-18 Approve piggyback of US Communities sponsored Maricopa County, AZ contract #16154 with Home Depot U.S.A., Inc. for the purchase of maintenance, repair, and operational supplies and related services on an asneeded basis at an estimated annual cost of \$66,000, not to exceed budgetary limits, and authorize the City Manager or Designee to execute the purchase orders and related documents; Department: Citywide; Estimated Annual Dollar Value: \$66,000; (General Fund)</u>
- 4) <u>Resolution 86-18 Approve piggyback of National IPA sponsored City of Tucson, AZ contract #141003 with W.W. Grainger, Inc. for the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis at an estimated annual cost of \$175,000, not to exceed budgetary limits, and authorize the City Manager or Designee to execute the purchase orders and related documents; Department: Citywide; Estimated Dollar Value: \$175,000; (General Fund)</u>
- 5) <u>Resolution 88-18 Award ITB-UT18-35/KR Acidization of Select Upper Floridan</u> Wellfield Supply Wells for the North Reverse Osmosis (NRO) and Southwest Reverse Osmosis (SWRO) Water Treatment Plants (WTP) to A.C. Schultes of Florida Inc. located in Gibsonton, Florida to provide "Well Acidization Services" as the lowest responsive, responsible bidder for the initial project of six (6) wells in the amount of \$536,910 with a 10% City controlled contingency of \$53,691 for a total of \$590,601 and Approve continued use of the contract for individual work assignments, for "Well Acidization Services", based on the unit prices shown in agreement up to the annual budgetary limits and authorize the City Manager or

designee to execute the contract, amendment and renewals; Department: Utilities; Dollar Value: \$590,601 for initial project {annual budget \$800,000; after FY19, \$1.6 million each year in FY20 and FY21; (Water and Sewer Fund)

Councilmember Carioscia moved, seconded by Councilmember Cosden to approve items 8(B)(1), (2), (3), (4), and (5), as presented.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

6) <u>Resolution 92-18 Approval of Purchase Contract for the purchase of Lots 24 through 29, Block 1548, Unit 17, Cape Coral Subdivision, 2025 NE 6th Street, for a future Fire Station site for the purchase price of \$90,000 plus closing costs not to exceed \$2,500; Department: Financial Services / Real Estate Division; Dollar Value: \$92,500; (Fire Impact Fee Fund); Note: Trade offer rejected by Seller.</u>

<u>Councilmember Williams</u> requested information on the zoning for that property that justifies this action.

Property Broker Andrews displayed aerials and noted this property was located on a five-lot site on NE 6th Street. The City owns the property to the rear; this site will be for a future fire station. It is zoned Pine Island Road Future Land Use with a Corridor Zoning. There was an appraisal done; the purchase is at the appraisal amount. The Fire Master Plan identified this area as a need in order to reach out to the Judd Creek area.

Acting Interim Fire Chief Lamb stated this property was located between Fire Stations 2 and 5. This area has seen a lot of growth recently, and it is projected that growth will continue in that area. He noted this is an area that represents about 12 percent of our call volume so there is a high demand for service in this area. Construction of a fire station is not anticipated for a few years, but they wanted to secure property now in a good location that will provide a good response in the future.

<u>Councilmember Williams</u> stated a fire station is needed but was concerned about the amount of money for that property.

Property Broker Andrews explained the price is higher than a residential lot because it was zoned Corridor which allows for commercial uses.

<u>Councilmember Stokes</u> noted that was an excellent location with quick access to Pine Island Road and Del Prado, and it was far enough from the residents so as not to disturb the neighborhood with loud sirens during an early morning truck check.

Councilmember Stokes moved, seconded by Councilmember Nelson to approve item 8(B) (6), as presented.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

CITIZENS INPUT TIME

Dennis Richardson of the Cornwallis Neighborhood Association discussed Case Number SE 18-0003 which is a Special Exception for a gas station located on Del Prado Boulevard at a boat rental place. The boat rental business has caused grave concerns for residents in the neighborhood. The tank will be approximately 12 feet from the canal. The dimensions on the tank are listed as 4 feet by 6 feet. He noted the handout he provided to Council showed it was inaccurate. The tank is actually 4 feet 6 inches by 6 feet. The National Fire Prevention safety setbacks regulate that the tank should be 5 feet from the building and 15 feet from the property line. There is not enough room; they are short six inches. He stated that this was a self-serve fuel tank for rental boats. He requested that Council stop this from happening.

Jerry Owens requested that the Council not bring up anything during their reports without having public input on it first. If it is not on the agenda, it should not be allowed to have a vote on it.

Bill Johnson Jr., CCCIA Executive Director and CEO, commented on Resolution 97-18. He thanked the City Manager and staff for bringing this about which would help the Building Department provide excellent levels of services to the construction industry.

Jimmy Spurgen supported the comments given by Mr. Richardson regarding the gas pump that was proposed in the Cornwallis neighborhood. He voiced his concern with more boat traffic since this was in a residential area with residential canals.

Joe Pavel stated he lived on Moody Canal. He commented about broken down boats and how the speeds of boats were not controlled. He questioned the maintenance of a fuel dock in that area.

Scott Johnson stated he lived in the Cornwallis neighborhood area and objected to the fuel situation developing in the area. Additional boat traffic will be a safety issue.

Dave Rowan commented about the potential damage that could be done to the seawalls from the speeds of boats creating wakes.

Mason Rose, Southeast Cape resident, appeared to discuss the noise ordinance that has been in the news about potentially raising decibel levels and possibly extending the hours until midnight.

Carla Martinez, a Cornwallis neighborhood resident, appeared to voice her opinion against the gas tank at the marina. She noted boat speeds on that canal were not regulated; the docks were not permitted; and debris goes into the water from boat repairs.

<u>Councilmember Williams</u> questioned the permit approval of the gas pumps in the Cornwallis neighborhood.

City Attorney Menendez stated the case was a Special Exception application that has been heard by the Hearing Examiner, but not yet ruled upon. The Hearing Examiner has the final decision unless there is an appeal by a party.

DCD Director Cautero stated depending on the ruling and if an appeal is filed, staff will meet with the City Attorney's Office to go through the parameters to assure that the appeal can then proceed to Council. He stated that as a professional planner it was not appropriate for Council to get into the details of the case since it may come before you as an appeal. He suggested that Council consult with the City Attorney.

<u>Councilmember Williams</u> voiced his opinion that a commercial marina and gas facility at the end of a residential canal does not make economic sense. He questioned the potential time change of the noise ordinance.

Chief of Police Newlan stated he was aware of the location the citizen was complaining about and will be looking into it on the nights he was having problems.

<u>Mayor Coviello</u> understood there were no proposed changes to the noise ordinance at this time.

Director Cautero explained that proposed changes to the Land Development Regulations were discussed at the Planning and Zoning Commission meeting regarding noise levels and also adding protection in Design Standards for Bimini Basin. The proposed noise decibel increase is completely off the table.

<u>Mayor Coviello</u> requested confirmation that the current decibel level is 60 and the time element is 10:00 p.m.

Director Cautero responded in the affirmative, adding that the decibel level may be higher than 60. He confirmed that the proposal to allow the hours to increase is off the table.

<u>Councilmember Gunter</u> recommended the citizen voice his opinion about the gas pump issue at the Hearing Examiner's hearing.

City Attorney Menendez commented on the question about whether or not the proposed gas pump at the boat rental establishment was correctly classified. She stated that was a different issue from the Special Exception.

Mayor Coviello questioned if we have heard from the business.

Director Cautero stated the case has been heard, but it has not been decided upon yet. It usually takes about 10 days to get a decision from the Hearing Examiner.

<u>Mayor Coviello</u> added how inspections via Skype was helping the construction industry for seawalls and roofs at this time.

Southwest Florida Regional Planning Council Membership

Margaret Wuerstle, Executive Director, SWFRPC, displayed a power point regarding the Return on Investment (ROI) for the counties and Cape Coral. The ROI for Cape Coral was 869%. She noted she sent a document to Council outlining some of the projects for the region and for Cape Coral. It was hard to put a dollar value on some of the items because it impacts the whole region. She added there was currently \$600 million in EDA funding for disaster supplement.

<u>Councilmember Cosden</u> questioned that the total cost for Cape Coral has only been \$101,000 over the past six years.

Ms. Wuerstle responded in the affirmative, noting that Cape Coral had a free seat for three years.

Councilmember Williams questioned staff if our investment pays off.

Director Cautero explained that the work that we do in terms of grants and outside assistance is invaluable. The RPC plays a vital role and did not have a dollar value for the work they do.

<u>Councilmember Williams</u> stated he had been involved with the RPC and knew their value.

<u>Councilmember Gunter</u> researched this, and he did not find any advantage to Council. He went over some of the services since 2013. He stated staff may benefit from this and if they want to maintain this, it should come out of staff's budget, not Council's budget.

<u>Councilmember Nelson</u> questioned Ms. Wuerstle about the timeframe of the Return on Investment.

Ms. Wuerstle stated it was over a six-year period.

Councilmember Nelson questioned when was the last time we benefited from this.

Ms. Wuerstle stated the Climate Vulnerability Assessment and the Resiliency Plan were recently completed.

Councilmember Nelson questioned if Lee County still uses their services.

Ms. Wuerstle stated the Statute requires all counties to be part of a Regional Planning Council. The Statute and our By-Laws in the Interlocal Agreement are not consistent. She stated there was an opt out clause for any county who decided that they did not want to participate, and they needed to give the RPC a 12-month notice. State Statutes do not allow that. Sarasota, Lee, and Charlotte Counties have said that as of this June they are no longer going to pay assessments.

Councilmember Nelson inquired what was the annual budget for the RPC.

Ms. Wuerstle stated it ranged between \$1.2 and \$1.7 million. The assessments from the counties and the cities pay about one third of the total operating budget. The rest comes from service agreements and grants.

<u>Councilmember Nelson</u> inquired if City Manager Szerlag could move this to staff's budget since they use it and take it off the Council budget since it has no legislative value.

City Manager Szerlag stated he would be happy to consider it if that is the direction of Council and would assign staff as a member. He questioned if the By-Laws of the group prohibit a selected official to be a member, as opposed to an elected official.

Ms. Wuerstle noted that the State Statutes says there needs to be two elected officials from each county and one elected official from the city.

Mayor Coviello questioned if the seat that Cape Coral had free for three years rotated.

Ms. Wuerstle explained it was up to the County to determine what City was at the table and its rotation. Some counties have only one city. Lee County is the only County that does not pay the full assessment. All the other counties pay for their cities, and that is where the free seat originated. It is supposed to rotate annually.

Mayor Coviello asked if it was mandatory that a city be part of the RPC.

Ms. Wuerstle stated it was not mandatory.

<u>Councilmember Williams</u> stated there was a membership budget and if Council was adamant about it not being in the Council budget, then we can switch it to staff's budget.

<u>Councilmember Cosden</u> pointed out that Council would benefit from RPC since we provide input. She wanted to see an ROI on the Florida League of Cities.

<u>Councilmember Stokes</u> questioned the City Manager if we were not a member of the RPC would the City still function well?

City Manager Szerlag stated we would function well independently, given the staff we have.

Mayor Coviello inquired if there were any plans for staff to be using the RPC soon.

Director Cautero stated they planned on speaking with Ms. Wuerstle about the continuation of Climate Resiliency. He noted they also performed work on the Regional Economic Development Plan. He was not sure if this would come under membership dues or special services.

<u>Councilmember Carioscia</u> questioned why Cape Coral only received \$11,660 out of \$8 million in projects with the Cape being the biggest city. He doubted he would be supporting this.

<u>Councilmember Cosden</u> asked Ms. Wuerstle why the Cape got only \$11,000 of the \$8 million.

Ms. Wuerstle stated she did not have that information available but would research it and email the Council.

<u>Councilmember Cosden</u> questioned when it was anticipated that the RPC would have a discussion about its future.

Ms. Wuerstle anticipated that it would be in September.

<u>Councilmember Cosden</u> mentioned that if we stayed on for another year we would be able to be part of that discussion in determining the future of the RPC.

Councilmember Cosden moved to renew our membership for this year and have another discussion in a year after we have had the conversation at the Regional Planning Council. There was no second.

Councilmember Williams suggested holding off until they have the direction meeting.

<u>Councilmember Cosden</u> stated we are behind on payments. The last payment covered up to March 31st.

Ms. Wuerstle stated the RPC's year starts October 1st.

Councilmember Cosden withdrew her motion.

Councilmember Cosden moved, seconded by Councilmember Williams, that we at least get ourselves current and pay through the end of this year which ends in October.

<u>Councilmember Gunter</u> stated he felt we should withdraw from the RPC but to pay up to date.

<u>Councilmember Cosden</u> re-stated her motion: **To continue membership through the** rest of this year.

Council polled as follows: Carioscia, Coviello, Gunter, Nelson, and Stokes voted "nay." Cosden and Williams voted "aye." Two "ayes." Five "nays." Motion failed 2-5.

Councilmember Cosden moved, seconded by Councilmember Carioscia to at least get current to today.

City Attorney Menendez questioned if withdrawing from the RPC was included in the motion to be effective today.

Councilmember Cosden agreed with the clarification. Second agreed.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

PERSONNEL ACTIONS

Resolution 97-18 Approval to convert 3 vacant Building Inspectors to Senior Inspectors, convert 1 vacant Building Inspector to a Chief Plans Examiner/Inspector, add 2 new Customer Service Representatives, convert 2 vacant Customer Service Representatives to 2 Senior Customer Service Representatives, and add 1 new Construction Inspector, within the Department of Community Development; Department: Human Resources; Dollar Amount: FY 2018 amount of \$80,575 is within budget/Recurring cost for FY 2019 is \$205,505; (Building Fund)

Councilmember Stokes moved, seconded by Councilmember Carioscia to approve Resolution 97-18.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

Resolution 100-18 Approval to convert 1 vacant Survey Crew Chief to a Land Surveyor/Senior Surveyor within the Public Works Department; Department: Human Resources; Dollar Value: FY 2018 amount of \$4,864 is within budget/Recurring cost for FY 2019 is \$12,407; (General Fund)

Councilmember Carioscia moved, seconded by Councilmember Nelson to approve Resolution 100-18.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

PETITIONS TO COUNCIL

None.

APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

None.

ORDINANCES/RESOLUTIONS

PUBLIC HEARINGS

Ordinance 26-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends Chapter 2, Administration, Article VI, Pensions, Division 2, Firefighter Pension of the Code of Ordinances, to amend Sections 2-122.1, Definitions; 2-122.6, Benefit Amounts and Eligibility; 2-122.8, Disability; 2-122.9, Vesting; 2-122.10, Optional Forms of Benefits; 2-122.15, Maximum Pension; 2-122.27, Deferred Retirement Option Plan (DROP); 2-122.28, Prior Fire Service; 2-122.29, Reemployment after Retirement; and establishing Section 2-122.30, Defined Contribution Component (Share Plan). (Applicant: Brought forward by City Management)

Assistant City Clerk Bruns read the title of the Ordinance.

Doug Lozen, Actuary, Foster and Foster, stated they reviewed the proposed Ordinance and opined that there is no actuarial cost. This will not increase the City's annual funding requirements for passage of this Ordinance. He submitted a letter with the proposed Ordinance and was available for any questions.

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Carioscia moved, seconded by Councilmember Gunter to adopt Ordinance 26-18, as presented.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

Ordinance 27-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 1, Police Pension, to amend Section 2-121.1, Definitions; Section 2-1214, Finances and Fund Management; Establishment and Operation of Fund; Section 2-121.6, Benefit Amounts and Eligibility; Section 2-121.9, Vesting; Section 2-121.10, Optional Forms of Benefits; Section 2-121.15, Maximum Pension; Section 2-121.27, Deferred Retirement Option Plan (DROP); Section 2-121.28, Prior Police Service; and Section 2-121.9, Reemployment after Retirement. (Applicant: Brought forward by City Management)

Assistant City Clerk Bruns read the title of the Ordinance.

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Carioscia moved, seconded by Councilmember Gunter to adopt Ordinance 27-18, as presented.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

Ordinance 28-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 3, General Employees Pension, to amend Section 2-123.1, Definitions; Section 2-123.4, Finances and Fund Management; Establishment and Operation of Fund; Section 2-123.6, Benefit Amounts and Eligibility; Section 2-123.7, Death Benefits; Section 2-123.8, Optional Forms of Benefits; Section 2-123.9, Vesting; Section 2-123.13, Maximum Pension; Section 2-123.24, Deferred Retirement Option Plan (DROP); Section 2-123.25, Purchase of Nonqualified Service Credit; Section 2-123.26, Prior Government Service; and Section 2-123.27, Reemployment After Retirement. (Applicant: Brought forward by City Management)

Assistant City Clerk Bruns read the title of the Ordinance.

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Carioscia moved, seconded by Councilmember Stokes to adopt Ordinance 28-18, as presented.

Councilmember Williams questioned if there were any basic changes to the pensions.

Mr. Lozen noted there were no basic changes, a lot of it was IRS compliance language.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

Ordinance 30-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An Ordinance authorizing the issuance of not to exceed \$8,100,000 in aggregate principal amount of Debt Obligations to finance the acquisition and construction of a Fire Station and various Streetscape Improvements; Providing for a covenant to budget and appropriate legally available non-ad valorem revenues to pay the principal, redemption premium, if any, and interest on the Debt Obligations; and providing for the rights of the holders of such debt obligations. (Applicant: Brought forward by City Management.)

Assistant City Clerk Bruns read the title of the Ordinance.

Finance Director Bateman explained what the Ordinance would accomplish. She discussed the power point presentation which included the following slides:

- City of Cape Coral Bank Loan for Fire Station and CRA Streetscape
- RFP Results
- RFP for Bank Loan
- Recommendation
- Requested Action

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Carioscia moved, seconded by Councilmember Gunter to adopt Ordinance 30-18, as presented.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, and Stokes voted "aye." Williams voted "nay." Six "ayes." One "nay." Motion carried 6-1.

Resolution 106-18 Public Input Loan from Iberiabank to finance a Fire Station and Streetscape Improvements

WHAT THE RESOLUTION ACCOMPLISHES:

The Resolution accepts a proposal of Iberiabank to provide the City with a loan in order to finance the acquisition and construction of a fire station and various streetscape improvements; approves the form of a loan agreement; authorizes the issuance of a promissory note pursuant to such loan agreement in the aggregate principal amount of not to exceed \$8,100,000 in order to evidence such loan; authorizing the repayment of such note from a covenant to budget and appropriate legally available non-ad valorem revenues; delegating certain authority to the Mayor, City Manager and other officers of the City for the authorization, execution and delivery of the loan agreement, promissory note, and various other documents with respect thereto. (Applicant: Brought forward by City Manager.)

Assistant City Clerk Bruns read the title of the Resolution.

Finance Director Bateman explained what the Resolution would accomplish.

<u>Councilmember Williams</u> voiced his concern about this Resolution, especially with the addition of the SE 47th Terrace Streetscape.

Public Hearing opened.

No speakers.

Public Hearing closed.

<u>Councilmember Nelson</u> recommended at this point that this would prepare us for the future and to be proactive as we grow that area.

City Manager Szerlag stated City Council, as well as the Council in its role as CRA Commissioners, have already approved this project and the methodology to utilize funds that exist in the CRA as well as an indication to utilize a bank loan. The project is currently under construction. The kiosks, cameras, license plate readers, fiber cable, bollards, electric vehicle chargers, and lighting came in after the project was awarded. With the exception of the cameras and license plate readers, individual members of Council asked me if we could include those in the project scope. He stated we will look at having a change order when the appropriate time comes. At that time, we will look at the funding in terms of whether it should come from the General Fund or the CRA. He will approach both bodies when that time comes. He referred to a memo dated March 30, 2018 that related to the debt obligation for Fire Station 11, as well as the SE 47th Terrace Streetscape.

Mayor Coviello asked Director Bateman about the length of the bank loan.

Director Bateman stated it would be paid off in 3-4 years.

Councilmember Williams explained why he would still vote against it.

<u>Councilmember Carioscia</u> requested that Chief of Police Newlan address the last five weekends on SE 47th Terrace.

Chief of Police Newlan stated there were some minor issues; only four bars are involved and the Police Department will continue to monitor activity.

Councilmember Cosden moved, seconded by Councilmember Carioscia to approve Resolution 106-18, as presented.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, and Stokes voted "aye." Williams voted "nay." Six "ayes." One "nay." Motion carried 6-1.

Ordinance 33-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 12, Offenses and Miscellaneous Provisions, by establishing Article XII, Parking on Public Property, to provide regulations for parking trailers in City-owned or controlled parking lots in the South Cape Downtown District. (Applicant: Brought forward by Councilmember Gunter)

Assistant City Clerk Bruns read the title of the Ordinance.

Chief of Police Newlan explained what the Ordinance would accomplish. He displayed the following slides:

- Definitions
- Trailer Parking Prohibition
- Construction Trailers
- Construction Trailers (continued)
- Questions

Councilmember Carioscia inquired about trailers that are there for over 72 hours.

Chief of Police Newlan stated anything over two hours, based on this Ordinance, would be cited, and we would be authorized to tow.

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Carioscia moved, seconded by Councilmember Gunter to adopt Ordinance 33-18, as presented.

City Attorney Menendez stated the effective date of this Ordinance would be June 15, 2018.

<u>Councilmember Gunter</u> explained why this Ordinance came about due to the concern of the business owners in that area.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

INTRODUCTIONS

Resolution 83-18 (VP 17-0019*) Set Public Hearing Date for May 14, 2018 *Quasi-Judicial, All Persons Testifying Must be Sworn In WHAT THE RESOLUTION ACCOMPLISHES:

A resolution providing for the vacation of plat for all platted interior lot lines and public utility and drainage easements lying within Blocks 4722-4725, Cape Coral Unit 70; property located at 3514 Chiquita Boulevard. (Applicant: Newcom Real Properties, LLC) Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions set forth in Hearing Examiner Recommendation Order 5-2018. City Management Recommendation: City Management recommends approval.

Assistant City Clerk Bruns read the title of the Resolution.

The public hearing was scheduled for May 14, 2018 in Council Chambers.

Planning Team Coordinator Struve stated he was available for any questions.

Ordinance 9-18 Set Public Hearing Date for June 4, 2018

WHAT THE ORDINANCE ACCOMPLISHES: An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 8, Fire Prevention and Emergency Management, Article II, Fire Prevention, by amending Section 8-10, City of Cape Coral Fire Prevention and Protection Code Adopted; Amendments to Fire Codes, to be consistent with the current edition of the National Fire Codes; Establishing Section 8-14, Burn Ban Implementation Procedures, providing procedures to ban open burning when extreme dry conditions warrant a ban; by amending Article IV, Emergency Management, to provide for the declaration of a state of local emergency in preparation for or response to an emergency or disaster; to prohibit the sale of beer in the Alcoholic Beverage Prohibition; to amend Removal of Debris to include conditions affecting public health and safety; amending termination provisions.

Assistant City Clerk Bruns read the title of the Ordinance.

(Applicant: Brought forward by City Management)

The public hearing was scheduled for June 4, 2018 in Council Chambers.

Acting Interim Fire Chief Lamb stated he was available for any questions and that a presentation would be provided at the public hearing.

Ordinance 34-18 Set Public Hearing Date for June 4, 2018 WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 12, "Offenses and Miscellaneous Provisions", Article II, "Offenses Creating Nuisances", Section 12-23 to provide regulations for parking commercial vehicles and trailers on certain public streets posted with signs. (Applicant: Brought forward by Councilmember Gunter.)

Assistant City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for June 4, 2018 in Council Chambers.

Chief of Police Newlan stated he was available for any questions and that a presentation would be provided at the public hearing.

UNFINISHED BUSINESS

Water Quality - Update

Public Works Director Clinghan reviewed the memo provided to Council and gave the most current update on Lake Okeechobee.

<u>Mayor Coviello</u> requested that Mr. Clinghan provide a water quality update for the public on the Bimini Basin.

Director Clinghan stated we were continuing to sample and monitor for *Enterococci* and *E. coli* bacteria in the Bimini Basin. As part of that project, Utilities looked at any potential releases from the sanitary sewers which seemed to be good. With the baseline sampling, we are trying to show whether or not there is a point or non-point source pollution and whether or not there is a baseline of birds, dolphins, and manatees that are in there. The connecting pipe between the Rubicon and Bimini is full of sediment. We are looking to clean it out and see if that will help with water quality. We are also looking at the pipe system by Coronado south of Cape Coral Parkway.

<u>Councilmember Nelson</u> requested Mr. Clinghan to speak about the Community Out Reach efforts in order to educate the public of what should not go into the water.

Director Clinghan discussed a big part of it are the boats that were in the Bimini. The CRA has a Mooring Plan in place that needs to be approved. In this situation, it is the non-point pollution that we are looking at. Homeowners need to be educated regarding fertilizer and where their pets do their business.

Follow Up Items Requested by Council:

None

Southwest Florida Regional Planning Council Membership moved to after Citizens Input

NEW BUSINESS

FLC Board of Directors Selection (Brought forward by Mayor Pro Tem Williams)

<u>Mayor Pro Tem Williams</u> discussed that he was currently on the Board of Directors for the FLC. He noted that a letter needs to be sent annually with the selection and requested permission for the Council Office to send a letter to the FLC.

Councilmember Cosden moved, seconded by Councilmember Carioscia to give permission for the Councilmember to send this letter to the FLC with Council's selection.

Councilmember Stokes requested permission to go to a FLC Conference on August 16-18, 2018.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

<u>Councilmember Williams</u> stated most Councilmembers attend that annual conference, and the City always funds it.

Burnt Store Road Right-of-Way Committee Discussion (Brought forward by Councilmember Cosden)

<u>Councilmember Cosden</u> discussed that the Burnt Store Road Right-of-Way Committee no longer needs to exist, and Council needs to officially sunset it. The people on it now will become advisory members for the TAC meetings.

PW Planning and Permitting Manager Zambrano stated this Committee was formed to encourage Lee County to acquire additional right-of-way, and the Committee has achieved their mission. She clarified that the members were not advisory members to the CTAC.

<u>Councilmember Cosden</u> stated the decision at the last CTAC meeting was that we would welcome their input at every meeting.

Manager Zambrano noted that she would keep the Committee apprised of any issues with Burnt Store Road and if needed, she would invite her peers in the County to come to a meeting.

<u>Councilmember Williams</u> stated the meetings have been sparse and lately not attended by the County. He recommended sunsetting this Committee. He noted the NWNA would create their own group to act as an advisory board; it would not be an official board that Council would appoint members.

Councilmember Cosden moved, seconded by Councilmember Gunter to sunset the Burnt Store Road Right-of-Way Committee.

Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

Reinstatement of Parks Master Plan Stakeholders Group (Brought forward by City Manager)

City Manager Szerlag provided background of the Parks Master Plan Stakeholders Group. He wanted to reinstate this group to discuss what to do with the 175 acres of the old golf course property if the purchase goes through and present the information to the Council for formal adoption. He noted they would also look at any possible impacts to Four Freedoms Park, Yacht Club, and Festival Park. He noted they would also include any possible joint uses between the City of Cape Coral and the Charter Schools. He requested a general concurrence to proceed.

Consensus agreed.

REPORTS OF THE MAYOR AND COUNCIL MEMBERS

Councilmember Carioscia - Topics: No report

<u>Councilmember Cosden</u> – Topics: Attended the Board of County Commissioners (BoCC) meeting regarding the straw poll on consolidating the Fire Services and we were successful; Volunteer Boards and Committees Luncheon; Mentor Appreciation Luncheon at Oasis High School; Local Coordinating Board meeting which she Chairs for the Transportation Disadvantaged Provider Good Wheels; Lighthouse Awards for the Charter School system.

<u>Councilmember Gunter</u> – Topics: Praised the work of the DCD; Attended the BoCC meeting; Mayors Scholarship Award Banquet; Bimini Basin Mooring Field meeting; Charter School Lighthouse Awards Dinner; guest speaker at Everest Homeowners Association.

<u>Councilmember Nelson</u> – Topics: Congratulated our Fleet; Met with Bill Jones of Waste Pro and did a ride along; Horizon Council meeting; Charter School Governing Board meeting tomorrow; Mayors Scholarship Dinner; Lighthouse Awards.

<u>Councilmember Stokes</u> – Topics: Attended Cape Coral Charter School Lighthouse Awards; Law Week Awards Luncheon; this weekend going into burning buildings with the Fire Department along with two other Councilmembers.

Councilmember Stout - Topics: Excused

<u>Councilmember Williams</u> – Topics: Attended Mayors Scholarship Fund Meeting; Volunteer Luncheon at Rumrunners; Mayors Scholarship Awards Banquet; Proclamation for Arbor Day at the Bill Austen Youth Center; Youth Council meeting on April 27th which was the last one for the graduating seniors; next Youth Council meeting is on May 11th and will seat seven new Councilmembers; attended Citizens Academy Mock Council Meeting; Ida Baker Awards Ceremony for the Seniors; Rotary Club Lighthouse Event.

<u>Mayor Coviello</u>: Topics: Attended BoCC meeting and spoke against the consolidation of the Fire Districts which will not be on the ballot; Do the Right Thing Awards; City Volunteer Appreciation Luncheon at Rumrunners; Mayors Scholarship Awards Banquet; Go Red for Women American Heart Association meeting; Bimini Basin Mooring Field meeting; CRA meeting; Law Week Awards Luncheon; Lighthouse Awards Dinner; CCCIA Dinner meeting; Stamp Out Hunger Food Drive on 5/12; Saturday will be at the Cape Coral Police Department's Morning of Remembrance; our next Council meeting on May 14th we will have the Tribute to a Soldier; there is a Committee of the Whole meeting on May 21st and wanted to know if it can be changed to May 23rd.

Discussion held to have the Committee of the Whole meeting on Tuesday, May 22nd at 4:30 p.m.

Councilmember Gunter moved, seconded by Councilmember Stokes to move the Committee of the Whole meeting to Tuesday, May 22, 2018, at 4:30 p.m. Voice Poll: All "ayes." Motion carried.

REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

City Attorney – Topic: No report

<u>City Manager</u> – Topic: Thanked Mayor Coviello and Councilmember Gunter, as well as the CCCIA and Bill Johnson for their positive comments relative to our Building Department.

TIME AND PLACE OF FUTURE MEETINGS

A Regular Meeting of the Cape Coral City Council was scheduled for Monday, May 14, 2018 at 4:30 p.m. in Council Chambers.

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MOTION TO ADJOURN

There being no further business, the meeting adjourned at 6:59 p.m.

Submitted by,

Rebecca van Deutekom, MMC City Clerk Item 7.B. Number: 7.B. Meeting 6/4/2018 Date: APPROVAL OF MINUTES

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE: Regular Meeting - May 14, 2018

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS: Regular Meeting - May 14, 2018

PREPARED BY:

Kimberly Bruns

Division- Managerial

Department- City Clerk's Department

SOURCE OF ADDITIONAL INFORMATION:

Kimberly Bruns Assistant City Clerk 1-239-242-3243

ATTACHMENTS:

Description

Regular Meeting - May 14, 2018

Type Backup Material

SUBJECT TO APPROVAL

MINUTES FOR THE REGULAR MEETING OF THE CAPE CORAL CITY COUNCIL

May 14, 2018

Council Chambers

4:30 p.m.

Meeting called to order by Mayor Coviello at 4:30 p.m.

Invocation/Moment of Silence - Tribute to a Soldier - Councilmember Williams

Pledge of Allegiance - National Anthem - Jennifer Sleiman - Ida S. Baker High School

Roll Call: Mayor Coviello, Council Members Cosden, Gunter, Nelson, Stokes, Stout, and Williams were present. Councilmember Carioscia was excused.

CHANGES TO AGENDA/ADOPTION OF AGENDA

<u>Mayor Coviello</u> announced Item 11.B. – Resolution 115-18 to be moved directly after 8.F(1) which will become 8.G.; Addition of 8.H. changing June 11th meeting to June 18th and cancelling the June 18th COW meeting; Item 11.A to be moved to 8.I. presentation of Horizon Council.

Councilmember Williams moved, seconded by Councilmember Gunter to adopt the agenda, as amended.

Council polled as follows: Cosden, Coviello, Gunter, Nelson, Stokes, Stout, and Williams voted "aye." All "ayes." Motion carried 7-0.

RECOGNITIONS/ACHIEVEMENTS

None

APPROVAL OF MINUTES

None

BUSINESS

PUBLIC COMMENT - CONSENT AGENDA

Tim Trimble questioned the unit cost for 5/8" and 1" meters and the cost per unit for the concrete.

Utilities Director Pearson stated the unit cost was included in the packet as attachment A. This is not for the purchase of the meters, only for the meter installations for the various size meters. We wanted the unit prices in the event that we needed just for a meter change-out, \$31.89 for 5/8" meter. If we have to change the existing backflow prevention device and reconnect the customer's existing residential service piping, that cost is \$17.50. Other prices were: replace a curb stop - \$38.50; remove and reset the meter box - \$20.00; remove existing meter box and replace it with a new meter box complete surface restoration - \$30.00; drill a 2" diameter hole in existing plastic meter box lid - \$1.75. Those are the unit prices that the contractors competitively bid on, and we selected the lowest responsible bidder.

CONSENT AGENDA

 <u>Resolution 90-18 Award Bid ITB-PW18-46/MC to Kuhlman Concrete, LLC., as</u> the lowest responsive responsible bidder for the Purchase and Delivery of Ready Mix Concrete for sidewalk and curb repairs for various projects in support of the Sidewalk program, at the unit prices stated in the bid, for an estimated amount of <u>\$275,000 annually, not to exceed budgetary limit, and authorize the City Manager</u> or his designee to execute the contract, renewals and amendments; Department: Public Works; Estimated Annual Dollar Value: \$275,000; (General Fund, Stormwater Fund, Grants)

- 2) <u>Resolution 103-18 Award Request for Proposal RFP#UT18-15/MC to Vanguard Utility Service, Inc., for the 5/8" & 1" Potable Water Meter Exchange Program for the replacement of manual read water meters with new radio read water meters throughout the City of Cape Coral at the unit prices listed in the proposal, not to exceed budgetary limit and authorize the City Manager or his designee to execute the contract, renewals and amendments; Department: Utilities; Estimated Annual Dollar Value: \$500,000; (Water and Sewer Fund)</u>
- Resolution 104-18 Approve a Single Source with South Florida Emergency Vehicles, LLC., for the purchase of Holmatro Extrication Equipment and authorize the City Manager or Designee to execute the purchase orders and any related documents; Department: Fire; Dollar Value: \$66,390; (General Fund)
- 4) <u>Resolution 105-18 Award Bid #ITB-UT18-41/KR to Douglas N. Higgins, Inc. for Weir #15 Bladder & Controls Improvements as the lowest responsive, responsible bidder, in the amount of \$162,000 with a 10% City controlled contingency of \$16,200 for a total project cost of \$178,200, and authorize the City Manager or designee to execute the contract and/or amendments; Department: Utilities; Dollar Value: \$178,200; (Water and Sewer Fund)</u>
- 5) <u>Resolution 107-18 Approval for use of Reserves from the Yacht Basin Fund for the repair of the Yacht Club Pool Bath House and Pavilion Roof; the procurement of Contractors in accordance with the City of Cape Coral Procurement Ordinance and authorize the City Manager to execute the contracts and/or purchase orders for these purchases; Department: Parks & Recreation; Dollar Value: \$158,750; (Yacht Basin Fund)</u>
- 6) <u>Resolution 109-18 Approval of Contract for Purchase of Lots 63 and 64, Block 3013, Unit 43, Cape Coral Subdivision, 1235 NW 25th Street, Cape Coral, for the Festival Park project for the purchase price of \$11,000 plus closing costs not to exceed \$1,200; Department: Financial Services / Real Estate Division; Dollar Value: \$12,200; (Parks Capital Project Fund); Note: Trade offer rejected by Seller.</u>
- 7) <u>Resolution 110-18 Approval of Contract for Purchase of Lots 34 and 35, Block 3028, Unit 43, Cape Coral Subdivision, 1255 Wilmington Parkway, Cape Coral, for the Festival Park project for the purchase price of \$14,000 plus closing costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$15,500; (Parks Capital Project Fund); Note: Trade offer rejected by Seller.</u>
- 8) <u>Resolution 111-18 Approval of Exchange Contract to trade City owned property</u> located at 2117 Chiquita Boulevard South (Lots 7-8, Block 4406) for a portion of an adjoining five-lot parcel located at 2120 SW 15th Place (Lots 53-54, Block 4406), both parcels being in Unit 63 Cape Coral Subdivision, to complete the assemblage of property for the construction of a future fire station; City will assume a portion of the outstanding balance of the Southwest 6&7 utility assessment in the approximate amount of \$9,750 plus closing costs not to exceed \$4,500; Department: Financial Services / Real Estate Division; Dollar Value: \$14,250; (Fire Impact Fee Fund)
- 9) Resolution 112-18 Approve the additional funding for the removal of Hurricane Vegetative Debris on vacant lots utilizing the City's current Disaster Debris Removal Contractor TAG Grinding Services, Inc.; Authorizing the funding from the Lot Mowing Program Special Revenue Fund; and Authorize the City Manager or designee to execute the amendment to the contract. On February 5, 2018,

Council approved Resolution 39-18 with TAG Grinding Services, Inc. for the removal and disposal of fallen trees (hurricane vegetative debris) from vacant lots in the amount of \$750,000; Department: Public Works; Estimated Dollar Amount: \$1,080,000; (Lot Mowing Fund)

10)<u>Resolution 114-18 Approve the waiver of the City of Cape Coral Procurement</u> process to contract with Ric-Man Construction FL, Inc. for the SE 47th Ter, SE <u>5th Place and Cape Coral Parkway Culvert Cleaning (Between the Rubicon Canal</u> and the Bimini Basin) in the amount of \$95,680 with a 20% City Controlled Contingency of \$19,136 for a total amount of \$114,816 and Authorize the City Manager to execute the contract and amendments. Department: Public Works Dollar Value \$114,816 (Stormwater Fund)

Councilmember Williams moved, seconded by Councilmember Nelson to approve items 8(B)(1), (2), (3), (4), (5), (6), (7), (8), (9), and (10), as presented.

Council polled as follows: Cosden, Coviello, Gunter, Nelson, Stokes, Stout, and Williams voted "aye." All "ayes." Motion carried 7-0.

CITIZENS INPUT TIME

Joyce Easton stated she was in favor of the School Resource Officers. She questioned Resolution 115-18 regarding the purchase of 23 new police cars and would rather put that money towards hiring more police officers for the schools.

Dolores Bertolini questioned where will the money come from to purchase the old golf course property and how will we pay for it in the future. She discussed Festival Park and Seven Islands, which are wonderful concepts, but questioned if we were ready to jump on the same bandwagon.

Gwynne Hickman stated she was present on behalf of ABATE (American Bikers Aimed Towards Education) of Florida and discussed Motorcycle Safety and Awareness Month.

Tim Trimble stated he emailed Council about his conversation with LCEC regarding retightening the wire under his meter. He stated he owned the meter socket, but LCEC owns the meter. He noted it is a felony if he broke the seal. He asked Council to develop some legislation that eases and protects the health, welfare, livelihood, and safety of the City of Cape Coral.

Jerry Owens announced the Cape Coral CERT Team's Hurricane Seminar on Thursday, June 7, 2018, at 6:00 p.m. in Council Chambers.

Richard Osman stated he is taking the Citizens Academy class and showed the book he received from the class. He recommended people to take the class so they will know what City government is about.

Lou Navarra displayed an email he received regarding vacation rentals. He questioned why Cape Coral cannot have an Ordinance for this whereas Fort Myers Beach has a registry. He requested that City Council consider this idea.

Chuck Warren, Coral Ridge Funeral Home, invited the public to attend the 37th Annual Memorial Day Service on Monday, May 28, 2018, at 10:00 a.m. at Coral Ridge Cemetery.

<u>Councilmember Williams</u> stated he has taken the Citizens Academy and expressed how much he enjoyed the class. He mentioned the Memorial at Coral Ridge is a very well-run program for our deceased veterans.

<u>Councilmember Stokes</u> addressed the emails from Mr. Trimble and requested that the City Manager have staff work with him.

<u>Councilmember Cosden</u> requested that the City Manager have someone from staff to help Mr. Navarra who was asking about the dumpster regulations at the vacation rentals.

PERSONNEL ACTIONS

None

PETITIONS TO COUNCIL

None

APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

Planning & Zoning Commission - 1 Alternate Vacancy

Robert Maurice O'Connor

Assistant City Clerk Bruns stated we received one application for the alternate vacancy.

Councilmember Stout moved, seconded by Councilmember Stokes to appoint Robert O'Connor as an alternate to the Planning and Zoning Commission.

Council polled as follows: Cosden, Coviello, Gunter, Nelson, Stokes, Stout, and Williams voted "aye." All "ayes." Motion carried 7-0.

Item 8.G

<u>Resolution 115-18 Approve the funding of 23 police vehicles from undesignated</u> reserves for the Implementation of the School Resource Officer Program; authorize the addition of 1 regular full-time position in the Police Department and authorize the City Manager or designee to execute the purchase orders for said purchases; Department: Police – MOVED TO 8.G.

City Manager Szerlag called up to the podium: Dr. Greg Adkins, Superintendent of Lee County School District, Roger Desjarlais, Lee County Manager, as well as Gregory Blurton, Chief Financial Officer, Lee County School District, and Chief of Police David Newlan. He discussed Senate Bill 7026 which indicates that every school in the State of Florida have a School Resource Officer. He noted there would be a partnership to share the funding between the City and the Lee County School District.

Dr. Adkins explained the funding and the need for the safety of our children. He stated he will commit up to 50% of the cost of the School Resource Officers up to \$50,000.

Lee County Manager Desjarlais discussed the funding mechanism from the Lee County Government.

Chief of Police Newlan explained the process of hiring the School Resource Officers (SRO). He discussed the following:

- 19 Public Schools, 6 Charter Schools, 3 SROs currently in some of our Charter Schools during the past school year
- 25 SRO positions will be filled to start in August.
- 23 new police cars, it will be cheaper to order the cars now in the FY 18 budget through a budget amendment versus the FY 19 budget.
- Protection of our children is top priority

Councilmember Williams moved, seconded by Councilmember Stout to approve Resolution 115-18, as presented.

<u>Councilmember Williams</u> stressed the need to have our own police officers in the schools.

Councilmember Nelson inquired about the recruiting for the new officers.

Chief of Police Newlan stated nationwide the market has changed with all the events that have been going on. They use more social media to advertise, as well as contacting different organizations, and work closely with the Academy to recruit good quality employees.

<u>Mayor Coviello</u> stated he understood that we are going to purchase vehicles through the passage of this Resolution at the cost of \$1.196 million. The additional officers will be in next year's budget starting in October.

Chief of Police Newlan confirmed that the police officers will be part of the FY 19 budget.

<u>Mayor Coviello</u> questioned if the initial funds being approved with this Resolution will come out of undesignated reserves.

City Manager Szerlag responded in the affirmative. He noted that they will be advertising for the 22 police officers immediately.

<u>Mayor Coviello</u> requested clarification from Dr. Adkins concerning the funding from Lee County Schools.

Dr. Adkins stated it was 50%, up to \$50,000 per officer.

City Manager Szerlag stated our cost will be more than \$50,000 because of our capital requirements. On the recurring cost, it is more than just the pay and benefits of an SRO or Police Officer since you also have to factor in equipment costs, as well as costs for the vehicles. He stated they would need to get an agreement from the School District to make sure all the elements are addressed.

Council polled as follows: Cosden, Coviello, Gunter, Nelson, Stokes, Stout, and Williams voted "ave." All "ayes." Motion carried 7-0.

Addition of Item 8.H. changing the June 11, 2018 meeting to June 18, 2018 and cancelling the June 18, 2018 COW meeting and make it a regular meeting

<u>Mayor Coviello</u> stated he has to attend a U.S. Conference of Mayors between June 8th and June 12th. There is a meeting scheduled for June 11th. He would like to move the June 11th meeting to June 18th. He noted there was a Committee of the Whole scheduled for June 18th. He questioned if Council would agree to have a motion to cancel the June 18th and the June 11th meetings and replace the June 18th meeting with a voting meeting.

Councilmember Cosden moved, seconded by Councilmember Williams to cancel the June 18th and the June 11th meetings and replace the June 18th meeting with a voting meeting.

Assistant City Clerk Bruns confirmed that the June 11th regular meeting will be cancelled. The June 18th Committee of the Whole meeting will be cancelled. There will be a special meeting on June 18th at 4:30 p.m. in Council Chambers.

Council agreed.

Council polled as follows: Cosden, Coviello, Gunter, Nelson, Stokes, Stout, and Williams voted "aye." All "ayes." Motion carried 7-0.

Item 8.I. Horizon Council Presentation Christopher Spiro Horizon Council Outreach Committee Christopher Spiro from the Horizon Council Outreach Committee presented the following slides:

- Horizon Council
- 2018: Get Back to the Basics
- The Basics; Reaching out to develop open lines of communication
- Our Goal
- The Voice of Business in Lee County
- We are a public-private board established in 1991 to advise Lee County Board of Commissioners on economic development issues.
- Together with the Lee County Economic Development Office, we are a powerful voice for the business community in the county.
- Our collective voice is delivered directly to County Commissioners who rely on our expertise and passion for economic development to help them make smart choices that can have positive impacts throughout the region.
- We represent six cities, chambers of commerce, economic development and trade organizations, and community, business and educational organizations.
- In the last five years, our efforts have contributed to:
- 10 companies expanding or relocating to Lee County
- Over 2,100 jobs created at 150% of the local wages
- Increasing the average annual wage to \$40,420.
- Providing \$100M in capital expenditures
- Our efforts added to an estimated economic impact of over \$533M into our economy.
- We have some significant projects in the hopper.
- Facilitate the DevelopLee initiative
- Marketing projects and properties
- Strengthen workforce talent and skills availability
- Champion community wellness as a competitive business issue
- Support NFM Pilot Incentive Program, SWFL Government Contracting Symposium & Expo, SWFL Women's Business Summit and Women in Business Lunch & Learn Series
- Addressing the current Attainable Housing issue here in Lee County via our Business Issues Task Force
- And of course, our Industry Appreciation Celebration to be held this year on October 4th at the Hyatt Coconut Point...while Harbourside Convention Center goes through its remodeling
- Questions?

<u>Councilmember Nelson</u> questioned what the process was if a business contacted the Economic Development Department in Lee County about opening up a business in Cape Coral.

Mr. Spiro explained how it was a smooth procedure; calls and emails are sent and people are directed accordingly to them.

ORDINANCES/RESOLUTIONS

PUBLIC HEARINGS

Resolution 83-18 (VP 17-0019*) Public Hearing

*Quasi-Judicial, All Persons Testifying Must be Sworn In WHAT THE RESOLUTION ACCOMPLISHES:

A resolution providing for the vacation of plat for all platted interior lot lines and public utility and drainage easements lying within Blocks 4722-4725, Cape Coral Unit 70; property located at 3514 Chiquita Boulevard. (Applicant: Newcom Real Properties, LLC) Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions set forth in Hearing Examiner Recommendation Order 5-2018.

City Management Recommendation: City Management recommends approval.

Assistant City Clerk Bruns read the title of the Resolution and administered the oath.

Planning Team Coordinator Struve reviewed the purpose of Resolution 83-18. VP17-0019 presented the following slides:

- VP17-0019
- Aerial View
- Subject Parcel
- Current Zoning Map
- Background
- Analysis (LUDR, Section 8.11)
- Analysis Vacation of Lots Lines
- Recommendation: Staff recommends approval.
- Hearing Examiner recommended approval with staff conditions.
- There were two speakers at public input.
- Correspondence: Four phone calls and one letter in opposition.

Public Hearing opened.

Joe Mazurkiewicz, President, BJM Consulting, Inc., authorized representative, provided history of this site. Assemblage began in the early 1990s. It was one of the original sites set up for CAC land use and MR zoning.

Public Hearing closed.

Councilmember Stokes moved, seconded by Councilmember Stout to approve Resolution 83-18, as presented.

Council polled as follows: Cosden, Coviello, Gunter, Nelson, Stokes, Stout, and Williams voted "aye." All "ayes." Motion carried 7-0.

Ordinance 5-18 (LU 17-0011) Final Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the Future Land Use Map from Single Family Residential (SF) to Multi-Family Residential (MF) land use designation for property located at 1049 Embers Parkway and 320 Nelson Road. (Applicant: City of Cape Coral) Planning & Zoning Recommendation: At their January 10, 2018 meeting, Planning & Zoning voted (4-0) to recommended approval of the Ordinance.

City Management Recommendation: City Management recommends approval.

Assistant City Clerk Bruns read the title of the Ordinance.

Planning Team Coordinator Daltry reviewed the purpose of Ordinance 83-18. He presented the following slides:

- Ordinance 5-18 LU 17-0011
- Site map
- Subject Property
- Current Future Land Use Map
- Proposed Future Land Use Map
- State and Regional Agency Review
- Background
- Background (continued)
- Background (continued)
- Comprehensive Plan Housing Element Goal
- Comprehensive Plan Policy 8.4 FLUE
- Recommendation
- P&Z Recommendation

Public Hearing opened.

Philip Abbondanza stated the fate of the Nelson Preserve is still undecided and rests in the hands of the City Council. He wanted them to consider the weight that this carries and what it has to offer the future generations. He shared his concern about rushing to cover the City with cement and asphalt. He voiced his concern for the burrowing owls and the gopher tortoises and the need to keep our natural treasuries. He urged Council to go walk the site and bring their families.

Dillon Becker displayed a picture of a nature scene with greenery and lakes and how that is a place where children should grow up, not in a City with concrete. He stated Nelson Preserve should be preserved.

Pascha Donaldson, Cape Coral Friends of Wildlife, stated it would be a shame to have another large area destroyed with concrete.

Cheryl Anderson, Cape Coral Friends of Wildlife, questioned where the water would go if you put in 1,500 units on concrete.

Linda Miller, Senior Planner, Avalon Engineering, Inc., property owner's representative, noted the property owners did not bring this application in front of Council today, instead it was by the City of Cape Coral. This is a clean-up ordinance. Any future development will have to come to Council because the requirement in the PDP was to bring all projects forward.

Jim Weider displayed a ground shot of the one of the areas in the subject property. He stated he did not know about the zoning change in January. He discussed eagles on this property, family developments to be built here, congested traffic, lack of affordable housing, and suggested the City consider buying this property back.

Jerry Owens stated the only way you can know what you are voting on is to go out and walk this property so you can see it for yourself.

Claudia Nelson-Hart stated her dad owned this property previously. She noted the nature on this property and was concerned about removing the trees. She suggested Council go out and look at what they are voting on.

Lindsey Logan stated she lived about a mile and a half away from the subject property. She stated we would be squandering the only opportunity to keep a historical natural area in our City.

David Challer stated his property boarders this property. He bought his property in 2009 and was told by the City that this was single family zoning. He questioned what was the plan for this site. He was concerned about the buffering that would need to be done.

Pam Stiles lives in the Northwest Cape and noted that this property is a natural gem. She questioned how multi-purpose housing would work there with squeezing it in on 83 acres around the lakes.

Trevor Tares noted how he was a formerly labeled troubled youth because there was nothing to do in Cape Coral. He stated this property was a beautiful gem and should not be destroyed.

Emma Teris stated the people here are all wanting to have something natural to do. This type of construction is not something that belongs in Cape Coral.

Public Hearing closed.

Councilmember Stokes moved, seconded by Councilmember Stout to adopt Ordinance 5-18, as presented.

<u>Councilmember Nelson</u> requested staff to explain the difference between this property and the golf course.

Planning Team Coordinator Daltry explained the major difference between the two is that this property has vested rights. The development order adopted by Council in the past still existed. The property owner in 2007 continued the development order. Today they have a right to build the number of units allowed through that Ordinance adopted in 2007. There is no development order on the golf course property.

<u>Councilmember Nelson</u> stated this is now too far down the road to make changes. She questioned if there is a way to come together with the residents.

City Manager Szerlag requested that Avalon Engineering provide clarification.

Linda Miller, Senior Planner, Avalon Engineering, Inc., property owner's representative, stated with any development you have to go through a process: bring back the PDP, two public hearings, new traffic study, environmental report, obtain a South Florida Water Management District Permit, site plan permits, infrastructure permits, and design the buildings. She mentioned she would be happy to meet with the residents.

<u>Councilmember Stokes</u> stated it was too late in the process to go in another direction. He noted Festival Park and the old golf course property are both large park areas. He challenged our Friends of Wildlife and our animal lovers to work with our County Commissioners to get some more 20/20 land in Cape Coral.

<u>Councilmember Williams</u> agreed that we were very late in the process. We have had a lot of push back from what we are doing with the golf course. He questioned if we were to deny this tonight, does it open us up to a Bert Harris Act?

City Attorney Menendez stated it will open it up to potential liability to that property owner who has been given the development order and the vested rights to develop.

<u>Councilmember Williams</u> stated putting a development in there will probably be a blessing in disguise.

<u>Mayor Coviello</u> stated it is not the City's property. There is a need for multi-family dwellings. From a revenue stand point, this is going to bring a lot of tax dollars to the City.

Council polled as follows: Cosden, Coviello, Gunter, Nelson, Stokes, Stout, and Williams voted "aye." All "ayes." Motion carried 7-0.

Ordinance 32-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending Cape Coral Code of Ordinances, Chapter 23, Protected Species, Article I, Bald Eagle Protection, to amend definitions; to reduce the size of the Eagle Nest Management Zone; to provide that any development, other than a single-family home or duplex within an Eagle Nest Management Zone shall require the submission of an Eagle Nest Management Plan; to reduce the distance from an active eagle nest prohibiting any development to occur during nesting period; to provide for removal of nest trees if authorized by federal permits; to update the Monitoring Protocol to the current United States Fish and Wildlife Service Bald Eagle Monitoring Guidelines dated September 2007. (Applicant: Brought forward by City Management.)

Assistant City Clerk Bruns read the title of the Ordinance.

Planning Team Coordinator Daltry reviewed the purpose of Ordinance 32-18. He presented the following slides:

- Ordinance 32-18
- Aerial Map

- Background
- Recommendation: Adoption

Public Hearing opened.

Lori Haus, member of Cape Coral Friends of Wildlife and Cape Coral Wildlife Trust, stated she did not agree with the change to the Ordinance. The distance of 600 feet would be detrimental to the eagle.

Mark Hannon voiced his concern that the 1,100 limit should remain. He questioned what 660 would do to the property values. The City is overlooking not having a web cam on eagles' nests to promote the City.

Cheryl Anderson suggested in order to shorten this area to have a study done of the Cape Coral eagles. This is a vote on the conscience of the City Council.

Dillon Becker shared his concern about discussing the bald eagle, the symbol of our country.

Lindsey Logan stated just because the Federal Government lowers the standard that does not mean you should.

Alice Heredes discussed why we should save the eagles and how this ordinance would be detrimental to them. She shared a flier prepared by the City of Cape Coral. She showed a slide on the projector about the location of eagles' nest in the City.

Jim Collier shared a story about the importance of keeping the distance we currently have.

Pascha Donaldson questioned who would be designated to oversee the Eagle ordinance.

Cindy Romano stated she has read the Ordinance, as well as the National Bald Eagle Management Guidelines. She voiced her concern about the reduction of the 660 amount in keeping with Federal guidelines.

Jim Weider stated this was not brought forth to protect the eagles, but the developers.

Joe Mazurkiewicz stated he was part of the Species Management Task Force that worked for 18 months to help develop specific policies on this topic. He continued by explaining the only reason this is in front of you is because the Species Management group was concerned about the City's liability with a lawsuit. If you exceed the regulations by the State and Federal Government with local ordinance, you need a science-based study to support that regulation. Specific to Southwest Florida case law, an eagle case came against a city that had a more stringent requirement than State and Federal Law. This resulted in a loss of a very expensive lawsuit, an appeal, and a lost the appeal. That city was Bonita Springs. The developer was Bonita Bay. He emphasized recognizing law over emotion.

Isabel Furth stated she wants to know who will speak for the eagles; we have 10 nests in all of Cape Coral. We have to take care of our wildlife; it is about responsibility.

Emma Teris stated this was not an emotional issue but more of a humanity type of aspect.

Steve Swartz stated he has done some study on eagles. The reason you have failure from nesting is disturbance. This deserves another look.

Public Hearing closed.

Councilmember Stout moved, seconded by Councilmember Williams to adopt Ordinance 32-18, as presented.

<u>Councilmember Cosden</u> stated this Ordinance had nothing to do with the Nelson Preserve.

City Manager Szerlag confirmed that statement. He noted he asked the Deputy Clerk to take a look at previous meetings. He stated it was noted at the August 21, 2017 Council meeting that Mr. and Mrs. Spears, property owners, were inside of the 1,100 sq. ft. prohibition zone. He mentioned at that meeting that we have a Species Management Group and he would bring it forth for discussion for the entire group. He also invited Mr. and Mrs. Spears to attend that meeting.

Councilmember Cosden inquired if there was research on the 660 feet.

Planning Manager Pederson stated they were not aware of any research on the 660. This issue first arose with Ordinance 47-10 in April 2010. He did not find any evidence in the record from that area of specific research on one radius versus another. The 660 is the Federal Standard. The request was to mirror the Federal Standard and that was why staff followed it.

<u>Councilmember Cosden</u> questioned why there was the threat of a lawsuit if we were to scale it back.

City Manager Szerlag recollected what transpired. Mr. and Mrs. Spears were prohibited from building their home. Even though they were outside the 660, they were inside the 1,100 ft. area. He stated the stakeholders group vetted the pros and cons. It is the objective of that group to strike a balance between environmental protection and economic development. He questioned if a science study could justify it one way or another. He recalled Mr. Mazurkiewicz mentioning something about liability. It was primarily about a residents' concern because Mr. and Mrs. Spears could not build as a result of our Ordinance being more restrictive than State and Federal policies relative to eagle protection zones.

Councilmember Cosden stated she would not support this Ordinance.

Manager Pederson stated it was his understanding that the disclosure form required by Florida Law and included in State Statutes that the City of Cape Coral's GIS system on the website tells you whether each piece of property is in an eagle zone or not.

City Manager Szerlag stated if Council believes that their decision may be influenced by a lawsuit with Bonita, Council always has the option of continuing this discussion until such time when we do have that information.

<u>Councilmember Nelson</u> stated she cannot imagine that there would not be a scientific study for the 660. She questioned staff if there was any type of Federal study that determined the Federal and State regulation of the 660.

Manager Pederson stated they did not.

<u>Councilmember Nelson</u> stated because of the lack of data, she would not support this Ordinance.

Councilmember Stokes stated he will not support this Ordinance.

Councilmember Williams questioned how close to an eagles' nest can you build a house.

Manager Pederson stated that depended on the facts of the situation in the Eagle Management Plan. The 1,100 radius only applies to construction as defined in the Ordinance during nesting season. You can obtain a permit and build outside of nesting season. He stated the Federal Government has approved construction of a home less than 300 feet from an eagles' nest recently. Fish and Wildlife Service reviews those individually. There are a number of criteria that needs to be satisfied.

<u>Councilmember Williams</u> stated he preferred to table this Ordinance until more information is received about the lawsuit mentioned.

<u>Councilmember Gunter</u> inquired when the 1,100 feet was changed. Was that part of the original Ordinance in 2006?

Manager Pederson stated he would need to research that. He noted that there was an attempt in 2010 to reduce the radius when the Federal Government reduced theirs. He confirmed the reference in the Ordinance about the monitoring protocol in the U.S. Fish and Wildlife Bald Eagle Monitoring Guidelines dated September 2006 and updated in 2007. He noted the City's Ordinance adopted in 2006 has always been 1,100.

<u>Councilmember Gunter</u> stated the nesting season is October 15th until May 15th or until the eaglets fledge. Anytime during that period if a nest is discovered or if a developer wanted to build, they can still build within that timeframe as long as they have the Eagle Management Plan and there is monitoring. He stated he needed more information.

<u>Councilmember Stout</u> noted out of the top 20 Florida cities listed in the memo provided, Cape Coral is the only one with this type of Ordinance. She stated it did not make sense to go against what the other cities have done.

<u>Mayor Coviello</u> questioned if the other cities did not need 1,100 and can go with the 660. Do they even have eagles in their cities? We are managing our nests at the 1,100 ft. to maintain the level that we have now and did not want to lose that. This Ordinance allows for building to take place in non-nesting seasons.

<u>Councilmember Cosden</u> requested to receive the Federal and State research on the scientific study for the 660 versus the 1,100.

Mr. Pederson stated the changes may have been made some time ago and did not know what scientific studies they did at the time when they adopted those regulations.

City Manager Szerlag stated if this were to be tabled, they would try to find the science involved and why the Federal Government went from 1,100 to 660 and the criteria they used. Of the top 20 cities, they would research how many actually have eagles. He would also request the Law Department to do further research on the outcome of the lawsuit with Bonita.

Councilmember Stout withdrew her motion.

<u>Councilmember Stout</u> noted more information was being requested from several Councilmembers, and it would be a good idea to ask those cities if they have eagles.

Councilmember Williams, the second, agreed.

City Attorney Menendez suggested not making a motion to table but more appropriately to continue to a date certain.

Councilmember Stout moved, seconded by Councilmember Williams to continue Ordinance 32-18 to a date certain of June 4, 2018.

City Manager Szerlag stated they would work with all sense of urgency. They could contact the other cities regarding if they have eagles, finding out more about the lawsuit with Bonita, and would make a priority with DCD to work in conjunction with Florida Fish and Wildlife to determine the science of the 1,100 and 660 feet. They would also try to find out why the State and the Federal Government reduced the radius.

Council polled as follows: Cosden, Coviello, Gunter, Stout, and Williams voted "aye." Nelson and Stokes voted "nay." Five "ayes." Two "nays." Motion carried 5-2.

<u>Councilmember Stout</u> stated she understood that the State of Colorado has a great eagle population. She wanted to know if staff would check on what their City Ordinances read.

City Manager Szerlag agreed to have that done.

INTRODUCTIONS

Ordinance 36-18 Set Public Hearing Date for June 18, 2018 WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article II, Fees, by establishing Division 9, Impact Fee Deferral Pilot Program; providing definitions; establishing a Single-Family Impact Fee Deferral Program; providing program eligibility and procedures; requiring developer agreements; requiring owner agreements; providing for expiration or extension of the Impact Fee Pilot Program. (Applicant: Brought forward by City Management.)

Assistant City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for June 18, 2018 in Council Chambers.

Housing Coordinator Yearsley stated she was available for any questions.

Ordinance 37-18 Set Public Hearing Date for June 4, 2018 WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance authorizing the Mayor to grant to Lee County Electric Cooperative, Inc., a perpetual easement for a right-of-way to be used for the construction, operation and maintenance of one or more overhead and underground electric distribution lines across property owned by the City that is in the area of the Fire Station #11 project, located at 1038 Burnt Store Road North. (Applicant: Brought forward by City Management)

Assistant City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for June 4, 2018 in Council Chambers.

Property Broker Andrews stated she was available for any questions.

UNFINISHED BUSINESS

Water Quality - Update

Public Works Director Clinghan reviewed the memo provided to Council and gave the most current update on Lake Okeechobee.

Follow Up Items Requested by Council

None

NEW BUSINESS

<u>Horizon Council Presentation</u> <u>Christopher Spiro</u> Horizon Council Outreach Committee – MOVED TO 8.H.

Resolution 115-18 Approve the funding of 23 police vehicles from undesignated reserves for the Implementation of the School Resource Officer Program; authorize the addition of 1 regular full time position in the Police Department and authorize the City Manager or designee to execute the purchase orders for said purchases; Department: Police – MOVED TO 8.G.

REPORTS OF THE MAYOR AND COUNCIL MEMBERS

<u>Councilmember Cosden</u> – Topics: Attended the MPO Executive Committee meeting; she issued a proclamation today on behalf of the Mayor for a program called the Ability Experience; Saturday she attended Fire Ops 101 in Clearwater with Councilmember Stokes.

<u>Councilmember Gunter</u> – Topics: Attended ribbon cutting for Pro Med Instruments, a world-wide distributor for medical apparatus; CCCIA Dinner; guest speaker at Everest Homeowners Association.

<u>Councilmember Nelson</u> – Topics: Provided follow-up from last week regarding the Charter Schools, Charter School Town Hall meeting tomorrow at Oasis Middle School at 6:30 p.m.; Saturday participated in Uncommon Friends Foundation High School Business Ethics Competition.

<u>Councilmember Stokes</u> – Topics: Regarding the information on eagles, he requested that the City Manager bring back information on cities and counties that have left it at 1,100. Attended Fire Ops 101 in Clearwater with Councilmember Cosden.

<u>Councilmember Williams</u> – Topics: last Friday there was a Youth Council meeting and there are 5 new members; they are waiting for applications from two other schools.

<u>Councilmember Stout</u> – Topics: Attended Law Week Luncheon; Community Prayer Breakfast; Lighthouse Awards; Spent a week in Washington where she talked with our lobbyists about pre-platted communities and flood insurance; also spoke to staff in Congressman Rooney's office.

Councilmember Carioscia - Excused

<u>Mayor Coviello</u>: Topics: Last Tuesday attended the ribbon cutting for Pro Med Instruments; CCCIA dinner meeting; on Friday he will attend the MPO meeting; Oasis High School Graduation on the 19th.

REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

City Attorney – Topic: None

<u>City Manager</u> – Topic: He requested to have a special Council meeting ½ hour before the Committee of the Whole meeting on May 22nd for introduction of the Mooring Ordinance.

Consensus agreed to hold a special meeting on 5/22/18 at 4:00 p.m. in Council Chambers to introduce the Mooring Ordinance.

<u>Councilmember Williams</u> stated there are applications from the other two schools for the Youth Council. He stated appointments will be set up for all of the Councilmembers for a ten-minute meeting and interview.

TIME AND PLACE OF FUTURE MEETINGS

A Committee of the Whole Meeting was scheduled for Tuesday, May 22, 2018 at 4:30 p.m. in Council Chambers.

A Special Council meeting was scheduled for Tuesday, May 22, 2018, at 4:00 p.m. in Council Chambers.

MOTION TO ADJOURN

There being no further business, the meeting adjourned at 8:41 p.m.

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Submitted by,

Rebecca van Deutekom, MMC City Clerk Item Number: B.(1) Meeting Date: 6/4/2018 Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 67-18 Approval of the Continuance of the Existence and Functions of the Golf Course Advisory Board, Transportation Advisory Commission, and the Cape Coral Youth Council; Department: City Clerk; Dollar Value: N/A; (Fund: N/A)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

According to the City Code Section 2-59, on or before July 1st of each even-numbered year, the City Council shall conduct an annual review of the benefits derived from the continued existence of the Golf Course Advisory Board, the Transportation Advisory Commission, and the Cape Coral Youth Council.

LEGAL REVIEW:

EXHIBITS:

Memo from the Golf Course Advisory Board Chair outlining the benefits from continued existence Memo from the Transportation Advisory Commission Chair outlining the benefits of continued existence.

Memo from the Cape Coral Youth Council Chair outlining the benefits of continued existence Resolution 67-18

PREPARED BY: Kimberly

City Clerk's

SOURCE OF ADDITIONAL INFORMATION:

Kimberly Bruns Assistant City Clerk 1-239-242-3243

ATTACHMENTS:

DescriptionTypeMemo from Golf Course Advisory Board ChairBackup MaterialMemo from Transportation Advisory CommissionBackup MaterialMemo from Cape Coral Youth Council ChairBackup MaterialResolution 67-18Resolution

CITY OF CAPE CORAL CITY CLERK'S OFFICE

TO: Mayor and City Council

FROM: Jay A. Woodall, Chairman, Golf Course Advisory Board

DATE: March 5, 2018

SUBJECT: Memo as per City Code, Section 2-59

If the only benefit of the Golf Course Advisory Board was to make the citizens of Cape Coral and the golfing public feel that they have a connection to the City Government, then it would have accomplished a major goal. However, this Board has exceeded that goal and will continue to expand its usefulness to the community and to the City Government.

The Board will continue to be a watchdog as it concerns the budget for Coral Oaks Golf Course. An example of this is that I and other members, both past and present, have spoken on a number of occasions on what was considered to be a highly inflated fee increase for the course. Another example was the stand that the Board advanced concerning outsourcing the course.

The Board also allows its members to mix with fellow golfers to listen to their questions and concerns about Coral Oaks and how the City Government makes determinations that affect the operations of the Course.

Additionally, it is a good sounding board for the Course Manager and the parent organization, notably the Parks and Recreation Department, in setting policies for the Course.

The final advantage of the Board is that it gives the Course Management another set of eyes to make certain that the course is given the proper care and nurturing that it must have to maintain its current quality. The information gleaned from Board Meetings is then imparted to members or pass holders so that all can be aware of any changes that affect them.

JW:ps

MEMORANDUM

CITY OF CAPE CORAL MAYOR AND COUNCIL OFFICE

TO:	Mayor and Council Members
FROM:	Councilmember Jessica Cosden, CTAC Chairperson 🔀
DATE:	May 16, 2018
SUBJECT:	Review of Transportation Advisory Commission

Pursuant to *City Code*. *Chapter 2 Article V Div. 1, 2-59(a), Annual Review of boards, task forces, committees and commissions,* "On or before July 1 of each even-numbered year, the City Council shall conduct an annual review of the benefits derived from the continued existence of the...Transportation Advisory Commission."

As Chair of the Transportation Advisory Commission it is my opinion that the Transportation Advisory Commission continues to be of benefit to the transportation needs of the City. In addition, vital information is provided to the Council Members serving on the Metropolitan Planning Organization.

IC/pt

CC: John Szerlag, City Manager Dolores: Menendez:, City Attorney Rebecca van Deutekom, City Clerk



YOUTH COUNCIL MEMORANDUM

TO: Mayor and City Council

FROM: Maxwell Slafer, Chairman, Cape Coral Youth Council

DATE: April 27, 2018

SUBJECT: Memo as per City Code, Section 2-59

Pursuant to City Code, Chapter 2, Article V Div. 1, 2-59(a), Annual Review of boards, task forces, committees and commissions, "On or before July 1, of each evennumbered years, the City Council shall conduct an annual review of the benefits derived from the continued existence of the Cape Coral Youth Council."

In the past year, the Cape Coral Youth Council has made substantial strides in establishing our foundation within City Government. The Youth Council has spearheaded multiple projects benefiting the well-being of our residents and youth population. These projects include a program that offers career mentoring opportunities for high schoolers through the Cape Coral Youth Center, and the creation of a partnership with Blessings in a Backpack, through which we have raised nearly \$2,500 to benefit underprivileged youth in Cape Coral.

Through our proposals to the City Council, we have raised the voice of the youth with our City in ways that was not possible before the creation of our Council. Members of our City's student population showed a surge of activism through presenting their input and supporting our recommendation to the City Council to deny changing the land use designation of the Old Golf Course.

In recent months, the Youth Council has taken internal steps to assess our role as an advisory board within the City through conducting strategic planning analysis. Since this meeting, our Council has been more successful with fulfilling our responsibility to identify issues pertinent to the business of the Cape Coral City Council. I am confident that the increase in our effectiveness of our Council will continue to increase in the future.

As Chair of the Cape Coral Youth Council, I strongly believe that the Cape Coral Youth Council continues to benefit the needs of the youth in the City. I urge the Cape Coral City Council to reaffirm their support to the Cape Coral Youth Council while conducting your annual review.

MS:bk

RESOLUTION 67 - 18

A RESOLUTION OF THE CITY OF CAPE CORAL CONTINUING THE EXISTENCE AND FUNCTIONS OF THE TRANSPORTATION ADVISORY COMMISSION, THE GOLF COURSE ADVISORY BOARD, AND THE YOUTH COUNCIL; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 2-59 of the City of Cape Coral Code of Ordinances provides that the City Council shall conduct a review of the benefits derived from the continued existence of the Transportation Advisory Commission, the Golf Course Advisory Board, and the Youth Council on or before July 1 of each even-numbered year; and

WHEREAS, the City Council has determined that there are substantial benefits derived from the continued existence of the Transportation Advisory Commission, the Golf Course Advisory Board, and the Youth Council.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The existence and functions of the Transportation Advisory Commission, the Golf Course Advisory Board, and the Youth Council shall be continued.

Section 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA STOUT

NELSON _____ STOKES _____ WILLIAMS _____ COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM CITY CLERK

APPROVED AS TO FORM:

Denes D. Menundy

DOLORES D. MENENDEZ CITY ATTORNEY res/Boards-TAC, Golf Course, Youth Council Item Number: B.(2) Meeting Date: 6/4/2018 Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 93-18 Approve the single source purchase with Trinova Inc., for the purchase and service of Ultrasonic transmitters & sensor set, parts, preventative maintenance, troubleshooting, repairs, chemical pumps, system parts, level indicators or flow meters, and remote terminal units (RTU's) from Endress + Hauser Inc., Telog Instruments, Inc. and Prominent Fluid Controls, Inc. for the Utilities Department for Fiscal Year 2018 and Fiscal Year 2019, not to exceed budgetary limits and authorize the City Manager or Designee to execute the purchase orders and Single Source. Trinova is the only authorized representative for Endress +Hauser (E+H), Prominent Fluid Control Inc and Telog Instruments Inc. products and is the only authorized service repair and warranty organization in the State of Florida; Department: Utilities; Combined Total Dollar Amount: \$354,762; (Water & Sewer Fund–FY2018 \$177,381 and FY2019 \$177,381).

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment? No
- 2. Is this a Strategic Decision?

No

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- 1. Trinova is the only authorized representative for **Endress +Hauser (E+H)**, Prominent Fluid Control Inc and Telog Instruments Inc. products and is the only authorized service repair and warranty provider in the State of Florida
- 2. Trinova, Inc. is the only authorized distributor for the following manufacturer's products: Endress +Hauser (E+H) for OEM parts, spare parts kits for pumps, flow/level meters & transmitters, pressure relief valves, gauges maintenance, software, and annual equipment calibration.; Prominent Fluid Control Inc. for chemical metering pumps; Telog Instruments Inc. for equipment bleach pumps, back pressure regulators, composite water quality samplers, data hosting service and support software.
- 3. Other products may offer the same specification, but are not direct replacements and are not acceptable for reasons of compatibility with existing system piping configurations, foundation and/or base plate height and bolt patterns, electrical control panel/system and interfacing with electronic telemetry.
- 4. Other factors for the request include: critical replacement time to maintain uninterrupted treatment plant processes, cost of spare parts for different makes/models of equipment for the same system and substantial cost

for any changes to equipment/systems requiring engineers, contractors, and possible approval from the Florida Dept. of Environmental Protection (FDEP).

- 5. The Utilities Department will continue to annually research companies, components and equipment that have the capability to meet the Utilities Department's specifications and requirements.
- 6. The purchase and repairs for Fiscal year 2018 are estimated at \$177,381 and fiscal year 2019 is estimated at \$177,381 respectively for a combined dollar value of \$354,762
- 7. This purchase request is in accordance with Section 2-144 (C) (2) (a) and 2-144 (c) (2) (b) of the City of Cape Coral Code of Ordinances which authorizes the City to award contracts without competition upon the determination of the Procurement Manager that there is only one source for the required supply, service or construction item.
- 8. Section 2-144 (c) (2) (a) states that a purchase can be categorized as a "Single Sole Purchase" when there are multiple distributors of the item, however, the manufacturer may have designated exclusive territorial sales boundaries and section 2-144 (c) (2) (b) states that a purchase can be categorized as a "Single Sole Purchase" when the purchase of an item or service results in a "best value" in that research has shown that the use of another brand or service would not be reasonable and would cause undue hardship to the city, would cause the city to incur additional expense, or would require modification to a present system or process.
- 9. The City Manager or designee shall have the authority to approve and execute any authorized contract amendment, renewals or purchase orders provided that any such renewal, amendment or purchase order does not exceed the current budget level during any one-year period.
- 10. Funding Information: Water & Sewer Fund Budgeted item in FY-2018; Budget for FY-2019 Upon approval of the City's FY-2019 budget.

LEGAL REVIEW:

Purchase Orders will be issued.

EXHIBITS:

Department Memo includes the vendor Sole Source letter Resolution 93-18

PREPARED BY:

Wanda Division- Procurement Department- Finance

SOURCE OF ADDITIONAL INFORMATION:

Jeff Pearson, Utilities Director

ATTACHMENTS:

Description

- Department Memo
- Resolution 93-18

Type Backup Material Resolution

CITY OF CAPE CORAL UTILITIES DEPARTMENT

TO: John Szerlag, City Manager Victoria Bateman, Finance Director Wanda Roop, Procurement Manager

FROM: Jeff Pearson, Utilities Director Andrew Fenske, Water Production Manager Pat Long, Water Reclamation Manager

DATE: April 10, 2018

SUBJECT: Sole Source Request for Trinova Inc.

The Water Production and Water Reclamation Divisions are requesting a combined two year annual single source approval spending authorization for purchases from Trinova Inc. totaling up to \$177,380.50 for fiscal year (FY) 2018 and \$177,380.50 for fiscal year (FY) 2019. For reference, please see the attached spreadsheet for a breakdown of the FY2018 required purchases. The FY 2019 request amount is based on staff's expectation of the need to purchase a similar amount of items as to what will be purchased in FY2018. In addition, based on previous fiscal year purchase requirements (FY2014-FY2017), as much as \$163,555.84 was needed in FY2014.

Trinova Inc. is the sole source regional dealer for Endress+Hauser (E+H), ProMinent Fluid Controls, Inc., and Telog Equipment. Trinova Inc. is the sole source provider of the following equipment:

- <u>Endress+Hauser (E+H)</u>: OEM repair parts, spare parts kits for pumps, flow/level meters & transmitters, pressure relief valves, gauges, maintenance, software, & annual equipment calibration.
- Prominent Fluid Control Inc,: Chemical metering pumps.
- <u>Telog:</u> Equipment: bleach pumps, back pressure regulators, composite samplers, data hosting service and support software

The Utilities Department has a significant amount of E+H, ProMinent, and Telog equipment installed at the treatment plants, pump stations, wells, and lift stations. When the SW and Everest Reclamation plants were refurbished/expanded and the North RO plant was constructed, an effort was made to standardize process equipment as much as possible within the Water Production and Water Reclamation Divisions in order to share resources for parts, preventive maintenance, troubleshooting, and repairs. According to E+H representatives, the City of Cape Coral has one of the largest installation bases of E+H equipment in the Southeastern United States.

John Szerlag, City Manager Sole Source Request for Trinova Inc. April 10, 2018 Page Two

Based on this significant installation base of equipment sold and serviced exclusively through Trinova Inc., we recommend continuing to purchase these items from them as they are direct replacements and are compatible with current existing installation configurations. The purchase/installation of any variation from original equipment manufacturers design would require a retrofit of additional related components to the supporting subsystems such as: piping, valves, regulators, flow patterns, line supply wiring, control, and monitor wiring. This would result in significant additional cost and unnecessary added downtime to critical components that could interrupt sewer collection and treatment, and drinking water production and distribution. Although other similar products may be offered, use of this equipment would require extensive retrofitting of the treatment systems every time a different brand was procured. Retrofitting would also require the need for engineering services and additional training requirements for operations and maintenance personnel.

In addition, the E+H products, provide the following benefits with our current industrial control systems (ICS):

- Seamless Integration with our Rockwell ICS Hardware & Software: Reduces risk, implementation time and integration costs by taking advantage of the preferred integration between E+H instruments and the Rockwell automation system. Seamless integration into industrial control systems with direct EtherNet/IP connection. Easy access to process variables, device and diagnostic data. Convenient device configuration and process optimization. Cost-effective, fast system integration due to fewer network components.
- **Modular Input/Output (I/O)**: Simple in situ electronic board replacement. Simple conversion of output protocols (Example: analog board can be exchanged to an Ethernet board).
- Verification and Diagnostics: Comprehensive diagnostic and test functions unalterably integrated in the device. Electronic modules subject to 100% traceable testing in the factory. Calibration of all Proline flowmeters on accredited systems.
- Extended Warranty: 3 year warranty offered with commissioning services. Additional 2 year warranties available for purchase at \$100 per year per instrument. Totaling a possible 5 year warranty.
- Local & On-Site Hands On Training: Factory Authorized instructors with hands on training courses. State of the art local "Process Training Units". CEU courses offered.

John Szerlag, City Manager Sole Source Request for Trinova Inc. April 10, 2018 Page Three

Trinova Inc., has consistently provided excellent customer service and support and staff believes the products/services from Trinova Inc. are fair and reasonably priced. Based on the reasons provided, we are requesting a two year annual single source approval spending authorization of purchases from Trinova Inc. totaling up to \$177,380.50 for fiscal year (FY) 2018 and \$177,380.50 for fiscal year (FY) 2019.

Funds are budgeted and available for this request in 631399/646102/652116/664101. All appropriate procurement procedures will be followed to purchase equipment and services. Thank you for your consideration of our request.

Fiscal Year 2018 Planned Spending for the Utilities Department (Water Production & Water Reclamation Divisions)				
PO Number	Req. Number		Manufacturer	
45525		\$ 7,806.80	E+H	E+H Repair parts for flow meters
45909	S. Part	\$ 1,625.60	Prominent	Prominent Pump
46033		\$ 1,796.23	E+H	E+H Equipment calibration
46470		\$ 9,070.00	E+H	E+H Software upgrade to transmitters
46525	de la presente	\$ 1,474.09	E+H	E+H Simubox Ultrasonic
46741	and the second	\$ 1,000.00	E+H	Repair parts
47045		\$ 3,906.72	E+H	E+H Flow meters
47045		\$ 15,760.22	E+H	E+H Promass Flow meter (Resolution #167-17)
47126	All and a second	\$ 6,871.31	E+H	Repair parts for Psonic flow meters
44072		\$ 1,290.86	E+H	E+H Repair parts for level transmitter
44408	1.1	\$ 368.61	E+H	E+H repair parts for pressure switch
	48990	\$ 8,579.88	Prominent	Prominent chemical pump/motor repair parts
	48990	\$ 18,745.20	Prominent	Prominent mechanical chemical diaphragm pumps
	48990	\$ 20,411.75	Prominent	Prominent mechanical chemical diaphragm pumps (Resolution #167-17)
	50012	\$ 7,360.40	E+H	E+H Audit & Analysis of installed instrumentation
	50646	\$ 8,886.90	Prominent	Prominent Chemical Pumps
	50579	\$ 6,369.34	E+H	E+H Repair parts for flow meters
	50579	\$ 13,056.59	E+H	E+H Prosonic Flow transmitter (Resolution #167-17)
	Quote	\$ 28,000.00	E+H	E+H Replacement electronic circuit boards for existing South RO Plant flow meters
Total PO's		\$162,380.50		Note: Includes \$49,228.56 in items already approved under Resolution #167-17
Miscella		\$ 15,000.00	All and the second	For required unforeseen repairs, replacements, service
Grand	Total	\$177,380.50	State and	

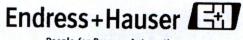
Spending Authorization Request Worksheet - Trinova

As of 4/10/18

Fiscal Year 2018 Planned Spending for the Utilities Department (Water Production & Water Reclamation Divisions)				
PO Number	Req. Number	Amount	Manufacturer	
45525		\$ 7,806.80	E+H	E+H Repair parts for flow meters
45909		\$ 1,625.60	Prominent	Prominent Pump
46033		\$ 1,796.23	E+H	E+H Equipment calibration
46470		\$ 9,070.00	E+H	E+H Software upgrade to transmitters
46525	1.2	\$ 1,474.09	E+H	E+H Simubox Ultrasonic
46741		\$ 1,000.00	E+H	Repair parts
47045		\$ 3,906.72	E+H	E+H Flow meters
47045		\$ 15,760.22	E+H	E+H Promass Flow meter (Resolution #167-17)
47126	1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 -	\$ 6,871.31	E+H	Repair parts for Psonic flow meters
44072	and the second	\$ 1,290.86	E+H	E+H Repair parts for level transmitter
44408		\$ 368.61	E+H	E+H repair parts for pressure switch
1.1	48990	\$ 8,579.88	Prominent	Prominent chemical pump/motor repair parts
1	48990	\$ 18,745.20	Prominent	Prominent mechanical chemical diaphragm pumps
-	48990	\$ 20,411.75	Prominent	Prominent mechanical chemical diaphragm pumps (Resolution #167-17)
Sec. 1	50012	\$ 7,360.40	E+H	E+H Audit & Analysis of installed instrumentation
See See	50646	\$ 8,886.90	Prominent	Prominent Chemical Pumps
11.00	50579	\$ 6,369.34	E+H	E+H Repair parts for flow meters
2.5	50579	\$ 13,056.59	E+H	E+H Prosonic Flow transmitter (Resolution #167-17)
	Quote	\$ 28,000.00	E+H	E+H Replacement electronic circuit boards for existing South RO Plant flow meters
Total PO's	& Req.	\$162,380.50		Note: Includes \$49,228.56 in items already approved under Resolution #167-17
Miscella	neous	\$ 15,000.00		For required unforeseen repairs, replacements, service
Grand	Total	\$177,380.50		

Spending Authorization Request Worksheet - Trinova

As of 4/10/18



People for Process Automation

February 7, 2018

Subject: Sole Source Representative

Attn: Richard Jones; Maintenance Supervisor; City of Cape Coral

<u>Endress+Hauser</u>, is the sole manufacture of its products. <u>TriNova- Florida</u>, is the sole or exclusive representative for <u>Endress+Hauser</u> within the state of Florida for the purchase of new products, OEM repair parts, repairs and maintenance.

No other representative can sell products, repair/replacement parts, maintenance, repair/replacement services, field services and technical support for Endress+Hauser.

Your contact for Endress+Hauser is:

Jack Robbins **TriNova-Florida** 2401 Drane Field Road Lakeland, FL 33811 Tel: 800-881-1487 Fax: 863-687-0077 **Email: <u>FLSales@trinovainc.com</u>**

If you have questions regarding this issue, please contact Mike Stajduhar at 800-881-1487.

Sincerely,

Monese Das

Denise Gay Inside Sales Engineer

Endress+Hauser, Inc. Southeast Regional Center 13900-A South Lakes Drive Charlotte, NC 28273 704-969-7988 Direct 704-969-7999 Fax 704-957-7138 Mobile denise.gay@us.endress.com www.us.endress.com

13900-A South Lakes Dr. • Charlotte, NC 28273 • Phone 704-504-8896 • Fax 704-527-5005



People for Process Automation

January 12, 2018

Michael Makedonski City of Cape Coral, Florida 1200 Kismet Pkwy West Cape Coral, Florida 33993

Subject: Sole Source Representative

<u>Endress+Hauser</u>, is the sole manufacture of its products. <u>TriNova Inc. formerly AMJ</u>, is the sole or exclusive representative for <u>Endress+Hauser</u> within the state of Florida for the purchase of new products, OEM repair parts, repairs, maintenance and software reflashing.

No other representative can sell products, repair/replacement parts, maintenance, repair/replacement services, field services and technical support for <u>Endress+Hauser</u>.

Your contact for Endress+Hauser is:

TriNova-Florida 4110 South Florida Ave, Suite 200 Lakeland, FL 33813 Tel: 800-881-1487 Fax: 863-687-0077 Email: FLSales@trinovainc.com

If you have questions regarding this issue, please contact Korey Toepel at 800-881-1487.

Sincerely,

Chieve English

Chris English East Area Vice President Endress + Hauser 13900-A South Lakes Drive Charlotte, NC 28277 Tel (704) 969-7974 Fax (317) 535-2293 Cell (704) 906-4120 Chris.english@us.endress.com www.us.endress.com

13900-A South Lakes Dr. • Charlotte, NC 28273 • Phone 704-504-8896 • Fax 704-527-5005

ProMinent Fluid Controls, Inc.

February 7, 2018

Mr. Richard Jones Maintenance Supervisor City of Cape Coral 2100 Kismet Parkway Cape Coral, FL 33993

Email: riones@capecoral.net

Dear Mr. Jones:

ProMinent Fluid Controls, Inc. has appointed TriNova Inc. – Florida, formerly AMJ, as our authorized representative for the municipal market. This includes direct sales to local, county and state governments and sales to contractors and/or system integrators on municipal projects, for the State of Florida, excluding the panhandle.

TriNova Inc. - Florida's corporate office is as follows:

TriNova Inc. - Florida 2401 Drane Field Road Lakeland, FL 33811

 Tel:
 863-682-4500

 Fax:
 863-687-0077

 Email:
 FLSales@trinovainc.com

Very truly yours, PROMINENT FLUID CONTROLS, INC. allis, ju Anthony J. Karalis Regional Sales Manager

cc: E. Fernandez, TriNova D. Ramsey, TriNova Jw

Cape Coral City of - 2-7-2018

RIDC Park West 136 Industry Drive Telephone 412/787-2484 Telefax 412/787-0704

Manufacturers of electronically controlled chemical metaning purpus





Telog instruments, inc.

830 Canning Parkway, Victor, NY 14564-8940, U.S.A. Phone: 585-742-3000 · Fax: 585-742-3006 E-Mail: TelogSales@telog.com

February 26, 2018

Mr. Jeff Walter Cape Coral 1740 Everest Pkwy Cape Coral, FL 333904

Dear Mr. Walter:

This is to confirm that Telog Instruments, Inc. is the sole source supplier of Telog data recorder, cables, Data Hosting Service and Support Software. These products are designed and manufactured exclusively by Telog Instruments, Inc. at our facility in Victor, NY.

Telog recorders are sole source products available only through Telog Instruments, Inc. and, in the State of Florida, through our local sales representative, TriNova, 2401 Drane Field Road, Lakeland FL 33811 (863) 682-4500. Telog Instruments in Victor NY is the only authorized service center for repairs and service on Telog recorders.

Thank you for your interest in Telog Instruments Inc. Should any questions regarding our products and/or services remain, please feel free to call, write or email. We look forward to serving your instrumentation needs.

Sincerely,

Muhili aller

Michele Allen, Inside Sales Manager Telog Instruments, Inc. A TRIMBLE COMPANY

RESOLUTION 93 – 18

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE SINGLE SOURCE PURCHASE OF ULTRASONIC TRANSMITTER AND SENSOR SETS, PARTS, PREVENTATIVE MAINTENANCE, TROUBLESHOOTING, AND REPAIRS, CHEMICAL PUMPS, SYSTEM PARTS, LEVEL INDICATORS OR FLOW METERS, AND REMOTE TERMINAL UNITS FROM TRINOVA, INC., AS THE EXCLUSIVE AUTHORIZED REPRESENTATIVE FOR ENDRESS & HAUSER, INC., TELOG INSTRUMENTS, INC., AND PROMINENT FLUID CONTROLS, INC.; PROVIDING FOR THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO EXECUTE THE DOCUMENTS RELATED TO THE SINGLE SOURCE PURCHASE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Water Production and Water Reclamation Divisions currently utilize Endress & Hauser, Inc., Telog Instruments, Inc., and Prominent Fluid Controls, Inc. brand ultrasonic transmitter and sensor sets, chemical pumps, level indicators or flow meters, and remote terminal units for the water production and water reclamation processes; and

WHEREAS, maintaining uniformity of equipment within the Reverse Osmosis and Water Reclamation Facilities, pump stations, wells, and lift stations has proven cost-effective by minimizing the need for retrofitting and engineering services; and

WHEREAS, Section 2-144(c) of the City of Cape Coral Code of Ordinances authorizes the City to award contracts without competition upon the determination of the Procurement Manager that there is only one source for the required supply, service or construction item; and

WHEREAS, the Procurement Manager has determined that the purchase of Endress & Hauser, Inc., Telog Instruments, Inc., and Prominent Fluid Controls, Inc. brand equipment results in a "best value," in that research has shown that the use of another brand or service would not be reasonable and would cause undue hardship to the city, would cause the city to incur additional expense, or would require modification to a present system or process; and

WHEREAS, the Procurement Manager has determined that Endress & Hauser, Inc., Telog Instruments, Inc., and Prominent Fluid Controls, Inc. brand equipment is available only through Trinova, Inc., as their exclusive authorized representative in the state of Florida; and

WHEREAS, the City Manager recommends the approval of the single source purchase of ultrasonic transmitter and sensor sets, parts, preventative maintenance, troubleshooting, repairs, chemical pumps, system parts, level indicators or flow meters, and remote terminal units from Trinova, Inc., as the exclusive authorized representative for Endress & Hauser, Inc., Telog Instruments, Inc., and Prominent Fluid Controls, Inc., for Fiscal Years 2018 and 2019 for an estimated combined total amount of \$354,762, or an amount not to exceed budgetary limits.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves the single source purchase of ultrasonic transmitter and sensor sets, parts, preventative maintenance, troubleshooting, repairs, chemical pumps, system parts, level indicators or flow meters, and remote terminal units from Trinova, Inc., as the exclusive authorized representative for Endress & Hauser, Inc., Telog Instruments, Inc., and Prominent Fluid Controls, Inc., for Fiscal Years 2018 and 2019 for an estimated combined total amount of \$354,762, or an amount not to exceed budgetary limits.

Section 2. The City Council hereby authorizes the City Manager or the City Manager's designee to execute the documents related to the single source purchase.

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	 NELSON	
GUNTER	 STOKES	
CARIOSCIA	 WILLIAMS	
STOUT	 COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM, CITY CLERK

APPROVED AS TO FORM:

Dolones Dolores D. Menendy

CITY ATTORNEY res/Single Source-Trinova

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Item Number: B.(3) Meeting Date: 6/4/2018 Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 95-18 Award ITB-PW18-43/AP, for the Purchase of Aggregate Materials, to the following contractors: Florida Dirt Source, LLC.; Grippo Pavement Maintenance, Inc.; and Stan Weeks and Associates, Inc., as the lowest responsive, responsible bidder for their respective awarded items, at the unit price bid, for an estimated annual dollar value of \$100,000 not to exceed budgetary limits and authorize the City Manager or Designee to execute the contracts, amendments, and any future renewals; Departments: Public Works; Estimated Annual Dollar Value: \$100,000; (Stormwater Fund)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment? No
- 2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

 Public Works Maintenance Division is responsible for maintaining all stormwater and roadway systems throughout the City. Maintenance crews use different sized crushed stone and limestone materials daily when repairing/replacing stormwater pipes, stormwater inlets and restoring roadways. Because of the daily need for these supplies, the Maintenance Division maintains a supply of these aggregates in stock for immediate use.

No

- 2. On March 14, 2018, an Invitation to Bid #ITB-PW18-43/AP was issued for the purchase of aggregate materials. It comprised of a total of eight (8) items in which prices were sought for both delivery and pick-up.
- 3. On April 12, 2018, three (3) bids were received, from the following vendors, in alphabetical order: Florida Dirt Source, LLC., of Fort Myers, Florida; Grippo Pavement Maintenance, Inc., of Lehigh Acres, Florida; and Stan Weeks and Associates Inc., of Fort Pierce, Florida.
- 4. After Evaluation, the Public Works Department recommends awarding to all three bidders for the items to which they are the lowest responsive, responsible bidder meeting the requirements and specifications outlined in the bid document.
- 5. If delivery is not made within 5 business days after placement of an order, the City reserves

the right to purchase the items from the second lowest responsive, responsible bidder for the specific item.

- 6. If approved, the term of the contract(s) will be for one (1) year with two (2) additional one (1) year optional renewal periods.
- 7. The City Manager or designee shall have the authority to approve and execute any authorized contract amendments, renewal or purchase orders provided that any such renewals, amendment or purchase order does not exceed the current budgetary limits during any one-year period.
- 8. This is a budgeted item.
- Funding Information: 4410014.662601 (Stormwater Capital Project Fund/Improvement Other than Bldgs); 440018.652125 (Stormwater Operations Drain Pipe Repl/Sod,Seed,Sand, Soil); 440023.652125 (Stormwater Operations Swales/Sod, Seed, Sand, Soil)

LEGAL REVIEW:

Contracts reviewed by Legal

EXHIBITS:

Department Recommendation Resolution 95-18 Bid Matrix – ITB-PW18-43/AP

PREPARED BY:

Wanda Division- Procurement Depar

Department-Finance

SOURCE OF ADDITIONAL INFORMATION:

Paul Clinghan, Public Works Director

ATTACHMENTS:

Description

- Department Recommendation
- Resolution 95-18
- Bid Matrix ITB-PW18-43/AP

Туре

Backup Material Resolution Backup Material

MEMORANDUM

CITY OF CAPE CORAL PUBLIC WORKS DEPARTMENT

TO:	John Szerlag, City Manager Victoria Bateman, Financial Services Director Wanda Roop, Procurement Manager
FROM:	Paul Clinghan, Public Works Director PRC Gary Gasperini, Public Works Maintenance Division Manager
DATE:	April 23, 2018
SUBJECT:	Contract for Purchase and Delivery of Aggregate Materials

Background

The Public Works Maintenance Division is responsible for maintaining all stormwater and roadway systems throughout the City. Maintenance crews use different sized crushed stone and limestone materials daily when repairing/replacing stormwater pipes, stormwater inlets and restoring roadways. Because of the daily need for these supplies, the Maintenance Division maintains a supply of these aggregates in stock for immediate use. Without a ready supply of aggregate materials, the Maintenance Division would experience delays in completing repairs, possibly resulting in increased costs, extended road closures or flooding problems. In Fiscal Year 2017, this division spent \$56,331.22 on aggregate materials. Moving forward, the current estimated annual expenditure for aggregate is \$65,000.

Recommendation

The Procurement Division received three (3) qualified bids for aggregate products from GRIPPO Pavement Maintenance, Inc., Florida Dirt Source, LLC, and Stan Weeks and Associates, Inc. The Public Works Maintenance Division recommends approval of three (3) individual one-year contracts, including two (2) one-year renewals, with GRIPPO Pavement Maintenance, Inc. as the primary supplier of #57 stone, #89 stone, and limestone base, Florida Dirt Source, LLC as the primary supplier of rubble, and Stan Weeks and Associates, Inc. as the primary supplier of 3/8" screenings and sand. This recommendation, in total, would not exceed \$100,000 per annum or budgetary limits, and authorizes the City Manager or designee to execute the contracts and purchase orders. Should any supplier listed herein fail to deliver per the terms of the contract, the Public Works Maintenance Division reserves the right to purchase from the next lowest responsible bidder.

Fund Availability

These purchases are funded in Stormwater accounts: 4410014.662601, 440018.652125, and 440023.652125

PC/GG: dk (purchaseanddeliveryofaggregatematerials)

C: Tristan Reiber, Accounts Coordinator

RESOLUTION 95 – 18

A RESOLUTION OF THE CITY OF CAPE CORAL AWARDING A BID THE PURCHASE OF AGGREGATE MATERIALS TO FLORIDA DIRT SOURCE, LLC, GRIPPO PAVEMENT MAINTENANCE, INC., AND STAN WEEKS AND ASSOCIATES, INC.; AUTHORIZING THE RENEWAL OF THE CONTRACTS FOR UP TO TWO ADDITIONAL ONE-YEAR PERIODS; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT DOCUMENTS AND ANY FUTURE RENEWALS BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 14, 2018, INVITATION TO BID (ITB) #PW18-43/AP was issued for the purchase of aggregate materials to be used for maintaining stormwater and roadway systems throughout the City; and

WHEREAS, three (3) bids were submitted and opened on April 12, 2018, from Florida Dirt Source, LLC, Grippo Pavement Maintenance, Inc., and Stan Weeks and Associates, Inc.; and

WHEREAS, the Public Works Department recommends the award of the bid to all three bidders based on the lowest qualified responsible and responsive bidder for each item, meeting the requirements and specifications set forth in the invitation to bid, at the unit price bid, in the estimated amount of \$100,000 annually; and

WHEREAS, if delivery is not made within five business days after placement of an order, the City reserves the right to purchase the item from the second lowest responsive, responsible bidder for the specific item; and

WHEREAS, the term of the contracts is for one (1) year, with an option to renew for two (2) additional one-year periods; and

WHEREAS, the City Council desires to award the bid for the Purchase of Aggregate Materials to Florida Dirt Source, LLC, Grippo Pavement Maintenance, Inc., and Stan Weeks and Associates, Inc., and to approve the renewal of the contract for up to two additional one-year periods, if the City Manager deems the renewal to be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby awards the bid for the Purchase of Aggregate Materials to Florida Dirt Source, LLC, Grippo Pavement Maintenance, Inc., and Stan Weeks and Associates, Inc., based on the lowest qualified responsible and responsive bidder for each item, in the estimated amount of \$100,000 annually, not to exceed budgetary limits.

Section 2. The City Council hereby approves the contracts between the City of Cape Coral and Florida Dirt Source, LLC, Grippo Pavement Maintenance, Inc., and Stan Weeks and Associates, Inc., for the Purchase of Aggregate Materials, and authorizes the City Manager or his designee to execute the Contracts, attached hereto as Exhibits 1, 2, and 3, respectively.

Section 3. The City Council hereby authorizes the City Manager to approve the renewal of the contracts for up to two additional one-year periods and authorizes the City Manager or his designee to execute any future contract documents associated with such renewals, should the City Manager deem it to be in the best interest of the City.

Section 4. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

STOUT COSDEN	COVIELLO GUNTER CARIOSCIA STOUT		NELSON STOKES WILLIAMS COSDEN	
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ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____ 2018.

REBECCA VAN DEUTEKOM, CITY CLERK

APPROVED AS TO FORM:

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) Hore Menerole DOLORES D. MENENDEZ CITY ATTORNEY res/Bid Award-Florida Dirt

CITY OF CAPE CORAL PURCHASE OF AGGREGATE MATERIALS FOR DELIVERY OR PICK-UP CONTRACT - ITB # PW18-43/AP

This Agreement, made and entered into this ______ day of _____, 2018 by and between the CITY OF CAPE CORAL, FLORIDA, hereinafter called "CITY", and <u>FLORIDA DIRT SOURCE, LLC.</u>, located at <u>6061 Hamilton Dr, Fort Myers, FL 33905</u>, hereinafter called "CONTRACTOR".

WITNESSETH: that for and in consideration of the payments and agreements mentioned hereinafter:

- 1. The CONTRACTOR will supply <u>Purchase of Aggregate Materials</u> in accordance with the Contract Documents.
- 2. The CONTRACTOR agrees to supply Aggregate Materials, at the per ton price outlined in Exhibit A, attached hereto and made a part thereof.
- 3. The term of this Contract shall be for one <u>1 year</u> from effective date. The contract may be renewed for <u>2 (two)</u> additional <u>1 (one)</u> year periods, upon mutual agreement by the CITY and the Contractor.
- 4. <u>Delivery</u>: All orders placed shall be delivered within the City of Cape Coral as per the location listed on the Invitation to Bid documents and shall occur between the hours of 7:30am and 2:30 pm.
- 5. <u>Pick-up:</u> The CITY may decide to pick-up materials from the CONTRACTOR. Arrangements for pick-up date and time will be made by mutual agreement with the CONTRACTOR.
- 6. The CONTRACTOR agrees to supply the product, within 5 (five) business days, as described in the bid documents. If delivery is not made within 5 (five) business days after the placement of an order, the CITY reserves the right to utilize other available contracts.
- 7. This Contract **may be terminated** for convenience by ether party upon thirty (30) days prior written notice to either party. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.

Page 1 of 5

Exhibit 1

CITY OF CAPE CORAL PURCHASE OF AGGREGATE MATERIALS FOR DELIVERY OR PICK-UP CONTRACT - ITB # PW18-43/AP

- 8. <u>Annual Appropriation Contingency</u>: Pursuant to FL Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City if the City Council reduces or eliminates appropriations.
- 9. The Term "Contract Documents" means and includes the following:
 - A. Bid Specifications prepared and issued by the CITY;
 - B. Submitted Response of CONTRACTOR to the CITY, except when it conflicts with any other contractual provision; and
 - C. This Contract as well as all other documents attached hereto and/or referenced herein.

This agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.

- 10. All time limits listed in the contract documents are of the essence in the performance of this agreement.
- 11. <u>RECORD KEEPING:</u> The awarded bidder shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years, and ten (10) years on capital projects, after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes

Records of the Contractor's personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Contractor shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Contractor shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Contractor on the Project. Contractor shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

- 12. <u>PUBLIC RECORDS</u>: Pursuant to Florida Statute §287.058 (1) (c), this contract may be unilaterally cancelled by the City if the Contractor, refuses to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this contract, unless the records are exempt from disclosure.
- 13. <u>Assignment</u>: This agreement may not be assigned except at the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 14. <u>Disclosure</u>: The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the Contractor to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bonafide employee working solely for the Contractor, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the agreement.
- 15. <u>Unauthorized Aliens:</u> The employment of unauthorized aliens by any CONTRACTOR is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the CONTRACTOR knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-Contractors used by the CONTRACTOR as well.
- 16. <u>Administration of Agreement</u>: The <u>Public Works Director</u>, or their representative, shall administer this agreement for the CITY.
- 17. <u>Governing Law:</u> The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, each party shall be responsible to pay for its own reasonable costs and attorney fees.
- 18. <u>Amendments:</u> No Amendments or variation of the terms or conditions of this agreement shall be valid unless in writing and signed by the parties.

- 19. <u>Payments:</u> CITY shall make payment and CONTRACTOR shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, CITY notifies CONTRACTOR in writing of its objection to the amount of such invoice, together with CITY'S determination of the proper amount of such invoice. CITY shall pay any undisputed portion of such invoice within such thirty (30) day period. If CITY shall give such notice to the CONTRACTOR within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, CITY shall promptly pay the CONTRACTOR the amount so determined, less any amounts previously paid by CITY with respect to such invoice. In the event it is determined that CITY has overpaid such invoice, the CONTRACTOR shall promptly refund to the CITY the amount of such overpayment.
- 20. <u>Indemnity:</u> To the extent permitted by law (F.S. 768.28), the CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or Intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.
- 21. <u>Invalid Provision</u>: The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 22. <u>Insurance:</u> Without limiting its liability, the CONTRACTOR shall be required to procure and maintain at its own expense during the life of the Contract, insurance of the types and in the minimum amounts as specified in the Contract Documents which will protect the CONTRACTOR, from claims which may arise out of or result from the CONTRACTOR'S execution of the project, whether such execution by himself or by any sub-consultant, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Any questions regarding the insurance requirements should be directed to the Risk Manager, (239) 574-0529. The CITY shall be listed as additional insured on General Liability policies.
- 23. <u>Entire Agreement:</u> This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials this Agreement on the date last signed as below written.

(SEAL)
ATTEST:

CITY:

City of Cape Coral, Florida

Rebecca van Deutekom

City Clerk

Signature:	
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Typed Name: A. John Szerlag

Title: City Manager

Date:

LEGAL REVIEW FOR CITY

Dolores Menendez

City Attorney

CONTRACTOR:

Florida Dirt Source, LLC.

Signature: 120USSIEAU Typed Name: 652ARD

WITNESS FOR CONTRACTOR:

Signature: BENDIT Typed Name:

NNER Title:

EXHIBIT A FLORIDA DIRT SOURCE, LLC

Cape Coral

Aggregate Materials

ITB-PW18-43/AP

OFFICIAL BID FORM City of Cape Coral Page 2 of 4

BID NUMBER: ITB-PW18-43/AP BID DATE: April 12, 2018

BID TITLE: Purchase of Aggregate Materials

DELIVERED:

MATERIAL DESCRIPTION	UNIT PRICE 1-25 tons	UNIT PRICE >25 TONS	
#89 Stone	\$ 25.24	\$ 25.24	per ton delivered
#57 Stone	\$ 25.24	\$ 25.24	per ton delivered
Limestone Base	\$ 19,47	\$ 19.47	per ton delivered
3/8" Screenings	\$ 19.99	\$ 19.99	per ton delivered
Sand	\$ 27,08	\$ 27.08	per ton delivered
Rubble – 4-6"	\$ 38.43	\$ 38,43	per ton delivered
Rubble – 6-12"	\$ 38,43	\$ 38.43	per ton delivered
Rubble – 12-24"	\$ 43,43	\$ 43.43	per ton delivered

PICKED-UP:

MATERIAL DESCRIPTION	UNIT PRICE 1-25 tons	UNIT PRICE >25 TONS	
#89 Stone	\$ 17.75	\$ 17.75	per ton picked-up
#57 Stone	\$.17.75	\$ 17.75	per ton picked-up
Limestone Base	\$ 11,98	\$ 11.98	per ton picked-up
3/8" Screenings	\$ 12.50	\$ 12.50	per ton picked-up
Sand	\$ 14.45	\$ 14.45	per ton picked-up
Rubble – 4-6"	\$ 28.00	\$ 28.00	per ton picked-up
Rubble - 6-12"	\$ 28.00	\$ 28.00	per ton picked-up
Rubble – 12-24"	\$ 33.00	\$ 33.00	per ton picked-up

AWARD: The City Council reserves the right to waive minor variations to specifications, informalities, irregularities and technicalities in any bids; to reject any and all bids in whole or in part with or without cause, and/or to accept bids that in its judgment will be in the best interest of the City. Following complete investigation of each bid received by the City, the City Council reserves the right to make awards on a multiple, lump sum, or individual item basis or in combination as shall best serve the interest of the City. The City reserves the right to negotiate additional related services.

This Agreement, made and entered into this ______ day of ______, 2018 by and between the CITY OF CAPE CORAL, FLORIDA, hereinafter called "CITY", and <u>GRIPPO PAVEMENT</u> <u>MAINTENANCE INC.</u>, located at <u>2600 40TH Street West, Lehigh Acres, FL 33971</u>, hereinafter called "CONTRACTOR".

WITNESSETH: that for and in consideration of the payments and agreements mentioned hereinafter:

- 1. The CONTRACTOR will supply <u>Purchase of Aggregate Materials</u> in accordance with the Contract Documents.
- 2. The CONTRACTOR agrees to supply Aggregate Materials, at the per ton price outlined in Exhibit A, attached hereto and made a part thereof.
- 3. The term of this Contract shall be for one <u>1 year</u> from effective date. The contract may be renewed for <u>2 (two)</u> additional <u>1 (one)</u> year periods, upon mutual agreement by the CITY and the Contractor.
- 4. <u>Delivery</u>: All orders placed shall be delivered within the City of Cape Coral as per the location listed on the Invitation to Bid documents and shall occur between the hours of 7:30am and 2:30 pm.
- 5. <u>Pick-up:</u> The CITY may decide to pick-up materials from the CONTRACTOR. Arrangements for pick-up date and time will be made by mutual agreement with the CONTRACTOR.
- 6. The CONTRACTOR agrees to supply the product, within 5 (five) business days, as described in the bid documents. If delivery is not made within 5 (five) business days after the placement of an order, the CITY reserves the right to utilize other available contracts.
- 7. This Contract **may be terminated** for convenience by ether party upon thirty (30) days prior written notice to either party. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.

Page 1 of 5

Exhibit 2

- 8. <u>Annual Appropriation Contingency</u>: Pursuant to FL Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City if the City Council reduces or eliminates appropriations.
- 9. The Term "Contract Documents" means and includes the following:
 - A. Bid Specifications prepared and issued by the CITY;
 - B. Submitted Response of CONTRACTOR to the CITY, except when it conflicts with any other contractual provision; and
 - C. This Contract as well as all other documents attached hereto and/or referenced herein.

This agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.

- 10. All time limits listed in the contract documents are of the essence in the performance of this agreement.
- 11. <u>RECORD KEEPING:</u> The awarded bidder shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years, and ten (10) years on capital projects, after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes

Records of the Contractor's personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Contractor shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Contractor shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Contractor on the Project. Contractor shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

- 12. <u>PUBLIC RECORDS</u>: Pursuant to Florida Statute §287.058 (1) (c), this contract may be unilaterally cancelled by the City if the Contractor, refuses to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this contract, unless the records are exempt from disclosure.
- 13. <u>Assignment</u>: This agreement may not be assigned except at the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 14. <u>Disclosure</u>: The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the Contractor to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bonafide employee working solely for the Contractor, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the agreement.
- 15. <u>Unauthorized Aliens:</u> The employment of unauthorized aliens by any CONTRACTOR is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the CONTRACTOR knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-Contractors used by the CONTRACTOR as well.
- 16. <u>Administration of Agreement</u>: The <u>Public Works Director</u>, or their representative, shall administer this agreement for the CITY.
- 17. <u>Governing Law:</u> The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, each party shall be responsible to pay for its own reasonable costs and attorney fees.
- 18. <u>Amendments:</u> No Amendments or variation of the terms or conditions of this agreement shall be valid unless in writing and signed by the parties.

- 19. <u>Payments:</u> CITY shall make payment and CONTRACTOR shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, CITY notifies CONTRACTOR in writing of its objection to the amount of such invoice, together with CITY'S determination of the proper amount of such invoice. CITY shall pay any undisputed portion of such invoice within such thirty (30) day period. If CITY shall give such notice to the CONTRACTOR within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, CITY shall promptly pay the CONTRACTOR the amount so determined, less any amounts previously paid by CITY with respect to such invoice. In the event it is determined that CITY has overpaid such invoice, the CONTRACTOR shall promptly refund to the CITY the amount of such overpayment.
- 20. <u>Indemnity:</u> To the extent permitted by law (F.S. 768.28), the CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or Intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.
- 21. <u>Invalid Provision:</u> The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 22. <u>Insurance:</u> Without limiting its liability, the CONTRACTOR shall be required to procure and maintain at its own expense during the life of the Contract, insurance of the types and in the minimum amounts as specified in the Contract Documents which will protect the CONTRACTOR, from claims which may arise out of or result from the CONTRACTOR'S execution of the project, whether such execution by himself or by any sub-consultant, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Any questions regarding the insurance requirements should be directed to the Risk Manager, (239) 574-0529. The CITY shall be listed as additional insured on General Liability policies.
- 23. <u>Entire Agreement:</u> This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal



IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials this Agreement on the date last signed as below written.

(SEAL) ATTEST:

CITY:

City of Cape Coral, Florida

Signature:_____

Rebecca van Deutekom

City Clerk

Typed Name: A. John Szerlag

Title: City Manager

Date:_____

LEGAL REVIEW FOR CITY

City Attorney

WITNESS FOR CONTRACTOR:

Signature: April Howell

CONTRACTOR:
GRippo Pavement Maintenance, INC
Signature: Christien Ceippo
Typed Name: MRISTINE M. GRUppo
Title: Vice PRESideNT

EXHIBIT A GRIPPO PAVEMENT MAINTENANCE, INC.



Accregate Materials

OFFICIAL BID FORM City of Cape Coral

ITB-PW18-43/AP

Page 2 of 4

BID NUMBER: ITB-PW18-43/AP BID DATE: April 12, 2018

BID TITLE: Purchase of Aggregate Materials

DELIVERED:

MATERIAL DESCRIPTION		NIT PRICE	NIT PRICE	
#89 Stone	\$	21.45	\$ 21.45	per ton delivered
#57 Stone	\$	24.00	\$ 24.00	per ton delivered
Limestone Base	\$	18.25	\$ 18.25	per ton delivered
3/8" Screenings	\$	18.20	\$ 18.20	per ton delivered
Sand	\$	22.20	\$ 22.20	per ton delivered
Rubble – 4-6"	\$	43.45	\$ 43.45	per ton delivered
Rubble – 6-12"	\$	43.45	\$ 43.45	per ton delivered
Rubble - 12-24"	\$	64.95	\$ 64.95	per ton delivered

PICKED-UP:

MATERIAL DESCRIPTION	NIT PRICE	10000	NIT PRICE	
#89 Stone	\$ 15.25	\$	15.25	per ton picked-up
#57 Stone	\$ 16.25	\$	16.25	per ton picked-up
Limestone Base	\$ 10.49	\$	10.49	per ton picked-up
3/8" Screenings	\$ 11.00	\$	11.00	per ton picked-up
Sand	\$ 13.20	\$	13.20	per ton picked-up
Rubble – 4-6"	\$ 32.95	\$	32.95	per ton picked-up
Rubble - 6-12"	\$ 32.95	\$	32.95	per ton picked-up
Rubble - 12-24"	\$ 49,95	\$	49.95	per ton picked-up

AWARD: The City Council reserves the right to waive minor variations to specifications, informalities, irregularities and technicalities in any bids; to reject any and all bids in whole or in part with or without cause, and/or to accept bids that in its judgment will be in the best interest of the City. Following complete investigation of each bid received by the City, the City Council reserves the right to make awards on a multiple, lump sum, or individual item basis or in combination as shall best serve the interest of the City. The City reserves the right to negotiate additional related services.

This Agreement, made and entered into this ______ day of _____, 2018 by and between the CITY OF CAPE CORAL, FLORIDA, hereinafter called "CITY", and <u>STAN WEEKS AND</u> <u>ASSOCIATES, INC.,</u> located at <u>2700 South Header Canal Road, Fort Pierce, FL 34945</u>, hereinafter called "CONTRACTOR".

WITNESSETH: that for and in consideration of the payments and agreements mentioned hereinafter:

- 1. The CONTRACTOR will supply <u>Purchase of Aggregate Materials</u> in accordance with the Contract Documents.
- 2. The CONTRACTOR agrees to supply Aggregate Materials, at the per ton price outlined in Exhibit A, attached hereto and made a part thereof.
- 3. The term of this Contract shall be for one <u>1 year</u> from effective date. The contract may be renewed for <u>2 (two)</u> additional <u>1 (one)</u> year periods, upon mutual agreement by the CITY and the Contractor.
- 4. <u>Delivery</u>: All orders placed shall be delivered within the City of Cape Coral as per the location listed on the Invitation to Bid documents and shall occur between the hours of 7:30am and 2:30 pm.
- 5. <u>Pick-up:</u> The CITY may decide to pick-up materials from the CONTRACTOR. Arrangements for pick-up date and time will be made by mutual agreement with the CONTRACTOR.
- 6. The CONTRACTOR agrees to supply the product, within 5 (five) business days, as described in the bid documents. If delivery is not made within 5 (five) business days after the placement of an order, the CITY reserves the right to utilize other available contracts.
- 7. This Contract **may be terminated** for convenience by ether party upon thirty (30) days prior written notice to either party. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.

Page 1 of 5

Exhibit 3

- 8. <u>Annual Appropriation Contingency</u>: Pursuant to FL Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City if the City Council reduces or eliminates appropriations.
- 9. The Term "Contract Documents" means and includes the following:
 - A. Bid Specifications prepared and issued by the CITY;
 - B. Submitted Response of CONTRACTOR to the CITY, except when it conflicts with any other contractual provision; and
 - C. This Contract as well as all other documents attached hereto and/or referenced herein.

This agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.

- 10. All time limits listed in the contract documents are of the essence in the performance of this agreement.
- 11. <u>RECORD KEEPING:</u> The awarded bidder shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years, and ten (10) years on capital projects, after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes

Records of the Contractor's personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Contractor shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Contractor shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Contractor on the Project. Contractor shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

- 12. <u>PUBLIC RECORDS</u>: Pursuant to Florida Statute §287.058 (1) (c), this contract may be unilaterally cancelled by the City if the Contractor, refuses to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this contract, unless the records are exempt from disclosure.
- 13. <u>Assignment</u>: This agreement may not be assigned except at the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 14. <u>Disclosure</u>: The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the Contractor to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bonafide employee working solely for the Contractor, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the agreement.
- 15. <u>Unauthorized Aliens:</u> The employment of unauthorized aliens by any CONTRACTOR is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the CONTRACTOR knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-Contractors used by the CONTRACTOR as well.
- 16. <u>Administration of Agreement</u>: The <u>Public Works Director</u>, or their representative, shall administer this agreement for the CITY.
- 17. <u>Governing Law:</u> The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, each party shall be responsible to pay for its own reasonable costs and attorney fees.
- 18. <u>Amendments:</u> No Amendments or variation of the terms or conditions of this agreement shall be valid unless in writing and signed by the parties.

- 19. <u>Payments:</u> CITY shall make payment and CONTRACTOR shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, CITY notifies CONTRACTOR in writing of its objection to the amount of such invoice, together with CITY'S determination of the proper amount of such invoice. CITY shall pay any undisputed portion of such invoice within such thirty (30) day period. If CITY shall give such notice to the CONTRACTOR within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, CITY shall promptly pay the CONTRACTOR the amount so determined, less any amounts previously paid by CITY with respect to such invoice. In the event it is determined that CITY has overpaid such invoice, the CONTRACTOR shall promptly refund to the CITY the amount of such overpayment.
- 20. <u>Indemnity:</u> To the extent permitted by law (F.S. 768.28), the CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or Intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.
- 21. <u>Invalid Provision</u>: The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 22. <u>Insurance:</u> Without limiting its liability, the CONTRACTOR shall be required to procure and maintain at its own expense during the life of the Contract, insurance of the types and in the minimum amounts as specified in the Contract Documents which will protect the CONTRACTOR, from claims which may arise out of or result from the CONTRACTOR'S execution of the project, whether such execution by himself or by any sub-consultant, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Any questions regarding the insurance requirements should be directed to the Risk Manager, (239) 574-0529. The CITY shall be listed as additional insured on General Liability policies.
- 23. <u>Entire Agreement:</u> This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials this Agreement on the date last signed as below written.

(SEAL) ATTEST:

CITY:

City of Cape Coral, Florida

Signature

Rebecca van Deutekom

City Clerk

Typed Name: A. John Szerlag

Title: City Manager

Date:

LEGAL REVIEW FOR CITY

City Attorney

CONTRACTOR:

WITNESS FOR CONTRACTOR:

Signature: Typed Name:

gnature: 📿	1. Wel	
ped Name:	Jim	Weeks
tle: Pr	esiden	.+

EXHIBIT A STAN WEEKS AND ASSOCIATES, INC.



Aggregate Materials

ITB-PW18-43/AP

OFFICIAL BID FORM City of Cape Coral Page 2 of 4

BID NUMBER: ITB-PW18-43/AP BID DATE: April 12, 2018

BID TITLE: Purchase of Aggregate Materials

Period Line of Rep

DELIVERED:

MATERIAL DESCRIPTION	UNIT PRICE 1-25 tons	UNIT PRICE >25 TONS	
#89 Stone	\$ No Bid	\$ No Bid	per ton delivered
#57 Stone	\$ No Bid	\$ No Bid	per ton delivered
Limestone Base	\$ No Bid	\$ No Bid	per ton delivered
3/8" Screenings	\$ 15.00	\$ 11.94	per ton delivered
Sand	\$ 14.00	\$ 11.40	per ton delivered
Rubble – 4-6"	\$ No Bid	\$ No Bid	per ton delivered
Rubble – 6-12"	\$ No Bid	\$ No Bid	per ton delivered
Rubble – 12-24"	\$ No Bid	\$ No Bid	per ton delivered

PICKED-UP:

MATERIAL DESCRIPTION	UNIT PRICE 1-25 tons	UNIT PRICE >25 TONS	
#89 Stone	\$ No Bid	\$ No Bid	per ton picked-up
#57 Stone	\$ No Bid	\$ No Bid	per ton picked-up
Limestone Base	\$ No Bid	\$ No Bid	per ton picked-up
3/8" Screenings	\$ 4.50	\$ 4.50	per ton picked-up
Sand	\$ 4.00	\$ 4.00	per ton picked-up
Rubble – 4-6"	\$ No Bid	\$ No Bid	per ton picked-up
Rubble – 6-12"	\$ No Bid	\$ No Bid	per ton picked-up
Rubble - 12-24"	\$ No Bid	\$ No Bid	per ton picked-up

AWARD: The City Council reserves the right to waive minor variations to specifications, informalities, irregularities and technicalities in any bids; to reject any and all bids in whole or in part with or without cause, and/or to accept bids that in its judgment will be in the best interest of the City. Following complete investigation of each bid received by the City, the City Council reserves the right to make awards on a multiple, lump sum, or individual item basis or in combination as shall best serve the interest of the City. The City reserves the right to negotiate additional related services.

OFFICIAL BID TABULATION PURCHASE OF AGGREGATE MATERIALS ITB-PW18-43/AP

City of Cape Coral Purchase of Aggregate Material ITB-PW18-43/AP

Bid open date: April 12, 2018

	Vendor Name							
		rt Source, LLC Dr, Fort Myers FL	Stan Weeks 2700 S Header Fort Pierce, FL	,				
MATERIAL DESCRIPTION								
DELIVERED:	UNIT PRICE 1-25 TONS	UNIT PRICE >25 TONS	UNIT PRI 1-25 TOM		UNIT PRICE >25 TONS	UNIT PRICE 1-25 TONS	UNIT PRICE >25 TONS	
#89 Stone	\$ 25.24	\$ 25.24	<mark>\$ 21.</mark> 4	5 \$	21.45	NO BID	NO BID	
#57 Stone	\$ 25.24	\$ 25.24	<mark>\$ 24.0</mark>	0 \$	24.00	NO BID	NO BID	
Limestone Base	\$ 19.47	\$ 19.47	<mark>\$ 18.</mark> 2		18.25	NO BID	NO BID	
3/8" Screenings	\$ 19.99	\$ 19.99	\$ 18.2		18.20	<mark>\$ 15.00</mark>	<u>\$ 11.94</u>	
Sand	\$ 27.08	\$ 27.08	\$ 22.2	20 \$	22.20	<mark>\$ 14.00</mark>	\$ 11.40	
Rubble 4-6"	<mark>\$ 38.43</mark>	\$ 38.43	*	*		NO BID	NO BID	
Rubble 6-12"	\$ 38.43	\$ 38.43	\$ 43.4	5 \$	43.45	NO BID	NO BID	
Rubble 12-24"	\$ 43.43	\$ 43.43	\$ 64.9	5 \$	64.95	NO BID	NO BID	
PICKED UP:								
#89 Stone	\$ 17.75	\$ 17.75	<mark>\$ 15.2</mark>	5 \$	15.25	NO BID	NO BID	
#57 Stone	\$ 17.75	\$ 17.75	<mark>\$ 16.2</mark>		16.25	NO BID	NO BID	
Limestone Base	\$ 11.98	\$ 11.98	<mark>\$ 10.</mark> 4		10.49	NO BID	NO BID	
3/8" Screenings	\$ 12.50	\$ 12.50	\$ 11.0		11.00	<mark>\$ 4.50</mark>		
Sand	\$ 14.45	\$ 14.45	\$ 13.2		13.20	\$ 4.00	\$ 4.00	
Rubble 4-6"	\$ 28.00	\$ 28.00	*	*		NO BID	NO BID	
Rubble 6-12"	\$ 28.00	\$ 28.00	\$ 32.9		32.95	NO BID	NO BID	
Rubble 12-24"	<mark>\$ 33.00</mark>	\$ 33.00	\$ 49.9	5 \$	49.95	NO BID	NO BID	

*Per the vendor they can provide a 3-6" rip rap <u>NOT</u> 4-6" for \$43.45 delivered/\$32.95 picked-up

Minimum of 20 ton for delivery

Item Number: B.(4) Meeting Date: 6/4/2018 Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 96-18 Award Bid # ITB-CW18-18/GL, for Citywide Pest Control Services, to Hulett Environmental Services Inc., as the lowest responsive responsible bidder to provide Pest Control Services for the City of Cape Coral and Charter School Facilities at the unit prices bid for an estimated annual amount of \$18,000 annually, City cost is \$13,188 (74%) and the Charter School is \$4,608 (26%) respectively, not to exceed budgetary limits and authorize the City Manager or Designee to execute the contract, amendments, and any future renewals. The term of the contract is for five (5) years with three (3) additional one (1) year renewal periods – the term of the contract dollar value, if monies appropriated in the subsequent fiscal years, is a total of \$90,000; Department: Public Works; Estimated Annual Dollar Value: \$18,000; {total contract \$90,000}; (General Fund)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- 1. Pest Control Services are provided to all City facilities to maintain a safe, clean and sanitary conditions for staff and visitors.
- 2. The City of Cape Coral issued bid #18-18/GL on February 15, 2018 for Citywide Pest Control Services for both the City of Cape Coral and the City of Cape Coral Charter School Authority.
- 3. Bids were opened on April 10, 2018, with two bids being submitted; Hulett Environmental Services, Inc. of Ft. Myers FL and Your Bugman Inc. of Port Charlotte FL.
- 4. After evaluation, Staff recommends awarding the services to Hulett Environmental Services, Inc. as the lowest responsible, responsive bidder meeting all the terms and conditions of the specifications.
- 5. If approved, the subsequent contract will be for a period of five year with three optional one year renewals.

- 6. This is a budgeted item. The annual cost for the City is \$13,188 (74%) and the Charter School is \$4,608 (26%) respectively for a total amount of \$18,000 annually. The term of the contract is for five (5) years with three (3) additional one (1) year renewal periods. The dollar value of the initial term of the contract, if monies appropriated in the subsequent fiscal years, is a total of \$90,000.
- 7. Funding Information: The monthly charges are billed back to each Department/Division utilizing Facilities work order system

LEGAL REVIEW:

Contract reviewed by Legal

EXHIBITS:

Department Recommendation Resolution 96-18 Bid Matrix ITB-CW18-18/GL

PREPARED BY:

Wanda Roop Division- Procurement Department- Finance

SOURCE OF ADDITIONAL INFORMATION:

Paul Clinghan, Public Works Director

ATTACHMENTS:

Description

- Department Recommendation
- Resolution 96-18
- Bid Matrix ITB-CW18-18/GL

Туре

Backup Material Resolution Backup Material

MEMORANDUM

CITY OF CAPE CORAL PUBLIC WORKS DEPARTMENT

TO:	John Szerlag, City Manager Victoria Bateman, Financial Services Director Wanda Roop, Procurement Manager
FROM:	Paul Clinghan, Public Works Director <i>PRC</i> Mark Ridenour, Facilities/Projects Manager MP_
DATE:	April 20, 2018
SUBJECT:	Citywide Pest Control Service Contract Recommendation

Background

Pest control services are provided for all City facilities and are necessary to maintain safe, clean and sanitary conditions for staff and visitors. Citywide Pest Control Services was recently bid with two qualified bidders submitting cost proposals. They were Hulett Environmental Services, Inc. and Your Bugman, Inc.

Recommendation

Public Works Department, Facilities/Projects Management Division is recommending award of a multi-year contract to Hulett Environmental, Inc. Hulett has provided this service for the City in the past and performed well. Their current contract cost is very competitive and we find them to be the most responsive, responsible bidder.

Staff recommends award of an initial award of five (5) years with the possibility of three (3) one (1) year renewals.

Estimated annual cost for pest control services for all City facilities is estimated at \$18,000.00. Cost may vary slightly contingent upon any unforeseen conditions or special treatments required.

Fund Availability

The monthly charges are billed to each Division through the Facility Dude Work Order System.

Business Unit/Account String: 500221.646103

Amount: \$18,000.00

PC/MR:ha

C: Gina Lanzilotta, Senior Buyer Kim Rotondo, Accounts Coordinator

RESOLUTION 96 - 18

A RESOLUTION OF THE CITY OF CAPE CORAL, FLORIDA, AWARDING A BID FOR CITYWIDE PEST CONTROL SERVICES TO HULETT ENVIRONMENTAL SERVICES, INC.; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT AND SUBSEQUENT RENEWALS BY THE CITY MANAGER; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 15, 2018, INVITATION TO BID (ITB) #CW18-18/GL was issued for Citywide Pest Control Services; and

WHEREAS, the two (2) bids submitted were publicly opened on April 10, 2018, from Hulett Environmental Services, Inc., and Your Bugman, Inc.; and

WHEREAS, the term of the contract is for five (5) years with three (3) optional one-year renewals; and

WHEREAS, the City Manager recommends the award to Hulett Environmental Services, Inc., as the lowest qualified responsible and responsive bidder meeting the requirements and specifications set forth in the invitation to bid, in the estimated annual amount of \$18,000; and

WHEREAS, the City Council desires to award the bid for Citywide Pest Control Services to Hulett Environmental Services, Inc., and to authorize the City Manager to approve the renewal of the contract for up to three (3) additional one-year periods, if the City Manager deems the renewals to be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City hereby awards the bid for Citywide Pest Control Services to Hulett Environmental Services, Inc., in the estimated annual amount of \$18,000.

Section 2. The City Council hereby authorizes the City Manager to enter into a contract between the City of Cape Coral and Hulett Environmental Services, Inc., for Citywide Pest Control Services and authorizes the City Manager to execute the contract. A copy of the contract is attached hereto as Exhibit 1.

Section 3. The City Council hereby authorizes the City Manager to approve the renewal of the contract for three (3) additional one-year periods and authorizes the City Manager to execute any future contract documents associated with such renewal(s), should the City Manager deem it to be in the best interest of the City.

Section 4. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	 NELSON	
GUNTER	 STOKES	
CARIOSCIA	 WILLIAMS	
STOUT	 COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____ 2018.

REBECCA VAN DEUTEKOM, CITY CLERK

APPROVED AS TO FORM:

enerde (loras DOLORES D. MENENDEZ CITY ATTORNEY res/Bid Award-Hulett Environmental Services

CITY OF CAPE CORAL CITYWIDE PEST CONTROL SERVICES CONTRACT # ITB-CW18-18/GL Page 1 of 6

THIS CONTRACT is made this ______ day of ______,2018 by and between the CITY OF CAPE CORAL, FLORIDA, hereinafter called "CITY", and HULETT ENVIRONMENTAL SERVICES INC, located at 7670 Okeechobee Blvd., West Palm Beach, FL 33411 doing business as a corporation, hereinafter called "CONTRACTOR".

WITNESSETH: For and in consideration of the payments and agreements mentioned hereinafter:

- The CONTRACTOR will provide Pest Control Services in accordance with the Contract Documents.
- The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the services described in the Contract Documents. Time is of the essence in the performance of this Contract.
- 3. The CONTRACTOR will commence work as required by the CONTRACT DOCUMENTS within <u>10</u> calendar days after the receipt of the written Notice to Proceed.
- 4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS for the following prices listed on the CONTRACTOR'S Official Bid Proposal Form during the term of the contract more, specifically Exhibit A hereto and made a part hereof.
- 5. The **term** of the contract to be awarded as a result of this bid shall be for <u>5</u> years starting on <u>July 1, 2018</u> and ending on <u>June 30, 2023</u> may be **renewed** for <u>3</u> additional, one-year periods upon mutual agreement by the City and the Contractor.
- 6. <u>Termination</u>: This Contract may be terminated by the City for its convenience upon thirty (30) days prior written notice to the Contractor. In the event of termination, the Contractor shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the City after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.
- 7. <u>Annual Appropriation Contingency:</u> The City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City if the City Council reduces or eliminates appropriations.
- 8. The Term "Contract Documents" shall include this Contract, addenda, Contractor's Bid except when it conflicts with any other contractual provision, the Notice to Proceed, the Bonds, and the Bid Package prepared and issued by the City. In the event of conflict between any provision of any other document referenced herein as part of the contract and this Contract, the terms of this Contract shall control.

CITY OF CAPE CORAL CITYWIDE PEST CONTROL SERVICES CONTRACT # ITB-CW18-18/GL Page 2 of 6

- 9. <u>Entire Agreement:</u> This agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal. In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.
- 10. <u>Assignment:</u> This Contract may not be assigned except with the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 11. <u>Disclosure:</u> The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the Contract.
- 12. <u>Administration of Contract</u>: The City Manager or his representative, shall administer this Contract for the CITY.
- 13. <u>Governing Law:</u> The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, each party shall be responsible to pay for its own reasonable costs and attorney fees.
- 14. <u>Amendments:</u> No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
- 15 <u>Payments:</u> The CITY will accept invoices for payment only after an entire district has been mowed in full and inspected by the CITY. No partial invoicing or payment will be permitted for any partially mowed Districts. District 1 may be invoiced at completion of each subsection.

CITY shall make payment and CONTRACTOR shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, CITY notifies CONTRACTOR in writing of its objection to the amount of such invoice, together with CITY'S determination of the proper amount of such invoice. CITY shall pay any undisputed portion of such invoice within such thirty (30) day period.

If CITY shall give such notice to the CONTRACTOR within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, CITY shall promptly pay the CONTRACTOR the amount so determined, less any amounts previously paid by CITY with respect to such invoice. In the event it is determined that CITY has overpaid such invoice, the CONTRACTOR shall promptly refund to the CITY the amount of such overpayment.

CITY OF CAPE CORAL CITYWIDE PEST CONTROL SERVICES CONTRACT # ITB-CW18-18/GL Page 3 of 6

16. <u>Contractor's Representations:</u> In order to induce CITY to enter into the Contract CONTRACTOR makes the following representations:

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

CONTRACTOR has made or caused to be made examinations, investigations and tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract.

Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

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

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

- 17 <u>Indemnity:</u> To the extent permitted by law (F.S. 768.28), the CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.
- 18. <u>Damage Liability:</u> The awarded CONTRACTOR shall be responsible for all claims filed for damage to private property, windows, screen enclosures, real estate signs, etc. Additionally, the CONTRACTOR shall be responsible for damage to all public property or utility property, fire hydrants, catch basins, guy wires telephone pedestals, etc. Copies of all damage claims shall be submitted to the Procurement Division.
- 19. <u>Invalid Provision:</u> The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

CITY OF CAPE CORAL CITYWIDE PEST CONTROL SERVICES CONTRACT # ITB-CW18-18/GL Page 4 of 6

20 <u>Record Keeping:</u> The awarded bidder shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determine the record-keeping method in the event of non-conformity. If a Public Construction Bond is required records shall be maintained for ten

(10) years, after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

Records of the Contractor's personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Contractor shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Contractor shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Contractor on the Project. Contractor shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

21. Public Records

Pursuant to Florida Statute §287.058 (1) (c), this contract may be unilaterally cancelled by the City if the Contractor, refuses to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this contract, unless the records are exempt from disclosure.

- 22. <u>Insurance:</u> Without limiting its liability under this contract, CONTRACTOR shall procure and continuously maintain, without interruption, at its own expense the following insurance (limits and specifications) during the life of this Contract:
 - a. Worker's Compensation Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws. The policy must include Employer's Liability with a minimum limit of \$1,000,000.00 for each accident.
 - b. Comprehensive General Liability coverage shall have minimum limits of \$1,000,000.00 per occurrence, combined single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations; Independent Contractors and Products and/or Completed Operations; Broad Form Property Damage; and Contractual Liability Endorsement.
 - c. Business Vehicular Liability coverage shall have minimum limits of \$1,000,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability, and Property Damage Liability. This shall include Owned Vehicles, Hired and non-Owned Vehicles and Employees Non-Ownership.
 - d. The City shall be listed as an Additional Insured on all policies. In the event the insurance coverage expires prior to completion of the project, a renewal certificate shall be issued 30 days prior to said expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy.

CITY OF CAPE CORAL CITYWIDE PEST CONTROL SERVICES CONTRACT # ITB-CW18-18/GL Page 5 of 6

- e. Unless otherwise specified, it shall be the responsibility of the proposing firm to insure that all subcontractors comply with the same insurance requirements herein. All certificates of insurance must be on file with and approved by the City before the commencement of work activities. Waivers of subrogation shall also be provided upon approval of the applicable insurers.
- f. The proposing firm shall "flow down" the requirements of this provision to all sub-contractors.
- g. The limits of insurance required above must be retained throughout the term of the contract. The proposing firm must notify the City immediately if any of the required coverage limits are reduced due to claim activity or for any other reason.

23. Background Investigations

In order to comply with the requirements of the Jessica Lunsford Act., Level 2 Screening is required of all subcontracted employees who meet one or more of the following requirements; 1) contractor's employees are at the school when students are present or, 2) contractor's employees have direct contact with students or, 3) contractor's employees have access to or control of school funds.

Level 2 screening includes fingerprinting, statewide criminal and juvenile justice records checks through the Florida Department of Law Enforcement (FDLE) and Federal Criminal records checks through the Federal Bureau of Investigation (FBI). Any certificate issued by a Law Enforcement Agency must clearly indicate that the employee has successfully passed a Level 2 Screening background investigation. All costs associated with level 2 screening shall be borne by the vendor or subcontractor.

Upon completion of Level 2 Screening, any results indicating an employee has been found guilty of, regardless of adjudication or have entered a plea of nolo contendere or guilty to, any crime in Florida Statue 435.04(2), or any other comparable statute of another state, or of the federal government, including, but not limited to, crimes involving moral turpitude, multiple felonies, or crimes against children, shall not be permitted to perform work for the Charter School Authority, on the Charter School Campus.

The results of such shall be provided to the City of Cape Coral and the Charter School Administrator or his designee for approval prior to the employee being assigned to the Charter School campus. Furthermore, the Charter School Administrator or his designee has the right, at his sole discretion, to reject any employee deemed incompetent, careless, insubordinate, or in any way objectionable, or any personnel whose actions may be contrary to the public interest or inconsistent with the best interests of the Charter School Authority. In such a case it shall be the responsibility of the contractor, at no additional cost to the Charter School Authority or the City of Cape Coral, to provide a suitable replacement and documentation of Level 2 Screening for that individual.

Failure to complete Level 2 Screening shall be considered a material breach of Contractor's duties and responsibilities entitling the Charter School Authority to terminate any business relationship with the vendor or Contractor immediately. In addition, all vendors and contractors will be required to indemnify and hold harmless the Charter School Authority, its officers, agents, and employees from any liability in the form of physical injury, death, or property damage resulting from your failure to comply with the requirements of the Jessica Lunsford Act.

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CITY OF CAPE CORAL CITYWIDE PEST CONTROL SERVICES CONTRACT # ITB-CW18-18/GL Page 6 of 6

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials this Contract in <u>one</u> counterpart which shall be deemed an original on the date last signed as below written.

(SEAL) ATTEST:

CITY:

CITY OF CAPE CORAL

Rebecca van Deutekom

City Clerk

John Szerlag

City Manager

Date

CONTRACTOR:

Envisonmental Services -Company Signature FURRWS Name Title i) 2018 Date

LEGAL REVIEW:

A Dolores Menendez City Attorney

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CITY OF CAPE CORAL OFFICIAL BID PROPOSAL

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Please state any deviations below:

Any costs associated with a lift rental for spider control, bee control, etc... will be an extra line item charge to the City of Cape Coral, or the City of Cape Coral will provide a lift as needed. Vehicle treatments for any target pests are tent fumigation only.

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EXHIBIT A PRICE SHEET- 8 PAGES OFFICIAL BID PROPOSAL

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LOCATION		ADDRESS	SQUARE FOOTAGE	CONTACT	CONTACT PHONE #	MONTHLY	FREQUENCY
Aquatics - Yacht Club Complex	Pool Bath House	Driftwood Pkwy	1818	Barbara Dickinson	239-574- 0806	\$5.00	MONTHLY
Art Studio	Building #1- Gallery	4533 Coronado Pkwy	5328	Samantha Wilkinson	239-242- 3800	\$8.00	MONTHLY
Art Studio	Building #2- Admin	4537 Coronado Pkwy	8652	Samantha Wilkinson	239-242- 3800	\$13.00	MONTHLY
BMX Park	Buildings	1410 SW 6th Pl	800	Art Avellino	239-242- 3488	\$5.00	MONTHLY
Camelot Park		1718 SW 52nd Ter	1400	Mike Webster	239-574- 0846	\$5.00	MONTHLY
Chester Street Resource Center	Building/Bay	4817 Chester St	6789	Martha LaForest	239-574- 0685	\$11.00	MONTHLY
Chiquita Lock	Building	5808 Cape Harbor Dr	144	Rich Gainly	239-574- 0809	\$5.00	MONTHLY
City Centrum Trailer 2	Trailer	1020 Cultural Park Blvd	1440	Hope Albury	239-574- 0471	\$5.00	MONTHLY
City Centrum Trailer 3	Trailer	1020 Cultural Park Blvd	1440	Hope Albury	239-574- 0471	\$5.00	MONTHLY
City Centrum Trailer 15	Trailer	1020 Cultural Park Blvd	2880	Hope Albury	239-574- 0471	\$5.00	MONTHLY
City Hall	Main Building	1015 Cultural Park Blvd	79376	Hope Albury	239-574- 0471	\$120.00	MONTHLY
City Hall Council Bldg			13961	Hope Albury	239-574- 0471	\$21.00	MONTHLY
Coral Oaks Clubhouse	Building Maintenance	1800 NW 28th Ave	13754	Sharon Smith	239-573- 3103	\$21.00	MONTHLY
Coral Oaks Greens	Building, Hole #1 Bldg, Hole #10 Bldg	1810 NW 28th Ave	6548	Sharon Smith	239-573- 3103	\$10.00	MONTHLY
Emergency Operations Center	Building	1115 SE 9th Ave	12000	Matthew Marshall	239-242- 3614	\$18.00	MONTHLY
Facility Management	Main Building, Locksmith Building, Electrical Building	1105 SE 9th Ave	5616	Hope Albury	239-574- 0472	\$9.00	MONTHLY

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LOCATION		ADDRESS	SQUARE FOOTAGE	CONTACT	CONTACT PHONE #	MONTHLY	FREQUENCY
Fire Hazmat Storage	Building (Everest Pkwy)	2531 SE 17th Ave	800	Matthew Marshall	239-242- 3614	\$5.00	MONTHLY
Fire Station #1	Building	4610 Cornado Pkwy	8925	Matthew Marshall	239-242- 3614	\$14.00	MONTHLY
Fire Station #2	Building	701 Nicholas Pkwy	6674	Matthew Marshall	239-242- 3614	\$11.00	MONTHLY
Fire Station #3	Building	1627 Everest Pkwy	9625	Matthew Marshall	239-242- 3614	\$15.00	MONTHLY
Fire Station #4	Building	2007 Santa Barbara Blvd	10736	Matthew Marshall	239-242- 3614	\$17.00	MONTHLY
Fire Station #5	Building	1029 Diplomat Pkwy	6593	Matthew Marshall	239-242- 3614	\$10.00	MONTHLY
Fire Station #6	Building	4540 Chiquita Blvd	6593	Matthew Marshall	239-242- 3614	\$10.00	MONTHLY
Fire Station #7	Building	3942 Burnt Store Rd N	5528	Matthew Marshall	239-242- 3614	\$9.00	MONTHLY
Fire Station #8	Building	707 SW 1st St	12195	Matthew Marshall	239-242- 3614	\$19.00	MONTHLY
Fire Station #9	Building	4107 Pelican Blvd	8925	Matthew Marshall	239-242- 3614	\$14.00	MONTHLY
Fire Station #10	House	3623 Gator Circle W	2500	Matthew Marshall	239-242- 3614	\$5.00	MONTHLY
Fire Station #11	Building	1038 Burnt Store Road	9058	Matthew Marshall	239-242- 3615	\$14.00	MONTHLY
Fire Training Duplex	Duplex	265 & 267 SW 5th St	1848	Matthew Marshall	239-242- 3614	\$5.00	MONTHLY
Fleet Administration	Building	2216 NE 11th Ave	1250	Tracy Robertson	239-574- 0779	\$5.00	MONTHLY
Fleet Repair Garage	Building	2503 SE 17th Ave	8682	Tracy Robertson	239-574- 0779	\$14.00	MONTHLY
Fleet Small Engine/Weld Shop	Building	Everest Pkwy	2975	Tracy Robertson	239-574- 0779	\$5.00	MONTHLY
Four Freedoms Park	Building	4818 Tarpon Ct	5870	Myri Del Leon	239-574- 0805	\$9.00	MONTHLY
Jaycee Park	Park Buildings	4125 S 20th Pkwy	1200	Mike Webster	239-574- 0846	\$5.00	MONTHLY
Joe Stonis Park	Park Buildings	3444 Ceitus Pkwy	1700	Mike Webster	239-574- 0846	\$5.00	MONTHLY

OFFICIAL BID PROPOSAL PAGE 3 of 9

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OFFICIAL BID PROPOSAL PAGE 4 of 9

LOCATION		ADDRESS	SQUARE FOOTAGE	CONTACT	CONTACT PHONE #	MONTHLY	FREQUENCY
Lafayette Building	Building	1231 Lafayette St	1275	Hope Albury	239-574- 0471	\$5.00	MONTHLY
Lake Argosy	House	1011 NW 27th St	2951	Hope Albury	239-574- 0471	\$5.00	MONTHLY
Lake Kennedy Senior Center	Building	400 Santa Barbara Blvd	9120	Kathryn Sayers	239-242- 3972	\$14.00	MONTHLY
Multi Sports Complex	Park Buildings	1410 Sports Blvd	4848	Toby Sheaf	239-707- 6590	\$8.00	MONTHLY
Nicholas Annex	Building	815 Nicholas Pkwy	54299	Hope Albury	239-574- 0471	\$82.00	MONTHLY
NW Softball Complex	Park Buildings	1030 NW 18th Pl	1400	Toby Sheaf	239-707- 6590	\$5.00	MONTHLY
Parks Maintenance	Building & Bay	2543 SE 17th Ave	7000	Mike Webster	239-574- 0846	\$11.00	MONTHLY
Parks Nursery	Building	3106 SW 20th Ave	1008	Mike Webster	239-574- 0846	\$5.00	MONTHLY
Parks House (Kayak)	House	418 SW 3rd PI	2192	Dawn Andrews	239-574- 0735	\$5.00	MONTHLY
Paul Sanborn Park	Park Buildings	2310 SE 3rd St	128	Mike Webster	239-574- 0846	\$5.00	MONTHLY
Pelican Soccer Complex	Park Buildings	4020 SW 2nd Ct	1500	Mike Webster	239-574- 0846	\$5.00	MONTHLY
Pelican Baseball	Building	4128 Pelican Blvd.	1980	Mike Webster	239-574- 0847	\$5.00	
Verdow Baseball	Building	801 SE 27th St.	1600	Mike Webster	239-574- 0848	\$5.00	MONTHLY
Police Department	Building	1100 Cultural Park Blvd	100755	Martha LaForest	239-574- 0685	\$152.00	MONTHLY
RO Plant North	Buildings	1200 W Kismet Pkwy	44577	Amanda Novosel	239-242- 3415	\$67.00	MONTHLY
RO Plant SW	Buildings	3300 SW 20th Ave	21400	Mike Kayatta	239-574- 0865	\$33.00	MONTHLY
Rosen Park Docks/Ramp	Park Buildings	2414 SE 15th Ter	1700	Rich Gainly	239-574- 0809	\$5.00	MONTHLY
Rotary Park	Park Buildings	5505 Rose Garden Rd	2712	Katie Locklin	239-549- 4606.	\$5.00	MONTHLY
Rotino Senior Center	Building	5819 Driftwood Pkwy	7920	Barbara Dickinson	239-574- 0806	\$12.00	MONTHLY

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LOCATION		ADDRESS	SQUARE FOOTAGE	CONTACT	CONTACT PHONE #	MONTHLY	FREQUENCY
Services/Stormwater Everest	Buildings	2535 SE 17th Ave	2679	Patty Brown	239-574- 0760	\$5.00	MONTHLY
Sign Shop - Transportation	Building	2511A SE 17th Ave	9600	Charles Kruvelis	239-574- 0739	\$15.00	MONTHLY
Stormwater Operations	Building	2541 SE 17th Ave	2700	Patty Brown	239-574- 0760	\$5.00	MONTHLY
Special Populations Center	Buildings	410 Santa Barbara Blvd	7916	Sara Sansone	239-574- 0574	\$12.00	MONTHLY
Sun Splash Family Waterpark	Buildings	500 W Lake Kennedy Dr	9077	Sandra Greiner	239-242- 3985	\$14.00	MONTHLY
Utilities Collection & Distribution	Buildings	1720 Everest Pkwy	2800	Lori Metcalf	239-574- 0860	\$5.00	MONTHLY
Utilities Warehouse Everest	Building	2515 SE 17th Ave	2975	Lori Metcalf	239-574- 0860	\$5.00	MONTHLY
Water Reclamation Everest	Building	1740 Everest Pkwy	43000	Matthew Astorino	239-574- 0872	\$65.00	MONTHLY
Water Reclamation Everest Plant		1820 Everest Pkwy	4000	Matthew Astorino	239-574- 0872	\$6.00	MONTHLY
Water Reclamation Pump Stations	Palm Tree Pump Station	4003 Palm Tree Blvd	1890	Matthew Astorino	239-574- 0872	\$5.00	MONTHLY
Water Reclamation Pump Stations	Van Loon Pump Station	2321 N Hancock Bridge Pkwy	560	Matthew Astorino	239-574- 0872	\$5.00	MONTHLY
Water Reclamation	Building	3310 SW 20th Ave	6800	Matthew Astorino	239-574- 0872	\$11.00	MONTHLY
Yacht Basin	Harbormaster Bldg	5817 Driftwood Pkwy	2016	Rich Gainly	239-574- 0809	\$5.00	MONTHLY
Yacht Club	Main Building	5819 Driftwood Pkwy	12980	Barbara Dickinson	239-574- 0806	\$20.00	MONTHLY
Yacht Club	Large Pavilion	5819 Driftwood Pkwy	5225	Barbara Dickinson	239-574- 0806	\$8.00	MONTHLY
Youth Center	Building	315 SW 2nd Ave	10927	Mark Cagle	239-242- 3950	\$17.00	MONTHLY
Youth Center - Eagle Skate Park	Trailer	315 SW 2nd Ave	1440	Mark Cagle	239-242- 3950	\$5.00	MONTHLY

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LOCATION	ADDRESS	SQUARE FOOTAGE	CONTACT	CONTACT PHONE #	MONTHLY	MONTHLY
CHARTER						
Christa McAuliffe Elementary	2817 SW 3rd	48500	Vic Rachoza	239-834- 7513	\$73.00	
Oasis Elementary School	3415 Oasis Blvd	56000	Paul Pescatrice	239-699- 4178	\$84.00	MONTHLY
Oasis High School and Gymnasium	3519 Oasis Blvd	82000	Paul Pescatrice	239-699- 4178	\$123.00	MONTHLY
Oasis Middle School and Gymnasium	3507 Oasis Blvd	69000	Paul Pescatrice	239-699- 4178	\$104.00	MONTHLY

OFFICIAL BID PROPOSAL PAGE 6 of 9

Company Name: Hulett Environmental Services, Inc.

arn

Signature of

endor

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OFFICIAL BID PROPOSAL PAGE 7 of 9

ADDITIONAL SERVICE, IF REQUIRED

SERVICE	UNIT OF MEASURE	RATE PER VISIT
BEE EXTERMINATION		
Ground Meter Boxes, Single box per service	Each	\$ <u>69.50</u>
Ground Meter Boxes, Multiple boxes per service	Lump Sum	\$ 150.00
Tree/Shrubs (external nesting)	Lump Sum	\$ 150.00
Trees (inside trunks)	Each	\$ 69.50
Buildings	Each	\$ 150.00
Return Service Fee	Each	\$ <u>69.50</u>

OTHER MISC. SERVICES

Bed Bug Treatment	Per Cubic Feet Rate	\$ <u>N/A</u>
Spider Treatment and clearing/high locations - fire bays, etc.	Per Square Feet	\$ <u>0.01</u>
Vehicle Treatments - standard passenger vehicle/pick up trucks	Each	\$ <mark>800.00</mark>
Outdoor areas, play fields, parking lots	Per Square Feet	\$ <u>0.01</u>
RODENT CONTROL: Trapping, Removal, & Disposal		
Live Animals	EACH	\$ <mark>45.00</mark>
Dead Animals	EACH	\$ <u>35.00</u>

COST FOR TERMITE CONTROL SUBTERRANEAN

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Cost per foot up to 7,500 linear foot for each construction type	Linear Foot	\$ <u>4.00</u>
Cost per foot above 7,500 linear foot for each construction type	Linear Foot	\$ <u>3.50</u>
Mono Slab	Square Foot	\$ ^{0.08}
Supported Slab	Square Foot	\$0.08
Crawl	Square Foot	\$ ^{0.08}

DRYWOOD:

Cost per cubic foot if less than 80,000 cubic feet	Cubic Foot	\$ ^{0.038}	
Cost per cubic foot if more than 80,000 cubic feet	Cubic Foot	\$ <u>0.035</u>	

Borate (Tim-Bot) Treatment

Square Foot

s 0.20

Signature of Vendor

Company Name: Hulett Environmental Services

City of Cape Coral Citywide Pest Control Service s Official Bid Tabulation ITB-CW18-18/GL

VENDOR	Monthly Cost For all Facilities	Annual Cost For all Facilities
Hulett Enviornmental Services PO Box 220928 West Palm Beach FL 33422 Local Office in Fort Myers	\$1,483.00	\$17,796.00
Your Bugman Inc 2458 Santee Street Port Charlotte FL 33948	\$2,310.10	 \$27,721.20

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			PO Box 2209 West Palm Be	imental Services Inc. 28 each, FL 33422	Your Bugman 2458 Santee Port Charlotte	Street
LOCATION	FACILITY	SQUARE FOOTAGE	MONTHLY COST	FREQUENCY	MONTHLY COST	FREQUENCY
Aquatics - Yacht Club	Pool Bath House					
Complex		1818	\$5.00	MONTHLY	\$10.00	MONTHLY
Art Studio	Building #1-Gallery	5328	\$8.00	MONTHLY	\$30.00	MONTHLY
Art Studio	Building #2-Admin	8652	\$13.00	MONTHLY	\$30.00	MONTHLY
BMX Park	Buildings	800	\$5.00	MONTHLY	\$20.00	MONTHLY
Camelot Park	Ŭ	1400	\$5.00	MONTHLY	\$20.00	MONTHLY
Chester Street						
Resource Center	Building/Bay	6789	\$11.00	MONTHLY	\$30.00	MONTHLY
Chiquita Lock	Building	144	\$5.00	MONTHLY	\$15.00	MONTHLY
City Centrum Trailer 2	Trailer	1440	\$5.00	MONTHLY	\$15.00	MONTHLY
City Centrum Trailer 3	Trailer	1440	\$5.00	MONTHLY	\$15.00	MONTHLY
City Centrum Trailer 15	Trailer	2880	\$5.00	MONTHLY	\$15.00	MONTHLY
City Hall	Main Building	79376	\$120.00	MONTHLY	\$70.00	MONTHLY
City Hall Council Bldg		13961	\$21.00	MONTHLY	\$40.00	MONTHLY
Coral Oaks Clubhouse	Building	13754	\$21.00	MONTHLY	\$45.00	MONTHLY
Coral Oaks Greens	Maintenance Building, Hole #1 Bldg, Hole #10 Bldg	6548	\$10.00	MONTHLY	\$35.00	MONTHLY
Emergency Operations	-					
Center	Building	12000	\$18.00	MONTHLY	\$50.00	MONTHLY
Facility Management	Main Building, Locksmith Building, Electrical Building	5616	\$9.00	MONTHLY	\$30.00	MONTHLY
i aciiity manayement		5010	φ9.00		φ30.00	
Fire Hazmat Storage	Building (Everest Pkwy)	800	\$5.00	MONTHLY	\$15.00	MONTHLY
Fire Station #1	Building	8925	\$14.00	MONTHLY	\$35.00	MONTHLY
Fire Station #2	Building	6674	\$11.00	MONTHLY	\$35.00	MONTHLY
Fire Station #3	Building	9625	\$15.00	MONTHLY	\$35.00	MONTHLY
Fire Station #4	Building	10736	\$17.00	MONTHLY	\$35.00	MONTHLY

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			Hulett Environmental Services Inc. PO Box 220928 West Palm Beach, FL 33422			Your Bugman Inc. 2458 Santee Street Port Charlotte, FL 33948	
		SQUARE	MONTHLY	·		MONTHLY	
LOCATION	FACILITY	FOOTAGE	COST	FREQUENCY		COST	FREQUENCY
Fire Station #5	Building	6593	\$10.00	MONTHLY	1	\$35.00	MONTHLY
Fire Station #6	Building	6593	\$10.00	MONTHLY	1	\$35.00	MONTHLY
Fire Station #7	Building	5528	\$9.00	MONTHLY	1	\$35.00	MONTHLY
Fire Station #8	Building	12195	\$19.00	MONTHLY	1	\$35.00	MONTHLY
Fire Station #9	Building	8925	\$14.00	MONTHLY	1	\$35.00	MONTHLY
Fire Station #10	House	2500	\$5.00	MONTHLY	1	\$35.00	MONTHLY
Fire Station #11	Building	9058	\$14.00	MONTHLY	1	\$35.00	MONTHLY
Fire Training Duplex	Duplex	1848	\$5.00	MONTHLY	1	\$20.10	MONTHLY
Fleet Administration	Building	1250	\$5.00	MONTHLY	1	\$20.00	MONTHLY
Fleet Repair Garage	Building	8682	\$14.00	MONTHLY	1	\$20.00	MONTHLY
Fleet Small							
Engine/Weld Shop	Building	2975	\$5.00	MONTHLY		\$15.00	MONTHLY
Four Freedoms Park	Building	5870	\$9.00	MONTHLY		\$35.00	MONTHLY
Jaycee Park	Park Buildings	1200	\$5.00	MONTHLY		\$20.00	MONTHLY
Joe Stonis Park	Park Buildings	1700	\$5.00	MONTHLY		\$20.00	MONTHLY
Lafayette Building	Building	1275	\$5.00	MONTHLY		\$20.00	MONTHLY
Lake Argosy	House	2951	\$5.00	MONTHLY		\$20.00	MONTHLY
Lake Kennedy Senior							
Center	Building	9120	\$14.00	MONTHLY		\$35.00	MONTHLY
Multi Sports Complex	Park Buildings	4848	\$8.00	MONTHLY		\$25.00	MONTHLY
Nicholas Annex	Building	54299	\$82.00	MONTHLY		\$45.00	MONTHLY
NW Softball Complex	Park Buildings	1400	\$5.00	MONTHLY		\$20.00	MONTHLY
Parks Maintenance	Building & Bay	7000	\$11.00	MONTHLY		\$20.00	MONTHLY
Parks Nursery	Building	1008	\$5.00	MONTHLY	1	\$10.00	MONTHLY
Parks House (Kayak)	House	2192	\$5.00	MONTHLY]	\$20.00	MONTHLY
Paul Sanborn Park	Park Buildings	128	\$5.00	MONTHLY]	\$20.00	MONTHLY
Pelican Soccer]		
Complex	Park Buildings	1500	\$5.00	MONTHLY		\$20.00	MONTHLY
Pelican Baseball	Building	1980	\$5.00	MONTHLY	-	\$20.00	

ITB- CW18-18/GL

			Hulett Environmental Services Inc. PO Box 220928 West Palm Beach, FL 33422		Your Bugman 2458 Santee Port Charlotte	Street
LOCATION	FACILITY	SQUARE FOOTAGE	MONTHLY COST	FREQUENCY	MONTHLY COST	FREQUENCY
Verdow Baseball	Building	1600	\$5.00	MONTHLY	\$20.00	MONTHLY
Police Department	Building	100755	\$152.00	MONTHLY	\$90.00	MONTHLY
RO Plant North	Buildings	44577	\$67.00	MONTHLY	\$45.00	MONTHLY
RO Plant SW	Buildings	21400	\$33.00	MONTHLY	\$45.00	MONTHLY
Rosen Park						
Docks/Ramp	Park Buildings	1700	\$5.00	MONTHLY	\$35.00	MONTHLY
Rotary Park	Park Buildings	2712	\$5.00	MONTHLY	\$25.00	MONTHLY
Rotino Senior Center	Building	7920	\$12.00	MONTHLY	\$35.00	MONTHLY
Services/Stormwater						
Everest	Buildings	2679	\$5.00	MONTHLY	\$25.00	MONTHLY
Sign Shop -						
Transportation	Building	9600	\$15.00	MONTHLY	\$20.00	MONTHLY
Stormwater Operations	Building	2700	\$5.00	MONTHLY	\$25.00	MONTHLY
Special Populations Center	Buildings	7916	\$12.00	MONTHLY	\$35.00	MONTHLY
Sun Splash Family		0077			· · · ·	
Waterpark Utilities Collection &	Buildings	9077	\$14.00	MONTHLY	\$45.00	MONTHLY
Distribution	Buildings	2800	\$5.00	MONTHLY	\$20.00	MONTHLY
Utilities Warehouse						
Everest	Building	2975	\$5.00	MONTHLY	\$20.00	MONTHLY
Water Reclamation						
Everest	Building	43000	\$65.00	MONTHLY	\$45.00	MONTHLY
Water Reclamation Everest Plant		4000	\$6.00	MONTHLY	\$10.00	MONTHLY
Water Reclamation	Palm Tree Pump	+000	 ψ0.00		φ10.00	
Pump Stations	Station	1890	\$5.00	MONTHLY	\$15.00	MONTHLY
Water Reclamation		1030	ψ0.00		ψ13.00	
Pump Stations	Van Loon Pump Station	560	\$5.00	MONTHLY	\$15.00	MONTHLY

ITB- CW18-18/GL

Open Date: April 10, 2018

			PO Box 220	nmental Services Inc. 928 each, FL 33422	2458 Santee	Your Bugman Inc. 2458 Santee Street Port Charlotte, FL 33948		
LOCATION	FACILITY	SQUARE FOOTAGE	MONTHLY COST	FREQUENCY	MONTHLY COST	FREQUENCY		
Water Reclamation SW	Building	6800	\$11.00	MONTHLY	\$50.00	MONTHLY		
Yacht Basin	Harbormaster Bldg	2016	\$5.00	MONTHLY	\$20.00	MONTHLY		
Yacht Club	Main Building	12980	\$20.00	MONTHLY	\$40.00	MONTHLY		
Yacht Club	Large Pavilion	5225	\$8.00	MONTHLY	\$10.00	MONTHLY		
Youth Center	Building	10927	\$17.00	MONTHLY	\$35.00	MONTHLY		
Youth Center - Eagle Skate Park	Trailer	1440	\$5.00	MONTHLY	\$10.00	MONTHLY		
Christa McAuliffe Elementary		48500	\$73.00	MONTHLY	\$70.00	MONTHLY		
Oasis Elementary School		56000	\$84.00	MONTHLY	\$70.00	MONTHLY		
Oasis High School and Gymnasium		82000	\$123.00	MONTHLY	\$70.00	MONTHLY		
Oasis Middle School and Gymnasium		69000	\$104.00	MONTHLY	\$70.00	MONTHLY		

Monthly Cost of all FACILITIES \$1,483.00

\$2,310.10

Recommendation to award to Hulett Environmental Services, Inc.

Item Number: B.(5) Meeting Date: 6/4/2018 Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 108-18 Award Bid #UT18-57/MC to Shrieve Chemical, as the lowest responsive, responsible, bidder for the purchase of Sulfuric Acid, at the unit price bid of \$112.00 per ton, for an estimated annual cost of \$336,000, not to exceed budgetary limits, and authorize the City Manager or Designee to execute the contract, amendments, purchase orders and all required documents; Department: Utilities; Estimated Annual Dollar Value: \$336,000; (Water & Sewer Fund).

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- 1. Sulfuric Acid is used in the pre-treatment process of the ground raw water to lower pH to protect the Reverse Osmosis membranes in the primary treatment process from fouling. Sulfuric Acid also lowers the pH of the blend product water to assist in degasification of Hydrogen Sulfide in the post-treatment process.
- Invitation to Bid #ITB-UT18-57/MC was issued on March 28, 2018 to secure a three-year price for purchases of Sulfuric Acid, eight (8) potential vendors obtained the City's bid documents.
- 3. On April 27, 2018, two (2) bids were received. The bidders, in alphabetical order, are as follows: Shrieve Chemical Company of Winter Haven, FL and Sulphuric Acid Trading Company, Inc. of Tampa, FL.
- 4. The other six vendors were polled for their no bid reasons which ranged from 1. Not being a manufacturer of Sulfuric Acid. 2. Being a distributor to a potential bidder. 3. No response.
- 5. After evaluation, City staff recommends awarding to Shrieve Chemical as the lowest, responsive, responsible bidder having met the requirements and specifications outlined in the bid documents.
- 6. If approved, the term of the contract will be three years.
- 7. The City Manager or designee shall have the authority to approve and execute any authorized

contract amendments or purchase orders provided that any such amendments or purchase order does not exceed the current budgetary limits during any one-year period.

- 8. This is a budgeted item.
- 9. Funding Information: Account #401022.652114: Chemicals, Water Production S. Plant, 401023.652114: Chemicals, Water Production N. Plant

LEGAL REVIEW:

Contract reviewed by Legal

EXHIBITS:

Department Recommendation Resolution 108-18 Bid Tabulation # ITB-UT18-57/MC

PREPARED BY:

Wanda Roop Division- Procurement Department- Finance

SOURCE OF ADDITIONAL INFORMATION:

Jeff Pearson, Utilities Director

ATTACHMENTS:

Description

- Department Memo
- Resolution 108-18
- **D** Bid Tabulation # ITB-UT18-57/MC
- **Type** Backup Material Resolution Backup Material

CITY OF CAPE CORAL
UTILITIES DEPARTMENT

TO: John Szerlag, City Manager Victoria Batemen, Financial Services Director Wanda Roop, Procurement Manager_

FROM: Jeff Pearson, Utilities Director

DATE: May 3, 2018

SUBJECT: Departmental Bid Award Recommendation to Shrieve Chemical Company for Sulfuric Acid (ITB-UT18-57/MC)

Background

- · · ·

Sulfuric Acid is required to ensure an uninterrupted safe potable water supply to the City. The Water Production Division uses this chemical in the pre-treatment process for raw well water. The acid lowers pH in the raw water in order to protect the reverse osmosis (RO) membranes in the primary treatment process. The lower pH helps prevent scaling of the membrane elements during the RO process. This allows more pure water to be recovered in addition to increasing the useful life of the RO membrane elements. The addition of acid also lowers the pH of the blend product water to assist in degasification of Hydrogen Sulfide in the plants' post-treatment process.

Recommendation

According to the staff's past personal experience with purchasing sulfuric acid from Shrieve Chemical Company, they have consistently delivered a quality product with good customer service. Based on this and the bids submitted for ITB-UT18-57/MC, we recommend the bid be awarded to Shrieve Chemical Company, as they were the lowest responsive responsible bidder with no deviations.

Fund Availability

We estimate an approximate total annual expenditure of about \$336,000 for sulfuric acid based on the unit price (\$112 per ton) and anticipated usage (3,000 tons). Funds are available and have been budgeted in the Water and Sewer Fund under the following account business units: 401022-652114 and 401023-652114.

	(City of Cape Coral			
	Bid Tabu	lation for ITB-UT18-	57/MC		
		SULFURIC ACID			
	Proposal	close date: April 27	2018		
Company Name	Unit Cost per ton	x Est. Annual Usage	Total Bid	Manufacturer	Minimum Order
The Shrieve Group	\$112.00	x 3,000 tons	\$336,000.00	Mosaic Fertilizer	24 tons
Sulphuric Acid Trading Co Inc	\$143.50	x 3,000 tons	\$430,500.00	SATCO	24 tons

RESOLUTION 108 – 18

A RESOLUTION OF THE CITY OF CAPE CORAL AWARDING A BID FOR THE PURCHASE AND DELIVERY OF SULFURIC ACID TO SHRIEVE CHEMICAL COMPANY; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT DOCUMENTS BY THE CITY MANAGER; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 28, 2018, INVITATION TO BID (ITB) #UT18-57/MC was issued for the purchase and delivery of sulfuric acid for use at the City's Reverse Osmosis Plants; and

WHEREAS, two (2) bids were submitted and opened on April 27, 2018; and

WHEREAS, the term of the contract is three years; and

WHEREAS, the City Manager recommends the award of the bid to Shrieve Chemical Company, as the lowest qualified responsible and responsive bidder meeting the requirements and specifications set forth in the invitation to bid, at the unit prices bid, in the estimated annual amount of \$336,000.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby awards the bid for the purchase and delivery of sulfuric acid to Shrieve Chemical Company, at the unit prices bid, in the estimated annual amount of \$336,000, not to exceed budgetary limits.

Section 2. The City Council hereby approves the contract between the City of Cape Coral and Shrieve Chemical Company, for the purchase and delivery of sulfuric acid, and authorizes the City Manager to execute the Contract, any authorized contract amendments or purchase orders, not to exceed current budgetary limits. A copy of the Contract is attached hereto as Exhibit 1.

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA STOUT

NELSON STOKES WILLIAMS COSDEN

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____ 2018.

> REBECCA VAN DEUTEKOM, CITY CLERK

APPROVED AS TO FORM:

Cenendy Hous DOLORES D. MENENDEZ CITY ATTORNEY

res/Bid Award-Shrieve Chemical Company

This Agreement, made and entered into this ______ day of ______, 20_____, 20_____, by and between the CITY OF CAPE CORAL, FLORIDA, hereinafter called "CITY", and Shrieve Chemical Company, 204 South Lake Florence Drive, Winter Haven, FL. 33884 doing business as a corporation, hereinafter called "CONTRACTOR".

WITNESSETH: that for and in consideration of the payments and agreements mentioned hereinafter:

- 1. The CONTRACTOR will supply <u>SULFURIC ACID</u> in accordance with the Bid Documents and Specifications.
- 2. This CONTRACTOR agrees to supply products, within three (3) calendar days, as described in the BID DOCUMENTS at the unit price of <u>\$112.00/ton</u> listed on the attached CONTRACTOR'S Official Bid Proposal Form (Exhibit A) during the term of the contract hereto and made a part hereof.
- 3. The term of this agreement is for three (3) years from September 9, 2018 through September 8, 2021.
- 4. This agreement may be terminated by the CITY for its convenience upon thirty (30) days prior written notice to the CONTRACTOR.

This agreement may be terminated by the CONTRACTOR on the anniversary of the agreement with a one hundred twenty (120) day written cancellation notice submitted to the City's Procurement Manager.

- 5. The Term "Contract Documents" means and includes the following:
 - A. Bid Specifications Prepared and Issued by the CITY.
 - B. Submitted Response of CONTRACTOR to the CITY, except when it conflicts with any other contractual provision.
 - C. This Contract as well as all other documents attached hereto and/or referenced herein.

This agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.

6. All time limits listed in the contract documents are of the essence in the performance of this agreement.

- 7. The CONTRACTOR shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for ten (10) years after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.
- 8. <u>Assignment:</u> This agreement may not be assigned except at the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 9. <u>Disclosure:</u> The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the agreement.
- 10. <u>Payments:</u> City shall make payment and Contractor shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, City notifies Contractor in writing of its objection to the amount of such invoice, together with City's determination of the proper amount of such invoice. City shall pay any undisputed portion of such invoice within such thirty (30) day period.

If City shall give such notice to the Contractor within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, City shall promptly pay the Contractor the amount so determined, less any amounts previously paid by City with respect to such invoice. In the event it is determined that City has overpaid such invoice, the Contractor shall promptly refund to the City the amount of such overpayment.

- 11. <u>Annual Appropriation Contingency:</u> Pursuant to Florida Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City if the City Council reduces or eliminates appropriations.
- 12. <u>Unauthorized Aliens:</u> The employment of unauthorized aliens by any CONTRACTOR is considered a violation of Section 274A € of the Immigration and Nationality Act. If the CONTRACTOR knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-Contractors used by the CONTRACTOR as well.
- 13. <u>Administration of Agreement:</u> The Utilities Director, or his representative, shall administer this agreement for the CITY.

- 14. <u>Governing Law:</u> The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees.
- 15. <u>Public Records:</u> Pursuant to Florida Statute §287.058 (1) (c), this contract may be unilaterally cancelled by the City if the Contractor refuses to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this contract, unless the records are exempt from disclosure.
- 16. <u>Amendments:</u> No Amendments or variation of the terms or conditions of this agreement shall be valid unless in writing and signed by the parties.
- 17. <u>Indemnity:</u> The CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.
- 18. <u>Invalid Provision:</u> The invalidity or unenforceability of any particular provision of this agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 19. <u>Insurance:</u> Without limiting its liability, the CONTRACTOR shall be required to procure and maintain at its own expense during the life of the Contract, insurance of the types and in the minimum amounts as specified in the Contract Documents which will protect the CONTRACTOR, from claims which may arise out of or result from the CONTRACTOR'S execution of the project, whether such execution by himself or by any sub-consultant, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

<u>Workers' Compensation:</u> Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with minimum limits of <u>\$ 3,000,000</u> each accident.

<u>Comprehensive General Liability:</u> Shall have minimum limits of <u>\$3,000,000</u> per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property Damage, XCU coverage, and a Contractual Liability Endorsement.

Business Auto Policy: Shall have minimum limits of <u>\$3,000,000</u> per occurrence. Combined Single Limit for Bodily Injury and Property Damage Liability. This shall include owned vehicles, hired and non-owned vehicles, and employees' non-ownership.

<u>Pollution Liability:</u> Covering a transporter moving hazardous products or waste as cargo aboard the transporter's truck. Shall have a minimum limit of \$ 3,000,000 per occurrence. Combined Single Limit for Bodily Injury, Property Damage Liability and Cleanup, including wrongful delivery. This shall include owned vehicles, hired and non-owned vehicles.

<u>Certificate of Insurance</u>: The City of Cape Coral is to be specifically included as an additional insured on the General Liability. This does not pertain to Workers' Compensation.

In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued thirty (30) days prior to said expiration date.

The policy shall provide a thirty (30) day notification clause in the event of cancellation or modification to the policy.

Unless otherwise specified, it shall be the responsibility of the contractor to ensure that all subcontractors comply with the same insurance requirements spelled out above.

All certificates of insurance must be on file with and approved by the City of Cape Coral before the commencement of any work activities.

Policies should be written on an "occurrence" basis.

20. <u>Entire Agreement:</u> This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

(Balance of page intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials this Contract in <u>one</u> counterpart which shall be deemed an original on the date last signed as below written:

WITNESS CITY:

CITY:

City of Cape Coral, Florida

Signature:_____

Typed Name: Rebecca van Deutekom

Title: City Clerk

Signature:		1.
Typed Nam	e: A. John Serzlag	
Title:	City Manager	
Date:		

CITY LEGAL REVIEW: Dolores Menendez Date City Attorney

WITNESS CONTRACTOR:

Signature: annette Chestnut
Typed Name: Annette Chestnut
Title: Executive Assistant

CONTRACTOR:
Company: Shrieve Chemical Company
Signature: Chilestochon
Typed Name: Charles J. Jackson
Title: Executive Vice President
Date: 5/17/18

Exhibit A

CITY OF CAPE CORAL

OFFICIAL BID PROPOSAL PAGE 1 OF 2

The undersigned certifies that this bid is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder and that the bidder is in compliance with all requirements. In submitting a bid to the City of Cape Coral, the bidder offers and agrees that if the bid is accepted, the bidder will convey, sell, assign or transfer to the City of Cape Coral all rights, title and interest in and all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Cape Coral. At the City's discretion, such assignment shall be made and become effective at the time the purchasing agency tenders final payment to the bidder.

The undersigned declares that the statements and representations made in this proposal are true in every respect and that the said proposal is in all respects fair and made without collusion or fraud, and that no member of the City Council or any other agent or employee of the City, directly or indirectly, is interested in this bid proposal or in any profits expected to accrue therefrom.

The undersigned acknowledges receipt of the following addende, and the cost, if any, of such revisions has been included in the price of the bid.

Addendum #____

Addendum #_____ Addendum #_____

Prices quoted shall be effective for one hundred twenty (120) days from bid opening date, and if accepted by the City, for the period specified herein.

<u>Description</u>		<u>Unit Cost</u>
SULFURIC ACID, as spe	ecified	s <u>11200/</u> ton
Manufacturer:	MOSAIC	Fest lizer
Minimum order:	24	tuns

	Est. Annual <u>Usage</u>	Total Bid
x	3,000 tons	\$ <u>336,000</u>

74-19 FEIN: - •

Shricke Chemical
NAME OF BUSINESS
Char-
AUTHORIZED SIGNATURE
Chris Burns, VP Southeast
NAME, TITLE, TYPED
chuvas @ shrieve.com
E-MAIL ADDRESS

204 SLake Florence Dr.
MAILING ADDRESS
Wister Haven, FL 33884
CITY, STATE & ZIP CODE
281- 367-4286
PHONENUMBER
281-367-0071

FAX NUMBER

Exhibit A

OFFICIAL BID PROPOSAL PAGE 2 OF 2

REMARKS BY BIDDER

If there are any deviations, they <u>MUST</u> be listed below, otherwise none will be allowed. If additional space is required, attach another sheet to this Bid Proposal. If nothing is listed below, it will be interpreted as meaning NO DEVIATIONS.

NO Deviations - Current sulfur proting is \$116.00

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BIDDER:	Shrieve	Chemiual				

City of Cape Coral Bid Tabulation for ITB-UT18-57/MC SULFURIC ACID

ITB closing date: April 27, 2018

	Company Name, City and State						
Description	Shrieve Chemical Company Winter Haven, FL 33884	Sulphuric Acid Trading Co., Inc Tampa, FL 33619					
Unit Cost per Ton	\$112.00	\$143.50					
x Est. Annual Usage	3,000 Tons	3,000 Tons					
Total Bid	\$336,000	\$430,500					
Manufacturer	Mosaic Fertilizer	SATCO					
Minimum Order	24 Tons	24 Tons					

Item Number: B.(6) Meeting Date: 6/4/2018 Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 116-18: Memorandum of Understanding Between the City of Cape Coral and Faith Presbyterian Church for a First Responder Shelter Base; Department: Fire; Dollar Value: N/A; (Fund: N/A).

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment? No
- 2. Is this a Strategic Decision?

Yes

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

ELEMENT E: INCREASE QUALITY OF LIFE FOR OUR CITIZENS BY DELIVERING PROGRAMS AND SERVICES THAT FOSTER A SAFE COMMUNITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

The Fire Department is requesting approval of a Memorandum of Understanding (MOU) between the City of Cape Coral and Faith Presbyterian Church of Cape Coral ("Faith Presbyterian"), for the establishment of a First Responder Shelter Base ("Base") during emergencies and disasters.

Faith Presbyterian agrees to activate their facilities to operate as a Base without direct monetary compensation. The City would coordinate and support the operations of the Base by providing staff and resources.

LEGAL REVIEW:

EXHIBITS:

Memo Resolution 116-18

PREPARED BY:

Linda A. Division- Administration Department- Fire

SOURCE OF ADDITIONAL INFORMATION:

Ryan W. Lamb, Acting Interim Fire Chief

ATTACHMENTS:

Description

- n Memo
- Resolution 116-18

Type Backup M

Backup Material Resolution



CAPE CORAL FIRE DEPARTMENT

OFFICE OF THE FIRE CHIEF

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager Ryan W. Lamb, Fire Chief

DATE: May 21, 2018

SUBJECT: Resolution 116-18 on the June 4, 2018, City Council Meeting: Memorandum of Understanding Between the City of Cape Coral and Faith Presbyterian Church for a First Responder Shelter Base

We are requesting approval of a Memorandum of Understanding (MOU) between the City of Cape Coral and Faith Presbyterian Church of Cape Coral ("Faith Presbyterian"), for the establishment of a First Responder Shelter Base ("Base") during emergencies and disasters.

Background

In the event of a catastrophic emergency or disaster, essential services may become exhausted and infrastructure may be damaged. In these events additional first responders may be required or first responders may need to be relocated. This MOU would permit the use of Faith Presbyterian's facilities for staging, provisioning, and sheltering of first responders during response and recovery operations, which could last several days or weeks. These first responders could include law enforcement, fire, medical, public works, and utilities crews.

Summary

Faith Presbyterian agrees to activate, make available, and deactivate their facilities to operate as a Base without direct monetary compensation. The City would coordinate and support the operations of the Base by providing staff and resources (e.g. generator, bedding, provisioning). Additionally, the City agrees to repair, replace, or reimburse Faith Presbyterian for any damage caused by the City or its agents. This MOU would be effective for a five (5) year period, with an optional extension for an additional three (3) years if mutually agreed upon.

Recommendation

We recommend approval of the MOU between the City of Cape Coral and Faith Presbyterian Church of Cape Coral.

JS/RWL:lak

RESOLUTION 116 - 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CAPE CORAL AND FAITH PRESBYTERIAN CHURCH; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATED TO THE MEMORANDUM OF UNDERSTANDING; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is vulnerable to a wide range of emergency events that are likely to cause the disruption of essential services and damage to the infrastructure needed to deliver those services; and

WHEREAS, the Florida Emergency Management Act, Chapter 252, provides local governments the authority to develop and enter into Mutual Aid Agreements and MOUs for emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted and through such agreements to ensure the timely reimbursement of costs incurred by the entity that renders such assistance; and

WHEREAS, the Fire Department is requesting approval of a Memorandum of Understanding between the City of Cape Coral and Faith Presbyterian Church for the establishment of a First Responder Shelter Base within property owned by Faith Presbyterian Church during emergencies and disasters; and

WHEREAS, the Memorandum of Understanding, attached hereto as Exhibit 1, shall remain in effect for five (5) years, with an option for an additional three (3) years upon mutual agreement of the parties; and

WHEREAS, the City Council desires to enter into the Memorandum of Understanding between the City of Cape Coral and Faith Presbyterian Church.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves the Memorandum of Understanding between the City of Cape Coral and Faith Presbyterian Church, attached hereto as Exhibit 1.

Section 2. The City Council hereby authorizes the City Manager to execute the Memorandum of Understanding and any other documents required to implement the agreement on behalf of the City of Cape Coral.

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA STOUT

		•

NELSON _____ STOKES _____ WILLIAMS _____ COSDEN ____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____ 2018.

REBECCA VAN DEUTEKOM CITY CLERK

APPROVED AS TO FORM: lous Menende DOLORES D. MENENDEZ CITY ATTORNEY Res/MOU-Faith Presbyterian

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CAPE CORAL AND FAITH PRESBYTERIAN CHURCH

THIS MEMORANDUM OF UNDERSTANDING is made and entered into on this day of ______ 2018, by and between Faith Presbyterian Church of Cape Coral, Inc, (hereafter "Faith"), its successors and assigns, and the City of Cape Coral, (hereafter "City"). collectively the "Parties".

WHEREAS, the City is vulnerable to a wide range of emergency events that are likely to cause the disruption of essential services and the destruction of the infrastructure needed to deliver those services.

WHEREAS, such emergency events are likely to exceed the capability of any one local government to cope with the emergency with existing resources.

WHEREAS, such emergency events may also give rise to unusual technical needs that the local Faith-based community may be able to offer.

WHEREAS, the Florida Emergency Management Act, Chapter 252, provides each local government of the state the authority to develop and enter into Mutual Aid Agreements and MOUs within the State for emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted, and through such agreements to ensure the timely reimbursement of costs incurred by the entity that render such assistance.

NOW, THEREFORE, in consideration of the following terms and conditions, it is mutually agreed between the Parties as follows:

1. Faith, voluntarily and without further monetary compensation beyond the contents of this MOU, agrees to activate, make available, and deactivate Cape Coral's First Responder Shelter Base ("Base") within property owned by Faith. Faith shall provide a primary and secondary Point of Contact ("POC") person to act as a liaison to the Cape Coral Fire Department's Division of Emergency Management.

2. City shall notify Faith, as soon as practicable depending on the type of emergency event, as to the intended dates and duration of requested assistance. City shall provide re-entry and communication support to Faith's POCs on an as-needed basis, at the discretion of the City, to expedite the establishment of the Base in the aftermath of the emergency event.

3. Faith shall permit use of the parking lots and the buildings known as "Faith Center" and "Faith Plex" to the City for Base operations. Faith shall pay electrical costs not associated with

generated power, water and sewage costs, trash disposal costs associated with the operation of the Base, as well as the continued custodial costs that Faith currently has in place.

4. In the event Faith's property is used to house the Base, the City shall provide a generator with fuel for electrical support, per the specifications of Faith's Facility Manager, until shore power is restored. The City shall provide a portable Air Conditioning unit to cool the gymnasium space within "Faith Center" on an as-needed basis at the discretion of the City. The City also shall lease a shower trailer from a third-party vendor in the instance that Faith's shower facilities are insufficient or unusable. The City shall provide any bedding and food/nutritional support required for Base operations. For purposes of general security, the City shall have an employee or volunteer on Faith's grounds while the Base is activated. On an as-needed basis, at the discretion of the City, the City may also provide police support at Faith for heightened-security purposes.

5. If Faith's facilities are used to operate the Base, City shall repair, replace or reimburse Faith for all damages to Faith's property caused by the City, or the City's agents, while the Base is in operation. Repair, replacement or reimbursement will be limited to returning the property to the condition in which it existed prior to the damage. Should damage be claimed, it shall be the responsibility of Faith to provide photographic proof, or other documentation satisfactory to the City, of the condition of the property prior to the commencement of the Base operation and subsequent to the use by the City.

6. This MOU shall remain in force for a period of five (5) years from the date of this MOU. The MOU may be renewed, at the option of the Parties and upon mutual agreement for an additional three (3) years under the same terms and conditions. Any renewal will require execution of a new MOU.

7. To the extent allowed by law and subject to the provisions and limitations contained in §768.28, Florida Statutes, the City agrees to indemnify and hold harmless Faith for injury or loss of property, personal injury, or death caused by the negligent or wrongful act of omission of any employee, or agent of the City, resulting from the City's temporary use of the property, while acting within the scope of his office or employment under circumstances. Any injury or loss of property, personal injury or death that occurs on Faith's property that is not related to the operation of the Base, is not caused by an employee or agent of the City directed to be at the Base by the City, and is the circumstance of a visitor on Faith's property, then Faith shall be responsible for any such injury or death. Notwithstanding the foregoing, this provision shall not be deemed a waiver of the City's sovereign immunity pursuant to §768.28, Florida Statute.

8. This MOU contains the entire Agreement between the Parties.

9. Any modification or amendment of this MOU must be mutually agreed by the Parties and executed with the same formality.

10. This MOU may be terminated by either Party, without cause, upon 30 days' written notice to the non-terminating Party.

IN WITNESS of the above, this MOU sets forth the full and complete understanding between the Parties hereto with respect to the matters addressed herein.

FAITH PRESBYTERIAN CHURCH OF CAPE CORAL, INC.

By: Print name: Char les on Its:

ATTEST:

CITY OF CAPE CORAL

By: _ Rebecca vanDeutekom, City Clerk

ess

Witne

By: ______ John Szerlag, City Manager

Approved as to form

Office of the City Attorney

EXHIBIT A Location and Sketch of Property

Faith Presbyterian Church of Cape Coral, Inc. 4544 Coronado Parkway Cape Coral, FL 33904 12-45-23-C3-00322.000D

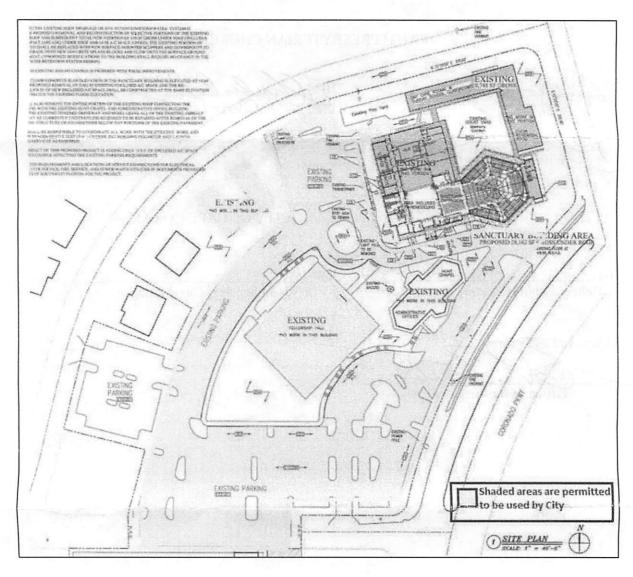


EXHIBIT B CONTACT LIST OF AUTHORIZED REPRESENTATIVES FOR TEMPORARY USE OF REAL ESTATE OR OTHER PREMISES

Name: Faith Presbyterian Church Address: 4544 Coronado Parkway, Cape Coral, FL 33904 Director of Operations: Kassandra Turpin Phone: (Cellular): 239-728-8836 Alternate: Facility Manager: Michael Bicknese, 239-887-0185

<u>Primary Point of Contact</u>: Director of Disaster Preparedness and Response Name: **Robert Griffin** Cellular Phone: 843-267-6489 E-Mail Address: kj4wpv@yahoo.com

Secondary Point of Contact: Name: Charles McClinton Phone (Office): 239-471-7704 Cellular Phone: 757-592-3558 E-Mail Address: chuck.mcclinton@comcast.net

The above information is correct as of 4 / 12 / 2018

Please mail this completed form to: City of Cape Coral c/o Cape Coral Fire Department 1015 Cultural Park Boulevard Cape Coral, FL 33990 Item Number: B.(7) Meeting Date: 6/4/2018 Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 124-18 Approval of reduction of wastewater charges and fees at the City-owned Sunsplash Waterpark, resulting from an engineering analysis of the excess water usage, and authorizing the reimbursement of excess payments from 2014; Department: City Manager; Dollar Value: \$236,735; (Unrestricted reserves of Water and Sewer Fund)

REQUESTED ACTION:

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment?
- 2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of

the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

Approval of reduction of wastewater charges and fees at the City-owned Sunsplash Waterpark, resulting from an engineering analysis of the excess water usage, and authorizing the reimbursement of excess payments from 2014;

LEGAL REVIEW:

EXHIBITS: Memo Resolution 124-18

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description

- n Memo
- Resolution 124-18

Type Backup Material Resolution

MEMORANDUM

CITY OF CAPE CORAL CITY MANAGER'S OFFICE

Soreward as Agenda 17cm

TO: John Szerlag, City Manager
 FROM: Jay Murphy, Business Manager
 Victoria Bateman, Finance Pirector
 Jeff Pearson, Utilities Director
 Kerry Runyon, Parks and Recreation Director

DATE: May 23, 2018

SUBJECT: Sunsplash Water Park Wastewater Billing Adjustment

The Parks and Recreation Department engaged Maastricht Engineering to conduct an engineering analysis in conformance with §19-100(e)(1) to establish the estimated percentage of metered potable water that is not discharged into the wastewater collection system. Sunsplash Water Park is a relatively large consumer of potable water. Natural evaporation from water feature pools, splashing over the containment walls and mechanical leakage all contribute to the issue.

Maastricht Engineering reviewed usage data derived from meter readings and structural design beginning in the first quarter of 2014. The analysis focused on the twelve-month period of December 2016 to November 2017. While there are other potable water metered locations within the Lake Kennedy Park area: Senior Center, Special Populations and Gatehouse, there is a single point of confluence in the overall system, which is a wastewater pump station. The analysis involved subtracting the sum of the metered potable water attributed to the Senior Center, Special Populations Center, Gatehouse, and Pump Station (603,000 gals.)¹ from the estimated pumped volume of wastewater at the Pump Station (5,037,966 gals.)². The difference (4,434,366 gals.) is then divided by total metered potable water attributed to Sunsplash (11,630,100 gals.), thus establishing that only 38.1% of the metered potable watered entered the wastewater system. Having determined the overage, Maastricht was able to opine that Sunsplash Water Park's wastewater billing met the criteria for a 61.9% reimbursement and the correction can be applied to wastewater billing for Sunsplash Water Park beginning first quarter 2014.

Adjustments for city facilities are governed by the section of the Code of Ordinances, which states:

¹ The analysis assumes there is no overage billed to the other facilities.

² Determined by flow analysis of the pumps and pump run times.

Sunsplash Water Park Wastewater Billing Adjustment May 23, 2018 Page 2

Effective October 1, 1996, all city owned and operated facilities shall pay all appropriate charges and fees associated with wastewater described in Chapter 19 of the City of Cape Coral Code of Ordinances. Where a city owned facility water use may exceed its wastewater contribution to the utility system the wastewater volume may be determined through an engineering analysis. City Council shall have final approval over any wastewater billing resulting from the engineering analysis.

This subsection is specific to city facilities and does not contemplate or provide direction relative to future years or remuneration for the overage, as another section of the ordinance does for commercial interests. As a municipal facility that is serviced by the municipality's Utility Department, any substantial changes to the recycling system or plumbing will be known to the Utility Department prompting the need for a new analysis. Therefore, absent these changes, we request this analysis be accepted for future years.

It is our jointly held opinion that we seek City Council's approval for the above actions to include reimbursement of the wastewater billing overage payable to the General Fund from the Utility Department Reserve Fund – Unrestricted.

JM:pd

C: Jay Murphy, Business Manager Victoria Bateman, Finance Director Jeff Pearson, Utilities Director Kerry Runyon, Parks and Recreation Director

RESOLUTION 124 - 18

A RESOLUTION OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE REDUCTION OF WASTEWATER CHARGES AND FEES AT THE CITY-OWNED SUNSPLASH WATERPARK RESULTING FROM AN ENGINEERING ANALYSIS OF THE EXCESS WATER USAGE, AND AUTHORIZING APPLYING THE REIMBURSEMENT OF EXCESS PAYMENTS FROM 2014; PROVIDING AN EFFECTIVE DATE.

WHEREAS, §19-100(e)(1) of the Cape Coral Code of Ordinances provides that where a City-owned facility water use may exceed its wastewater contribution to the utility system, the wastewater volume may be determined through an engineering analysis and the City Council shall have final approval over any wastewater billing resulting from the engineering analysis; and

WHEREAS, the City commissioned an engineering analysis that was subsequently completed by a Florida licensed Professional Engineer, and

WHEREAS, the data collected for the analysis spanned a twelve-month period from November 23, 2016 through November 21, 2017, and

WHEREAS, the results of the engineering analysis showed that the water use exceeds the wastewater contribution to the utility system, resulting in a reduction of 61.9 percent of the metered potable water usage for the facility; and

WHEREAS, the City Manager requests approval of the reduction of the wastewater billing for Sunsplash Waterpark by 61.9 percent to reflect the findings of the engineering analysis; and

WHEREAS, the City Manager requests the reduction of the wastewater charges to be reimbursed from the first quarter of 2014, as the engineer has confirmed that the data from the analysis could be accurately applied retroactively to 2014; and

WHEREAS, the City Manager requests the reduction of the wastewater billing by 69.1% be in effect until an alteration to the plumbing system is made that would influence the percentage of metered potable water usage for the facility.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1: The City Council hereby approves the reduction of the wastewater billing for Sunsplash Waterpark by 61.9% pursuant to the findings of an engineering analysis. A copy of the engineering analysis is attached hereto as Exhibit A.

SECTION 2. The City Council authorizes the reduction of the utility billing for Sunsplash Water Park by 61.9 percent retroactive to the first quarter of 2014. The total reimbursement for the reduction is \$236,735 to be paid from the Water and Sewer Fund to the Parks and Recreation Special Revenue Fund for capital improvements to Sunsplash Waterpark.

SECTION 3. The City Council authorizes the reduction of the utility billing for Sunsplash Water Park by 61.9 percent to remain in place until an alteration to the plumbing system is made that would influence the percentage of metered potable water usage for the facility.

SECTION 4. Effective Date. This Resolution shall take effect immediately upon its adoption by the Cape Coral City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	NELSON	
GUNTER	STOKES	
CARIOSCIA	 WILLIAMS	
STOUT	 COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____ 2018.

> REBECCA VAN DEUTEKOM CITY CLERK

APPROVED AS TO FORM:

Lenendy lous DOLORES D. MENENDEZ

CITY ATTORNEY res/Sunsplash Wastewater Charge 5/29/18



Sunsplash Water Usage Study

August 21, 2017 Revised October 31, 2017 Revised January 17, 2018 Revised February 28, 2018

The City of Cape Coral Department of Parks and Recreation engaged Maastricht Engineering, Inc. to perform a water usage study for the Sunsplash Water Park operation. The purpose of the study is to estimate the quantity of metered water consumption that is discharged to the wastewater collection system. The water park is a relatively large consumer of potable water. Due to the nature of water park features and operations, a significant volume of metered water is not generally discharged to the wastewater collection system. The water feature's pools will experience evaporation and water is lost from spillage over the containment walls which are considered the primary reasons for the reduction of flows to the wastewater system. This study is to provide the best estimate of the proportion of contributing wastewater flow to the metered potable water usage.

Wastewater flow generated from the Sunsplash Aquatic Park (500 West Lake Kennedy Drive) is collected within an internal park gravity sanitary sewer collection system servicing the various individual buildings. This system connects to the sanitary sewer main located in West Lake Kennedy Drive and discharges into the City of Cape Coral pump station # LS424. This pump station serves the entirety of the Sunsplash facility as well as the Lake Kennedy Senior Center (400 Santa Barbara Blvd) and the Special Populations Center (410 Santa Barbara Blvd). These facilities together with the lift station wash down service and the Entrance Gatehouse to Sunsplash are the only potable water connections contributing flows to pump station #LS424. These facility locations, meters and utilities are denoted on the attached Figure 1.

The meters for each of the facilities with contributing flow to the pump station are listed below:

Facility	Meter Size	Meter ID
Sunsplash	6" x 1" compound meter	SN 170169421 (6") SN 70169421 (1")
	4" x 5/8" compound meter	SN 170237937 (4") SN 70237937 (5/8")
Lake Kennedy Senior Center	2"	SN 60349855
Special Populations Center	1 1⁄2"	SN 046807684
Gatehouse	5/8"	SN 93058851
Pump Station	5/8"	SN 045606853

Monthly metered potable water flows for each of these meters were obtained from the City of Cape Coral Customer Billing Services Department and are attached as Exhibit A. Pump Station #LS424 daily pump run times were obtained from the City of Cape Coral Utilities Water Reclamation Department and are summarized monthly in the attached Exhibit B. Pump station #LS424 is a duplex station with (2) Flygt 7.5 HP pumps. The City performed pump tests for each of the two pumps within the station and

Exhibit A

Sunsplash Water Usage Study August, 2017 - Revised January, 2018 – Revised February, 2018 P a g e | 2

determined the average pump operating capacity to be approximately 345 gal/min. The recorded pump run time multiplied by the average pump operating capacity yields an estimate of the total volume pumped.

The water usage and pump data comparison is for a 12 month duration commencing <u>November 23</u>, <u>2016 and ends November 21, 2017</u>. This time period covers both "dry" season months and "wet" season months. The average potable monthly water usage for this time frame for all contributing facilities are tabulated in Table 1.

TABLE 1

Time Period		Sunspla	ash		Senior Center	Special Population Center	Gatehouse	Pump Sta LS424
Billing Period Ending	6″ x 1′ 6″ (A)	' Meter 1" (B)	4" x 5, 4" (C)	/8" Meter 5/8" (D)	2" Meter (E)	1 ½" Meter (F)	5/8" Meter (G)	5/8″ Meter (H)
11/23/16 12/22/16	0	27,000	0	0	12,000	28,000	0	100
1/24/17	0	59,600	0	0	11,000	26,000	0	0
2/22/17	520,000	91,800	28,000	8,700	12,000	35,000	0	0
3/22/17	250,000	109,600	0	8,700	15,000	28,000	200	0
4/21/17	590,000	238,100	1,000	20,300	13,000	29,000	100	300
5/19/17	760,000	240,200	0	25,500	12,000	43,000	0	100
6/21/17	1,590,000	312,200	0	36,800	16,000	35,000	100	300
7/24/17	1,790,000	428,500	1,000	14,600	15,000	28,000	200	0
8/21/17	1,560,000	314,700	0	9,900	17,000	29,000	0	100
9/25/17	760,000	165,200	0	4,300	12,000	24,000	0	0
10/23/17	860,000	160,200	0	1,800	23,000	52,000	0	0
11/21/17	480,000	160,200	0	2,200	47,000	40,000	100	0
Total	9,160,000	2,307,300	30,000	132,800	205,000	397,000	700	900

Monthly Average Metered Water Flows to Contributing Facilities (Gallons)

The metered water usage flows for the non-Sunsplash users contributing to Pump Station #LS424 are subtracted from the total pumped flow volume to determine the portion of the pumped volume attributed to the Sunsplash Water Park only. The ratio of the computed Sunsplash pumped volume to the metered water consumption is determined and tabulated in Table 2.

Sunsplash Water Usage Study August, 2017 - Revised January, 2018 – Revised February, 2018 P a g e | 3

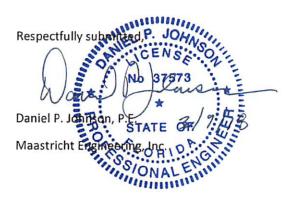
TABLE 2

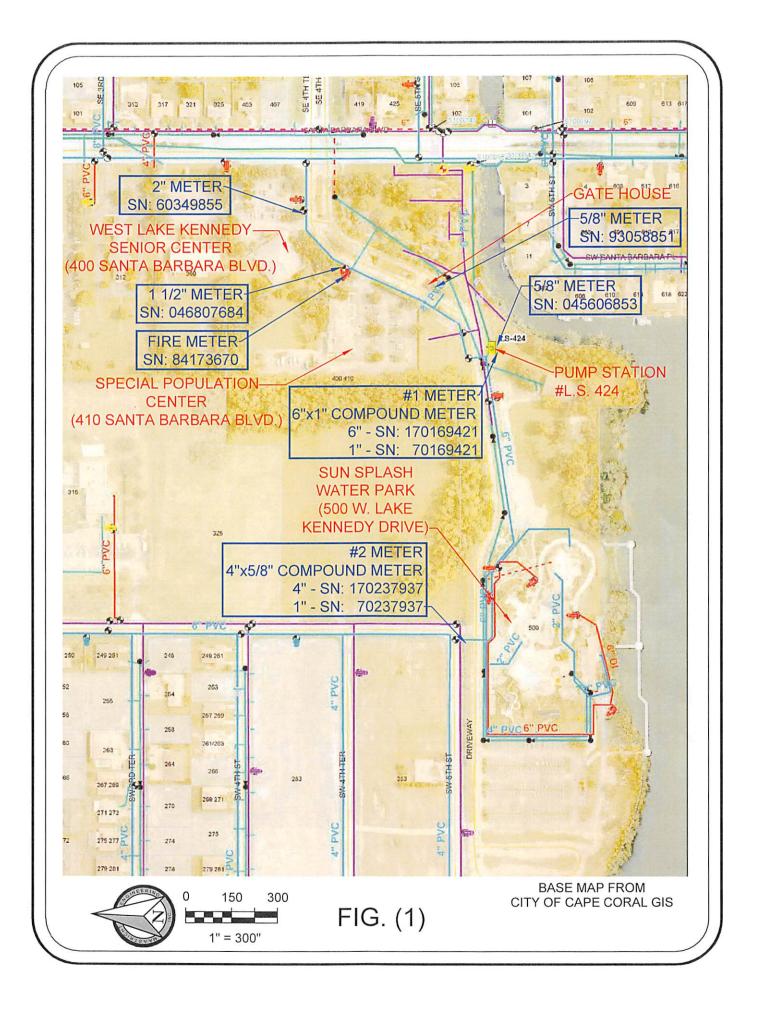
Time Period	Sunsplash Water Total (A) thru (D) Table 1	All Other Water Users (E) thru (H)	Total Est. Pumped Volume LS424	Sunsplash Pumped Flow	Ratio-Sewer to Water (%) (L)/(I)
Billing Period Ending	(1)	Table 1 (J)	(K)	(L) (L)	(M)
11/23/16 to 12/22/16	27,000	40,100	74,520	34,420	127.5%
1/24/17	59,600	37,000	110,124	73,124	122.7%
2/22/17	648,500	47,000	154,422	107,422	16.6%
3/22/17	368,300	43,200	205,965	162,765	44.2%
4/21/17	849,400	42,400	596,160	553,760	65.2%
5/19/17	1,025,700	55,100	380,880	325,780	31.8%
6/21/17	1,939,000	51,400	539,856	488,456	25.2%
7/24/17	2,234,100	43,200	1,164,168	1,120,968	50.2%
8/21/17	1,884,600	46,100	629,901	583,801	31.0%
9/25/17	929,500	36,000	743,958	707,958	76.2%
10/23/17	1,022,000	75,000	247,158	172,158	16.8%
11/21/17	642,400	87,100	190,854	103,754	16.2%
Total	11,630,100	603,600	5,037,966	4,434,366	38.1%

Sunsplash Pump Station LS424 Average Wastewater Flow Determination (Gallons)

The analysis for the twelve months of data comparison indicates the volume of wastewater generated from the Sunsplash Water Park is approximately 38.1 percent of the metered water usage.

Therefore, based upon the data and analysis contained herein, the sewer usage fee flow allocation for the Sunsplash Water Park facility is determined to be a reduction of 61.9% of the metered potable water usage for the facility (i.e., 100%- 38.1% (Table 2) = 61.9%).





Item Number: B.(8) Meeting Date: 6/4/2018 Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

1. 2.

Resolution 128-18 Approve the recommendations presented at the May 22nd Committee of the Whole meeting to determine best practices for the Charter Schools to assure competitive sustainability.

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

Will this action result in a Budget Amendment?	No
Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- 1. On May 22, 2018, at the Committee of the Whole meeting, City Management received general direction to analyze best practices that will assure that the Cape Coral Charter Schools be competitively sustainable moving forward. (presentation attached).
- 2. As discussed and presented at the COW meeting, the following recommendation are being presented, on June 4th Council meeting, for approval.
 - a. City staff will track all personnel and operating costs associated with:
 - i. Financial Services / City Clerk / Fleet & Facilities / ITS / HR
 - ii. Fleet & Facilities costs for Operating & Maintenance (O + M) and Capital (If necessary, the Charter School will fund outlays with Charter School Governing Board approval)
 - b. City staff will determine the costs of the development of shared athletic fields and facilities / Oasis Sports Park
 - c. City staff will ensure the Charter School follows applicable and allowable City policies/procedures
 - d. City staff will track Charter School administrative costs for how they currently operate
 - e. City staff will compare measurable costs to the costs that could be provided by the private sector
 - f. City staff will address Capital to be more competitive amongst other schools
 - g. City will ask Lee County School District to provide costs for managing Human

Resources, Record Keeping, and possible other areas such as ITS

- h. City staff will determine appropriate fund balance policies moving forward
- i. Fleet and Facilities services currently provided by the Charter School will be consolidated beginning in July 2018

3. In addition, City Management recommends that the City waive the FY 2018 chargeback for services, in the amount of \$311,000, to allow the Charter School the ability to fund other initiatives such as purchase of Chromebooks and funding of Merit Pay

LEGAL REVIEW:

EXHIBITS:

Recommendation Memo Resolution 128-18 Presentation for May 22, 2018 COW Meeting

PREPARED BY:

Wanda Division- Procurement Department- Finance

SOURCE OF ADDITIONAL INFORMATION:

John Szerlag, City Manager Victoria Bateman, Financial Services Director

ATTACHMENTS:

Description

- Recommendation memo
- Resolution 128-18
- **D** May 22, 2018 COW meeting presentation

Туре

Backup Material Resolution Backup Material

City of Cape Coral Financial Services Department

TO:	Mayor Coviello and Council Members
FROM:	John Szerlag, City Manager Victoria Bateman, CPA, CGFM, Financial Services Director Chris Phillips, CGFM, Management/Budget Administrator
DATE:	May 29, 2018

SUBJECT: Charter School Best Practices Analysis

At the Committee of the Whole meeting on May 22nd, City Council provided general direction to City staff to analyze best practices for the Cape Coral Charter Schools to assure sustainability moving forward.

Over the next six months, the following recommendations will be implemented following approval of the resolution presented at the City Council meeting on June 4:

- a. City staff will track all personnel and operating costs associated with:
 - o Financial Services / City Clerk / Fleet & Facilities / ITS / HR
 - Fleet & Facilities costs for Operating & Maintenance (O + M) and Capital (If necessary, the Charter School will fund outlays with Charter School Governing Board approval)
- b. City staff will determine the costs of the development of shared athletic fields and facilities / Oasis Sports Park
- c. City staff will ensure the Charter School follows applicable and allowable City policies/procedures
- d. City staff will track Charter School administrative costs for how they currently operate
- e. City staff will compare measurable costs to the costs that could be provided by the private sector
- f. City staff will address Capital to be more competitive amongst other schools
- g. City will ask Lee County School District to provide costs for managing Human Resources, Record Keeping, and possible other areas such as ITS
- h. City staff will determine appropriate fund balance policies moving forward
- i. Fleet and Facilities services currently provided by the Charter School will be consolidated beginning in July 2018.

In addition, City Management recommends that City Council waive the FY 2018 chargeback for services in the amount of \$311,000. This will provide the Charter Schools the ability to fund other initiatives such as purchase of Chromebooks and funding of Merit and/or Parity Pay.

RESOLUTION 128 - 18

A RESOLUTION OF THE CITY OF CAPE CORAL, FLORIDA, DIRECTING A BEST PRACTICES ANALYSIS BE PERFORMED FOR A SIX MONTH PERIOD TO EVALUATE VARIOUS PRACTICES AND EXPLORE OPTIONS CONCERNING THE CITY'S CHARTER SCHOOL SYSTEM; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral established a Charter School Authority for the purpose of operating and managing a municipal charter school system, currently consisting of two elementary schools, one middle school and one high school; and

WHEREAS, the City Council desires that the City Manager perform, for a six month period, a best practices analysis to include, but not be limited to, tracking all costs associated with City services provided, comparing the structure and performance of other charter schools, and evaluating the policies and procedures of the Charter Schools in relation to the City policies and procedures as allowed pursuant to Chapter 26 of the Code of Ordinances; and

WHEREAS, the City Council desires to have certain services evaluated for management of the charter school system such as hiring a management company, having the Lee County School District provide certain services, or using the City of Cape Coral staff to provide services; and

WHEREAS, the City Council desires analyses of the costs to develop City property adjacent to Oasis High School for City park facilities which can be co-utilized by the charter school system for athletic fields or other facilities; and

WHEREAS, the City Manager recommends the utilization of the City's Fleet and Facilities Management services for the purpose of maintaining school buses and buildings, except as otherwise provided in the City Code or Charter School Authority lease; and

WHEREAS, the City Manager recommends that the City Council waive the requirement that the Charter School Authority reimburse the City for the costs of administrative services pursuant to Section 26-17 of the Code of Ordinances in the amount of \$311,000 for FY2018 in order to reduce the impact on the Charter School Authority and allow the Authority to better meet the needs of the charter school system.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1: The City Council hereby directs the City Manager to perform a best practices analysis for a six month period, during which time the City will require that the Charter School Authority uses City services provided by various departments such as Financial Services, City Clerk, Facilities Maintenance and Fleet, Human Resources, and Information Technology. The analysis is to include the following:

- a. tracking all personnel and operating costs associated with the City's provision of services to the Charter School Authority;
- b. exploring the various options to manage the Charter School System, including but not limited to, utilizing private management or using the Lee County School District to provide certain services such as management of Human Resources and Information Technology;
- c. providing a cost analysis for the development of public City park facilities on Cityowned property adjacent to Oasis High School which can be co-utilized by the charter school system for athletic fields and facilities or other school related purposes.

SECTION 2. The City Council hereby directs the City Manager to work with the Charter School Authority to ensure those policies are in accordance with City policies and procedures relating to purchasing, facilities, non-state revenue sources, budgeting, fundraising and other activities relating to fiscal management of Authority resources as set forth in Section 26-15 of the Code of Ordinances utilized by the Charter School Authority.

SECTION 3. The City Council hereby waives the requirement that the Charter School Authority reimburse the City for the costs of administrative services pursuant to Section 26-17 of the Code of Ordinances in the amount of \$311,000 for FY2018 in order to reduce the impact on the Charter School Authority and allow the Authority to better meet the needs of the charter school system.

SECTION 4. Effective Date. This Resolution shall take effect immediately upon its adoption by the Cape Coral City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	 NELSON	
GUNTER	 STOKES	
CARIOSCIA	 WILLIAMS	
STOUT	 COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM CITY CLERK

APPROVED AS TO FORM:

deres Manend 50

DOLORES D. MENENDEZ CITY ATTORNEY res/City Analysis of Charter Schools 5/30/18 Intended Outcome – Craft a resolution that will make Cape Coral Charter Schools competitively sustainable moving forward.

- a. Over the next 6 months
 - City will track all personnel and operating costs associated with:
 - Financial Services / City Clerk / Fleet & Facilities / ITS / HR
 - Fleet & Facilities costs for O + M and Capital, if necessary (Charter will fund)
- b. City will develop the costs of the development of shared athletic fields and facilities / Oasis Sports Park
- c. Charter School will follow all of the City's policies/procedures
- d. City will also track Charter School costs for how they operate
- e. City will also compare to private sector
- f. City will also address Capital to be more competitive amongst other schools
- g. City will ask Lee County School District to provide costs for managing Human Resources, record keeping, and possible other areas such as ITS
- h. City will not execute the charge back this FY (\$311k)
- i. Will determine appropriate fund balance policies moving forward
- j. Fleet Services consolidation will have to occur beginning July 2018
- k. Facilities Services consolidation will have to occur beginning July 2018

Given the above, these initiatives will change the scope of work for the Cape Coral Charter School Board and will require comportment with the City's policies and procedures.

City Management will develop a resolution for Council's consideration at either the June 4, 2018 or June 18, 2018 City Council regular meeting.

April 2018 Workshop

Budget Overview

Revenues						% Change	% Change		
		FY 2017	FY 2018	FY 2018	FY 2019	From FY 2018	From FY 2018	FY 2020	FY 2021
Revenue Categories - Sources		Actual	Adopted	Amended	Proposed	As Adopted	As Amended	Proposed	Proposed
Intergovernmental	\$	22,910,150	\$ 22,937,710	\$ 22,251,887	\$ 21,971,448	-4.21%	-1.26%	\$ 22,054,431	\$ 22,020,696
Capital Outlay (PECO)		887,939	582,762	615,289	613,981	5.36%	-0.21%	612,891	611,812
Charges for Services		644,077	666,450	666,450	650,000	-2.47%	-2.47%	660,600	670,944
Miscellaneous		534,307	189,733	203,251	192,029	1.21%	-5.5 <mark>2%</mark>	200,033	205,803
Other: Debt Proceeds		163,071	-	-	-	0.00%	0.00%	-	-
Total Revenues:	Ś	25,139,544	\$ 24,376,655	\$ 23,736,877	\$ 23,427,458	-3.89%	-1.30%	\$ 23,527,955	\$ 23,509,255
Total Revenues.	<u>+</u>								
Expenditures	<u> </u>					% Change	% Change		
	<u> </u>	FY 2017	FY 2018	FY 2018	FY 2019	% Change From FY 2018	% Change From FY 2018	FY 2020	FY 2021
	<u> </u>		FY 2018 Adopted	FY 2018 Amended	FY 2019 Proposed	•	_	FY 2020 Proposed	FY 2021 Proposed
Expenditures	Ş	FY 2017	\$	\$	\$	From FY 2018	From FY 2018	\$	\$
Expenditures Expenditure Categories - Uses	\$	FY 2017 Actual	\$ Adopted	\$ Amended	\$ Proposed	From FY 2018 As Adopted	From FY 2018 As Amended	\$ Proposed	Proposed
Expenditures Expenditure Categories - Uses Personnel	\$	FY 2017 Actual 16,357,197	\$ Adopted 16,567,465	\$ Amended 16,665,496	\$ Proposed 17,534,439	From FY 2018 As Adopted 5.84%	From FY 2018 As Amended 5.21%	\$ Proposed 17,075,405	Proposed 17,163,216
Expenditures Expenditure Categories - Uses Personnel Operating	\$	FY 2017 Actual 16,357,197 6,767,837	\$ Adopted 16,567,465 7,022,075	\$ Amended 16,665,496 7,144,702	\$ Proposed 17,534,439 7,443,844	From FY 2018 As Adopted 5.84% 6.01%	From FY 2018 As Amended 5.21% 4.19%	\$ Proposed 17,075,405 7,283,871	Proposed 17,163,216 7,371,802

Revenues - Expenditures:

\$ 1,249,770 \$ 216,739 \$ (1,255,802) **\$** (2,118,475)



May 2018 Workshop

Budget Overview

Revenues									% Change	% Change
		FY 2017	FY 2018	FY 2018		FY 2019		FY 2019	From FY 2018	From FY 2018
Revenue Categories		Actual	Adopted	Amended	Wo	orkshop No. 1	Wo	orkshop No. 2	As Adopted	As Amended
Intergovernmental	\$	22,910,150	\$ 22,937,710	\$ 22,251,887	\$	21,971,448	\$	21,791,569	-5.00%	-2.07%
Capital Outlay (PECO)		887,939	582,762	615,289		613,981		1,515,652	160.08%	146.33%
Charges for Services		644,077	666,450	666,450		650,000		650,000	-2.47%	-2.47%
Miscellaneous		534,307	189,733	203,251		192,029		154,529	- <mark>18.55%</mark>	-23.97%
Other: Debt Proceeds	_	163,071	-	-		-		-	0.00%	0.00%
Total Revenues:	\$	25,139,544	\$ 24,376,655	\$ 23,736,877	\$	23,427,458	\$	24,111,750	-1.09%	1.58%

Expenditures									% Change	% Change
		FY 2017	FY 2018	FY 2018		FY 2019		FY 2019	From FY 2018	From FY 2018
Expenditure Categories		Actual	Adopted	Amended	W	orkshop No. 1	Wo	orkshop No. 2	As Adopted	As Amended
Personnel	\$	16,357,197	\$ 16,567,465	\$ 16,665,496	\$	17,534,439	\$	17,181,188	3.70%	3.09%
Operating		6,767,837	7,022,075	7,144,702		7,443,844		7,093,382	1.02%	-0.72%
Capital Outlay		457,514	318,165	875,898		262,291		32,791	-89.69%	-96.26%
Debt Service	_	307,226	252,211	306,583		305,359		305,359	21.07%	-0.40%
Total Expenditures:	\$	23,889,774	\$ 24,159,916	\$ 24,992,679	\$	25,545,933	\$	24,612,720	1.87%	-1.52%

Revenues - Expenditures: \$ 1,249,770 \$ 216,739 \$ (1,255,802) \$ (2,118,475) \$ (500,970)

Charter School Budget Highlights as presented at their Budget Workshops in April and May 2018

Payroll Impacts/Changes

- Position change costs \$328,227
- Merit Awards and Pay Parity \$500,000
- Health Care 5% increase, additional eligible employees in FY 2019
- Florida Retirement System .33% increased contribution by employer

Operating

Meraki Access Points - \$104,000 (Potential E-Rate reimbursement \$62,000)

Capital

- Total Capital \$262,291
 - Safety Initiatives \$109,000
 - Software \$117,616
 - Cafeteria Upgrades \$15,000
 - Christa McAuliffe Nothing Budgeted

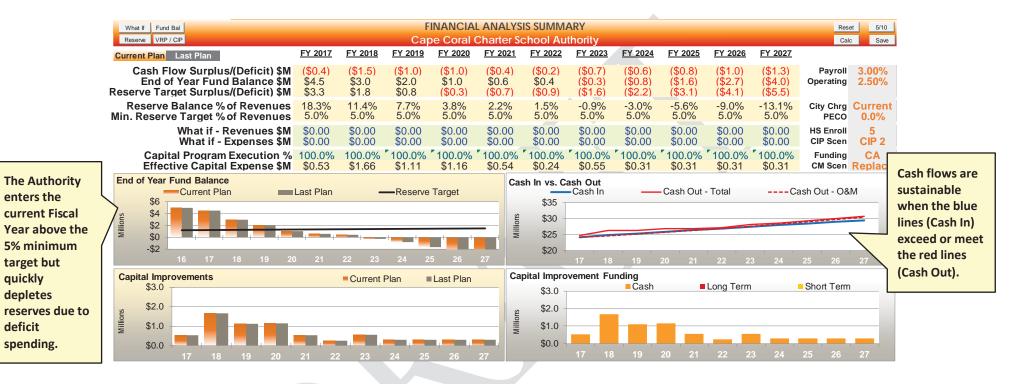
	Charter Cash Posit	ion 4/17/2018	
	BOA (Less Internal Funds)	\$ 4,499,242	
	FL Class	\$ 2,546,302	
	SBA	\$ 4,550,577	
	United	\$ 504,606	
		\$12,100,727	
	Restricted Discretionary Capital	\$ (1,700,000)	
	Internal Funds	\$ (650,000)	
	Available Cash	\$ 9,750,727	\$ 9,750,727
		φ 0,700,727	φ 3,730,727
	Remaining Revenues:		
	FEFP	\$ 4,450,000	
	NSLP Breakfast/Lunch	\$ 68,000	
	Capital Outlay State Shared	\$ 175,000	
	Other Revenue	<u>\$ 105,000</u>	
		\$ 4,798,000	\$ 4,798,000
/	Anticipated Expenditures:		
	Payroll Remaining		
	April (1 payroll remaining)	\$ (600,000)	
	May (3 payrolls)	\$ (1,800,000)	
	June (4 payrolls)	\$ (2,400,000)	
	Average monthly operating	<u>\$ (1,475,000</u>)	
	\$590,000 X 2.5 months	¢ (0.075.000)	¢ (0.075.000)
	Proposed Capital	\$ (6,275,000)	\$ (6,275,000)
	Proposed Capital: Security upgrades	\$ (530,650)	
	A/C units	\$ (530,650) \$ (486,000)	
	Painting	\$ (125,000)	
	Chromebooks	\$ (75,000)	
	Text Books	\$ (75,000)	
	Text Dooks	······································	\$ (1 201 650)
	Estimated Cash 6/30/18	\$ (1,291,650)	<u>\$ (1,291,650</u>) \$ 6 082 077
	5% Reserve Mandate		\$ 6,982,077 \$ (1,200,000)
			<u>\$ (1,200,000</u>)
			\$ 5,782,077

City Financial Services Projected ending Cash Balance and Fund Balance in mid-April. The differences in projections are the estimated Revenues over/(under) Expenditures vs. budgeted Revenues and Expenditures. Charter School's calculation of estimated Fund Balance at 6/30/18 is \$5,363,786.

Fund Balance	Projection 4/18/2018
\$ 8,787,089	Unassigned Fund Balance 2/28/218
(1,700,000)	Discretionary Capital held in escrow
\$ 7,087,089	
(530,650)	Security upgrades (Not Budgeted)
\$ 6,556,439	Estimated 6/30/18 Fund Balance
<u>\$(1,200,000</u>)	
\$ 5,356,439	

Oasis Charter Schools 2018 - 2020 Budget per Burton-Stantec Model

		FY 2017	FY 2018	FY 2019	FY 2020
Revenues	Christa McAuliffe	5,762,354	5,856,022	5,958,222	6,061,722
	Oasis Elementary	6,500,439	6,616,831	6,734,981	6,854,831
	Oasis Middle School	5,949,547	6,113,998	6,228,598	6,344,998
	Oasis High School	5,765,479	5,902,799	6,031,189	6,163,179
	CME VPK	98,928	98,900	98,900	98,900
	Oasis VPK	98,928	98,900	98,900	98,900
		24,175,675	24,687,450	25,150,790	25,622,530
		FY 2017	FY 2018	FY 2019	FY 2020
Expenditures	Christa McAuliffe	5,627,320	5,766,652	5,910,507	6,035,148
	Oasis Elementary	6,404,504	6,565,824	6,732,326	6,878,099
	Oasis Middle School	5,831,856	5,974,576	6,121,935	6,247,438
	Oasis High School	6,027,107	6,171,045	6,319,662	6,448,977
	CME VPK	102,767	105,730	108,779	111,916
	Oasis VPK	97,395	100,197	103,080	106,046
		24,090,949	24,684,023	25,296,288	25,827,623
Capital	Capital Improvement	-	1,615,000	1,800,000	1,800,000
	Capital Equipment	528,905	427,872	257,872	302,813
	Capital Maintenance	1,925	197,000	4,500	5,000
	Total Capital	530,830	2,239,872	2,062,372	2,107,813
	Total Revenues	24,175,675	24,687,450	25,150,790	25,622,530
	Total Expenditures	24,621,779	26,923,895	27,358,660	27,935,436
	Net Before Reserves	(446,104)	(2,236,445)	(2,207,870)	(2,312,906)



Model Control Panel – Baseline Analysis

City of Cape Coral Cost to Include Charter School Activities Within City Departments

	<u>Salaries</u>	<u>Op</u>	erating	<u>Ca</u>	<u>pital</u>	<u>Total</u>
Financial Services	\$ 255,222	\$	-	\$	-	\$ 255,222
ITS	\$ 293,074	\$	-	\$	-	\$ 293,074
Attorney	\$ 72,200	\$	-	\$	-	\$ 72,200
Auditor	\$ 27,773	\$	-	\$	-	\$ 27,773
City Clerk	\$ 68,821	\$	-	\$	-	\$ 68,821
Facilities	\$ 105,000	\$	-	\$	-	\$ 105,000
Fleet	\$ 63,020	\$	-	\$	-	\$ 63,020
Human Resources	\$ 102,587	\$	-	\$	-	\$ 102,587
	\$ 987,698	\$	-	\$	-	\$ 987,698

Cost per Student

		@ 3,2	181 students
Total City Cost Calculation including Charter Staff	\$ 2,367,334	\$	744.21
Current Cost to perform by Charter including Operating	\$ 2,373,381	\$	746.11

City Recommended Must Have Items

Annual Facilities Capital Co	osts \$	673,000
Annual Bus Fleet Capital/Debt Co	osts <u>\$</u>	252,365
	\$	925,365
Additional Considerations		

Athletic Fields / Oasis Sports Park \$ 9,500,000

Annual Maintenance of Athletic Fields / Oasis Sports Park \$ 288,000

Charter Savings Calculation

Current Cost to perform by Charter including Operating \$ 2,373,381

Current Staffing \$ (723,391)

Custodial Services \$ (486,245)

Fleet and Facilities Operating Costs \$ (170,000)

Total Estimated Charter Savings \$ 993,745

Item Number: B.(9) Meeting Date: 6/4/2018 Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 129-18 Approve D&D Boat Ramp Conceptual Site Plan Option 1A/1B (Phased) with P3 Restaurant / Bait Shop and authorization for the City Manager to execute all associated grants, permits, designs, and construction contracts.

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment?
- 2. Is this a Strategic Decision?

No Yes

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

ELEMENT D: IMPROVE THE CITY'S IMAGE WITH THE PURPOSE OF BUILDING LASTING RELATIONSHIPS WITH OUR RESIDENTS AND VALUABLE PARTNERSHIPS WITH OTHER ORGANIZATIONS, AND CONTINUALLY PROVIDE A WELL-BALANCED AND POSITIVE WORKPLACE FOR OUR INTERNAL STAKEHOLDERS.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS: D&D Boat Ramp Memo Resolution 129-18

PREPARED BY: Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Paul Clinghan Public Works Director 1-239-574-0702

ATTACHMENTS:

- Description
- n Memo
- Resolution 129-18

Туре

Backup Material Resolution

MEMORANDUM

CITY OF CAPE CORAL PUBLIC WORKS DEPARTMENT

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager Paul Clinghan, Public Works Director Kerry Runyon, Parks and Recreations Director Victoria Bateman, Financial Services Director Vince Cautero, Community Development Director Mark Ridenour, Facilities/Projects Manager

DATE: May 30, 2018

SUBJECT: D&D Boat Ramp

At the May 22, 2018 Committee of the Whole Meeting staff discussed with the Mayor and Council three main options for the proposed development of the D&D Boat Ramp Site as presented below:

- 1. Public Private Partnership (P3) on the bait shop parcel with the \$3.3 Million or \$1.7 Million boat ramp improvements (Conceptual Site Plan Option 1A or 1B).
- 2. Existing bait shop to remain with the \$3.3 Million or \$1.7 Million Boat Ramp Improvements (Conceptual Site Plan Option 2A or 2B).
- 3. Sell the entire property or establish a P3 development for the entire site (Option 3A or 3B).

Based on the discussions at the May 22, 2018 Committee of the Whole Meeting, Resolution 129-18 is being placed on the June 4th Council agenda for approval of the following:

- 1. Approve the Conceptual Site Plan Option 1A/1B to be permitted, designed and then constructed in phases as required based on funding.
- Approve the WCIND Grant for \$222,297 with City matching funds to replace/repair the existing seawall and boat ramp at the D&D property for a total not-to exceed of \$444,594.
- 3. Approve the FWC FBIP grant for \$67,500 with an additional \$12,500 City funding to permit and design the Conceptual Site Plan Option 1A/1B to be constructed in Phases. Design fee not-to-exceed \$80,000.
- 4. Authorize the City Manager to solicit a P3 to construct a new facility with a restaurant, marine fuel facility and maintain the D&D Tackle business.

PC:bw

RESOLUTION 129 – 18

A RESOLUTION OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE AGREEMENT FOR WCIND SUBGRANT FUNDING BETWEEN THE CITY OF CAPE CORAL AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS FOR THE REPLACEMENT/REPAIR OF THE SEAWALL AND RAMP AT THE CITY-OWNED D&D BOAT RAMP AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL RELATED DOCUMENTS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ALL PROCUREMENT RELATED DOCUMENTS IN EXCESS OF \$50,000 FOR PURCHASES NECESSARY TO COMPLETE THE NEEDED REPAIRS TO THE EXISTING SEAWALL AND RAMP LOCATED AT THE CITY-OWNED D&D BOAT RAMP; AUTHORIZING THE CITY MANAGER TO ENTER INTO A DESIGN SERVICES CONTRACT PARTIALLY FUNDED BY A FBIP GRANT FOR IMPROVEMENTS TO THE D&D BOAT RAMP SITE; AUTHORIZING THE CITY MANAGER TO ISSUE A REQUEST FOR PROPOSAL FOR A PUBLIC PRIVATE PARTNERSHIP FOR A NEW CITY FACILITY AT THE D&D BOAT RAMP SITE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on December 5, 2016 the City Council adopted Resolution 233-16, adopting the City of Cape Coral Parks Master Plan; and

WHEREAS, the City of Cape Coral Parks Master Plan, which outlines the development and maintenance for Cape Coral City Parks, establishes the level of service for boat ramp lanes at one boat ramp lane per every 10,000 residents; and

WHEREAS, the facilities level of service analysis in the City of Cape Coral Parks Master Plan identifies the immediate need for an additional 11 boat ramps within the City limits for water access and recreation and 33 additional boat ramp lanes at buildout; and

WHEREAS, on April 20, 2012, the City of Cape Coral purchased several parcels of improved and unimproved water access property with two existing boat ramp lanes and a bait and tackle store located on Pine Island Road; and

WHEREAS, on January 13, 2014, the City of Cape Coral adopted Ordinance 73-13, entering into a lease on such property with the owners of D&D Matlacha Bait & Tackle, Inc., to operate and manage the bait and tackle store and the boat ramp facilities, and

WHEREAS, the existing seawall located on the improved City of Cape Coral property leased by D&D Matlacha Bait & Tackle, Inc., is in extremely poor condition and is in danger of failing; and

WHEREAS, the City of Cape Coral has been notified by Lee County it has been awarded a \$222,297 West Coast Inland Navigation District (WCIND) Boating Recreation grant (L-474) to repair the existing seawall and boat ramp on the property; and

WHEREAS, the WCIND Boating Recreation Grant requires matching funds from the City of Cape Coral; and

WHEREAS, the City Council desires to approve the Agreement for WCIND Subgrant Funding between the Lee County Board of County Commissioners and the City of Cape Coral in the amount of \$222,297 and to authorize the City Manager to execute the Agreement and any other documents necessary to receive the grant award; and

WHEREAS, due to the exigent need of repairs to the existing seawall, the City Council desires to authorize the City Manager or his designee to execute all procurement related purchase orders and contracts in excess of \$50,000 pursuant to City Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-142(e) for purchases necessary to complete the needed repairs to the seawall and ramp at the D&D Boat Ramp, for a total amount not to exceed \$444,594; and

WHEREAS, on April 11, 2016, the City Council of Cape Coral adopted Resolution 49-16, authorizing the City Manager to apply for a Florida Fish and Wildlife Conservation Commission (FWC) Florida Boating Improvement Program (FBIP) grant to seek state funds to permit and design improvements to the existing boat ramp facilities at the D&D Boat Ramp to enhance safety and accessibility; and

WHEREAS, on July 22, 2016, the City of Cape Coral was notified it has been awarded up to \$67,500 in FBIP funds to design improvements at the D&D Boat Ramp; and

WHEREAS, at the Committee of the Whole Meeting on May 22, 2018, the City Council of Cape Coral expressed an interest in purchasing, permitting, and constructing a marine fuel tank and dispensing pump at the D&D Matlacha Bait & Tackle store to further enhance the amenities at the D&D boat ramp site; and

WHEREAS, at the Committee of the Whole Meeting on May 22, 2018, the City Council expressed an interest in constructing an additional facility on the property of the D&D Matlacha Bait & Tackle store to operate a restaurant; and

WHEREAS, the City Council desires to authorize the City Manager to enter into a permitting and design services contract with a qualified firm to permit and design the boat ramp improvements as discussed at the May 22, 2018 Committee of the Whole Meeting at the D&D Boat Ramp site for an amount not to exceed \$80,000, which includes \$67,500 from the FWC FBIP grant and \$12,500 in Cape Coral funds; and

WHEREAS, the City Council desires to authorize the City Manager to issue a Request for Proposal to solicit a Public Private Partnership to construct a new City facility, to include the D&D Bait & Tackle store, restaurant, and other improvements as discussed at the May 22, 2018 Committee of the Whole Meeting.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves the Agreement for WCIND Subgrant Funding between the Lee County Board of County Commissioners and the City of Cape Coral and authorizes the City Manager to execute the Agreement and any other documents necessary to receive the grant award. The Agreement provides that the County distribute funds to the City in an amount of \$222,297 for funding the replacement/repair of the seawall and ramp at the D&D Boat Ramp. A copy of the Agreement is attached hereto as Exhibit A.

Section 2. The City Council hereby approves the execution by the City Manager or his designee of all procurement related purchase orders and contracts in excess of \$50,000 pursuant to City Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-142(e) for purchases necessary to complete the needed repairs to the seawall and ramp at the D&D Boat Ramp, for a total amount not to exceed \$444,594. The City Manager and his staff shall, at all times, comply with all applicable procurement procedures identified in Section 2-144 of the City Code of Ordinances.

Section 3. The City Council hereby authorizes the City Manager to execute the documents necessary to receive the FWC FBIP funds totaling \$67,500. A copy of the award letter is attached hereto as Exhibit B.

Section 4. The City Council hereby authorizes the City Manager to enter into a permitting and design services contract with a qualified firm to design the boat ramp improvements at the D&D Boat Ramp as discussed at the May 22, 2018 Committee of the Whole Meeting and proposed as Conceptual Site Plan – Option 1A/1B - Phased, for an amount not to exceed \$80,000, which includes \$67,500 from the FWC FBIP grant and \$12,500 in Cape Coral funds. The City Manager and his staff shall, at all times, comply with all applicable procurement procedures identified in Section 2-144 of the City Code of Ordinances. A copy of the Conceptual Site Plans are attached hereto as Exhibit C.

Section 5. The City Council hereby authorizes and directs the City Manager to issue a request for proposal to solicit a Public Private Partnership to construct a new City facility which will include the D&D & and Tackle Store, a restaurant, and marine fueling facility on the parcels currently housing the D&D Matlacha Bait & Tackle store and associated dry storage, as discussed at the May 22, 2018 Committee of the Whole Meeting and proposed as Conceptual Site Plan – Option 1A/1B - Phased.

Section 6. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	 1
GUNTER	 S
CARIOSCIA	 V
STOUT	 (

NELSON	
STOKES	
WILLIAMS	
COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM, CITY CLERK

APPROVED AS TO FORM:

Menendy V DOLORES D. MENENDEZ

CITY ATTORNEY res\D&D Boat Ramp Improvements

AGREEMENT FOR WCIND SUBGRANT FUNDING

THIS AGREEMENT is entered into by and between the LEE COUNTY BOARD OF COUNTY COMMISSIONERS, hereafter referred to as the "County" and <u>City of Cape</u> <u>Coral</u> hereafter referred to as "Recipient", and is for implementation of the <u>D&D Matlacha</u> <u>Boat Ramp Improvements Project for Replacement of seawall and ramp at the D&D</u> <u>public boat ramp. (Boating Recreation L-474)</u> (hereafter "Project") to be carried out with funding provided by the Recipient, and grant funding provided by the County from the WEST COAST INLAND NAVIGATION DISTRICT (hereafter "WCIND") under its Waterway Development Program.

WHEREAS, the County is considered the applicant and assumes responsibility for the grant funds; and

WHEREAS, the Recipient is a co-applicant and will assume responsibility for daily grant administration; and

WHEREAS, the County, on June 01, 2016 adopted Resolution No. <u>16-06-28</u> and certified that the moneys from the WCIND Waterway Development Program will be appropriately and effectively used by Recipient for its Project, and that the grant funds will not be used to supplant existing County budget allocations; and

WHEREAS, funds received from WCIND through the Waterway Development Program are committed for expenditure in program activities that meet WCIND's criteria for grants; and

WHEREAS, the County has approved the Recipient's request for grant funding under the WCIND Waterway Development Program in accordance with their Pre-Application Form for Sub-grantees, incorporated herein by reference;

NOW, THEREFORE, the parties hereto agree as follows:

- 1. This Agreement shall be governed and construed in accordance with the provisions of Florida Statutes, and those specific provisions and rules pertaining to WCIND and the Waterway Development Program (Rule 66A-2, Florida Administrative Code). In the event that any provision in this Agreement is in conflict with the applicable rules and statutes, the parties hereto may negotiate in good faith to reconcile such conflict, or either party may terminate this Agreement to the extent funds have not been expended prior to the date of the Notice to Terminate.
- The County agrees, warrants and covenants to distribute funds to Recipient on a reimbursement basis for project costs accrued in accordance with the scope of work specified in Resolution No. <u>16-06-28</u> and the agreement between WCIND and the County.

No reimbursement shall be made for expenses made prior to October 1, 2016.

- 3. The Recipient agrees, warrants, and covenants that:
 - a. All moneys expended shall be for services, equipment, and supplies solely used to further the goals and objectives of the WCIND Waterway Development Program, as set forth in the current grant program guidelines in Rule 66A-2, Florida Administrative Code. Moneys shall not be used for tools, equipment, boats, motors, office furniture and supplies, law enforcement and safety equipment, contract labor and materials <u>not used exclusively for the authorized project</u>, in-house labor, equipment or other services, and operational or administrative costs.
 - b. All funds used for the project which are expended to acquire professional architectural, engineering, landscape architecture or land surveying services for the accomplishment of the project shall be secured in accordance with the provisions of Chapter 287, Florida Statutes. (NOTE: Rule 66A-2.005(2)(b), F.A.C., provides that moneys from the WCIND Waterway Development Program Fund <u>shall not be used for project-related pre-construction costs incurred for surveys, appraisals, engineering and architectural fees, permitting and utilities fees.</u>)
 - c. The recipient agrees that the project will be operated and maintained in a satisfactory condition for public recreational boating purposes for a minimum of <u>twenty-five (25)</u> years from the date of project completion. The recipient further agrees to return to the County all funds tendered by the County to the recipient for the Project, in the event the project is utilized for other than public recreational boating purposes during the time period as stated in this Paragraph.
 - d. All purchases of equipment and supplies shall be made on a competitive basis. Items with a purchase price of \$2000.00 or greater must have no less than three written bids. Bids must be submitted to the County for approval prior to purchases being made. Costs for items purchased without the required prior approval may not be eligible for reimbursement. Exceptions may be granted by the County, subject to applicable rules and regulations, but must be requested in writing and describe why the Recipient cannot meet the bidding requirement.

- e. WCIND funds may not be used for any land acquisition projects.
- f. The Recipient agrees to submit quarterly signed project status reports to the County which are due between the 15th and the 30th of December, March, June and September. Failure to provide timely reports may result in termination of the Project Agreement, or loss of present or future funding eligibility.
- g. (checked if applicable) For environmental education or boater safety projects, the recipient must also provide in their quarterly and annual reports the following in order to show an established curriculum relating to the waters of the WCIND:
 - i. Who attended and taught the course.
 - ii. Date class was held.
 - iii. Location of class.
 - iv. Course material.
- h. X (checked if applicable) Matching funds are required for this project. The Recipient must identify and enumerate the amount of all matching funds in quarterly and annual reports. Matching funds must constitute 50% of the total project cost.
- i. (checked if applicable) This project is for marine enforcement. The Recipient must identify and include the following information in all quarterly and annual reports:
 - i. standard Marine Enforcement Quarterly Report Form
 - ii. documentation of warnings and citations

iii. general activity as it pertains to vessels or equipment with a purchased value of \$2,000 or greater that WCIND funds were used to produce

j. Official communications shall be delivered as follows.

County designated Liaison Agent:

Michael Campbell Lee County Natural Resources P.O. Box 398 Ft. Myers, FL 33902-0398 239-533-8133 phone 239-485-8408 fax mcampbell@leegov.com Recipient designated Project Manager who shall be responsible for ensuring performance of the terms and conditions of this Agreement:

Name	Mark Ridenour
Title	Facilities/Projects Manager
Company	City of Cape Coral
Address	1105 SE 9th Ave.
City, State, Zip	Cape Coral, FI 33990
Phone	239-574-0724
Fax	239-574-0470
Email	mridenou@capecoral.net

Changes to the listed contact information shall be submitted immediately in writing to the other party.

- 4. The County and the Recipient agree, covenant, and warrant as follows:
 - a. The grant funds will be disbursed no more than monthly based on project deliverables to Recipient upon receipt of appropriate paid invoices with sufficient supporting documentation and a report indicating activities that have occurred during the billing period. Project deliverables must be verifiable to reflect the work accomplished before funds will be disbursed.
 - b. The Recipient shall prepare and submit to the County an annual report (due by the end of each calendar year) summarizing the work accomplished, problems encountered, location and status of equipment with a purchase value of \$2000 or more and other relevant information. The annual reporting requirement shall remain in effect until the County has verified in writing to the Recipient that no equipment or asset remains with a value of \$2000 or more.
 - c. The County has the right to terminate the grant and demand full refund of all moneys in the event it is determined that any grant funds were expended in non-compliance with the terms of this Agreement, WCIND rules, or other applicable statutes and rules.

- d. This grant period is July 1, 2018 to July 1, 2019. All unspent grant funds remaining at the end of the grant period, July 1, 2019, will be returned to WCIND for use in the Lee County Countywide Navigation Improvement Fund.
- e. Accurate records of expenditures of grant funds shall be maintained and these records shall be available at all reasonable times for inspection, review or audit by the County and WCIND. Records shall be kept for a period of at least three (3) years following the end of the grant period and until all annual reporting requirements have been satisfied.
- f. Expenditure reports must be accompanied by sufficient supporting invoices and documentation to support pre-audit and post-audit review. The sufficiency of said documentation shall be determined by the County's Clerk of the Circuit Court and WCIND's Executive Director who may seek additional information as the circumstances require.
- g. The performance of this Agreement shall be in compliance with all applicable laws, orders, and codes of Federal, State and Local governments.
- h. The County shall not be liable to any person, firm or corporation that contracts with the Recipient to provide goods and services associated with the Project conducted with grant moneys. Nor shall the County be liable to any person, firm, or corporation for claims against the Recipient or debts incurred by the Recipient.
- i. Neither party to this Agreement may assign this Agreement without prior written consent of the other party.
- j. This Agreement may be terminated and the Recipient shall return to the County all moneys received from the County under this Agreement, upon the occurrence of one or more of the following events:
 - (1) Should it be determined that the County is not a qualified grantee for funds awarded under the applicable statutes or rules, or

- (2) Should the Recipient fail to provide the quarterly and annual reports and documents required under this Agreement in accordance with the grant criteria or fail to expend the funds in a manner consistent with the grant criteria.
- k. Upon written notice by the County of the occurrence of either one of the conditions stated above, the Recipient shall, within thirty (30) days thereafter, return the funds to the County without regard to whether such funds have already been expended or encumbered by the Recipient.
- I. This Agreement may not be modified, amended or extended orally. This Agreement may be amended only by written agreement executed with the same formality as this Agreement.
- m. In the event that any section or paragraph of this Agreement is adjudged by a court of competent jurisdiction to be invalid, such adjudication shall not affect or nullify the remaining sections or paragraphs, but shall be confined solely to the sections or paragraphs involved in such decision.
- n. Each of the parties hereto covenants to the other party that it has lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.
- o. Any capital equipment expenditure made under this grant shall become the property of the County when it is no longer necessary for or used for the Recipient's Project unless the County (and, if necessary, WCIND) releases the capital equipment to the Recipient pursuant to Exhibit "A", Disposal of Assets Acquired with WCIND Grant Funds.
- p. The County and Recipient mutually agree to the following special terms and conditions incorporated as part of this Agreement:
 - (1) Exhibit "A" <u>Disposal of Assets Acquired with WCIND Grant</u> <u>Funds;</u>
 - (2) Exhibit "B" (check if applicable): X <u>Matching Funds Certification Form;</u> <u>Certification of Law Enforcement Expenditures;</u> <u>Standard Marine Enforcement Quarterly Report Form</u>
 - (3) Exhibit "C" <u>Definition of Funding Conditions.</u>

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned officials, as duly authorized this _____ day of _____, 20___.

FOR THE COUNTY:

BY:_____

ATTEST: LINDA DOGGETT, CLERK

DEPUTY CLERK

BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA

BY:____

ASSISTANT COUNTY MANAGER

APPROVED AS TO LEGAL FORM FOR THE RELIANCE OF LEE COUNTY ONLY

BY:_____

LEE COUNTY ATTORNEY'S OFFICE

FOR THE RECIPIENT:

By:	
Type Name:	
Title:	Witness
Address:	
	Witness

The foregoing instrument was acknowledged before me in the State of Florida, County of Lee, this ____ day of _____, 20__, by _____, who produced _____ as identification. WITNESS my hand and official seal in the County and State last aforesaid this

day of _____, 20__.

(SEAL)

Notary Public

Printed Name of Notary Public

My Commission Expires:_____

7

EXHIBIT "A"

DISPOSAL OF ASSETS ACQUIRED WITH WCIND GRANT FUNDS

Disposal of assets acquired with WCIND grant funds (such as tools, equipment, boats, motors, office furniture, law enforcement and safety equipment, and other materials, shall be handled in accordance with the following provisions;

A. When replacing assets or equipment acquired in whole or in part under a WCIND grant, the grantee or subgrantee may use the assets or equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the prior written approval of Lee County and WCIND.

B. When original or replacement assets or equipment acquired in whole or in part under a WCIND grant are [a] sold (except as authorized in the preceding paragraph); [b] no longer available for use in a WCIND-sponsored program; [c] used for purposes not authorized by WCIND; or [d] no longer needed for the original project or program or for other activities currently or previously supported by WCIND, disposition of the assets will be made as follows:

1. Disposition of assets must be approved in writing by Lee County prior to disposition.

2. Assets or items of equipment with a current per-unit fair market value of less than \$2000.00 may be retained, sold or otherwise disposed of without any further obligation to Lee County or WCIND.

3. Assets or items of equipment with a current per-unit fair market value in excess of \$2000.00 may be retained or sold and Lee County's and WCIND's equity in the asset will be refunded by the Recipient in the same proportion as Lee County and WCIND's participation in the purchase based on the current market value or proceeds from sale, whichever is greater.

C. Tangible property must be shown as property acquired, in the records for that project. Also, such property must be available for audit or appropriate recording of disposition of such property be readily available should the item or items be disposed of or are no longer in use.

WEST COAST INLAND NAVIGATION DISTRICT

WCIND WATERWAY DEVELOPMENT PROGRAM

CERTIFICATION OF MATCHING FUNDS REQUIREMENT

PROJECT:	D&D	Matlacha	Boat	Ramp	Improvements		
COUNTY:	LEE				PROJECT NO:	L-474	

I certify that all matching funds requirements were met in accordance with the terms of the Project Application between the County and the Recipient, pursuant to the Waterway Development Program rules and regulations adopted by WCIND on November 11, 1990, and all applicable law.

Date	Recipient
STATE OF) COUNTY OF)	
The foregoing instrument was day of, 20, by who produced WITNESS my hand and official last aforesaid thisday of	as identification. seal in the County and State
(SEAL)	Notary Public
	Printed Name of Notary Public

My Commission Expires:

DATE

ACCEPTED BY COUNTY LIAISON AGENT:

(6830)

WEST COAST INLAND NAVIGATION DISTRICT WCIND WATERWAY DEVELOPMENT PROGRAM

CERTIFICATION OF LAW ENFORCEMENT EXPENDITURES

PROJECT: D&D Matlacha Boat Ramp Improvements

COUNTY:	LEE	PROJECT NO:	L-474

I certify that all funds allocated for the above named project were expended for marine law enforcement only, pursuant to the Waterway Development Program rules and regulations adopted by WCIND on November 11, 1990, and as authorized by Section 374.976, Florida Statutes, to ensure program funds are not used to supplement other activities.

Date

Recipient

STATE	OF _	
COUNTY	OF	

The foregoing instrument was acknowledged before me this _________, day of _______, 20____, by ________, who produced ________ as identification. WITNESS my hand and official seal in the County and State last aforesaid this ______ day of _______, 19_____.

(SEAL)

Notary Public

Printed Name of Notary Public My Commission Expires:

DATE

ACCEPTED BY COUNTY LIAISON AGENT:

(6843)

GENCY:		
Foday's Date:	Report Period:	Oct Dec. Jan Mar. Apr Jun. Jul Sep.
Fotal Hrs. Worked for the Period	Total Hrs. on t	the Water
Verbal Warnings	Manatee Zone Warnings	
Written Warnings	Manatee Zone Citations	
Total Citations	Complaints Dispatched	
Assists: Agency/Boa	aters (Attach additional pages if necess	sary) Hours
Signage needs or enforcement pro	blems: (Attach additional pages if nec	essary)
Signage needs or enforcement pro	blems: (Attach additional pages if nec	essary)
Signage needs or enforcement pro	blems: (Attach additional pages if nec	essary)
Signage needs or enforcement pro		essary)
List other significant activity on rev		
List other significant activity on rev	verse side.	

EXHIBIT "C"

GUIDELINES TO DEFINE FUNDING CONDITIONS FOR LAW ENFORCEMENT, NAVIGATION, ENVIRONMENTAL EDUCATION, BOATING SAFETY-EDUCATION AND RECREATION

LAW ENFORCEMENT - 100%

- A. All funds must be used for waterway law enforcement.
- B. Funds shall be used for major overhaul or major repairs. No funding for general operation and maintenance will be approved.
- C. All equipment purchased by competitive bid or as specified by each county.
- D. The funding cap is 20% of the annual (fiscal year) allocation of ad valorem proceeds per county in which the grant is requested.
- E. Activities reports must be submitted with each quarterly report and grant payment request.

NAVIGATION IMPROVEMENT PROJECTS - 100%

- A. Project must directly improve navigation of District waters.
- B. Channel marking, navigation hazards removal and regulatory signage pertaining to District waters are applicable to navigation improvement projects.

ENVIRONMENTAL EDUCATION PROJECTS - 100%

- A. Must directly relate to waters of the District.
- B. Curriculum must be established via in-house classroom and/or field trip class instruction.
- C. The funding cap is 25% of the annual (fiscal year) allocation of ad valorem proceeds per county in which the grant is requested.
- D. Activity reports must be submitted with each quarterly report and grant payment request.

BOATING SAFETY AND EDUCATION - 50% MATCH FUNDED

- A. Funds can be used for classroom equipment providing the equipment is used for boater education and boater safety programs.
- B. Funds can be used for equipment placed on boats providing the boat is used for boater education and safety programs.
- C. Funds can be used for fire/rescue equipment, specifically for use in waters of the District.
- D. Funds may not be used for the operation and maintenance of equipment nor facilities.
- E. Funds may be used for signage pertaining to safety and education of boaters at launching facilities of the District.
- F. Activity reports must be submitted with each quarterly report and grant payment request.

BOATING RECREATION - 50% MATCH FUNDED

- A. Funds may be used to construct boat ramps.
- B. Funds may be used to rehabilitate boat ramps.
- C. Funds may be used for marine recreation parks usable by boaters and non-boaters.
- D. Funds may be used for spoil island and spoil area restoration affording boater recreation.

PROJECT EXTENSION REQUEST FORM

Project: D & D MATLACHA BOAT RAMP IMPROVEMENTS County: LEE Project No: L-474

A request to extend the above named project to: <u>September 30, 2018</u> has been approved as an amendment to the existing project agreement by the WCIND Board of Commissioners on: September 25, 2017.

Signed: WCIND Viee Chair



Florida Fish and Wildlife Conservation Commission

Commissioners Brian Yabionski Chairman Tallahassee

Aliese P. "Liesa" Priddy Vice Chairman Immokalee

Ronald M. Bergeron Fort Lauderdale

Richard Hanas Oviedo

Bo Rivard Panama City

Charles W. Roberts III Tallahassee

Robert A. Spottswood Key West

Executive Staff Nick Wiley Executive Director

Eric Sutton Assistant Executive Director

Jennifer Fitzwater Chief of Staff

Division of Law Enforcement Colonel Curtis Brown Director

(850) 488-6251 (850) 487-0463 FAX

Managing fish and wildlife resources for their long-term well-being and the benefit of people.

620 South Meridian Street Tallahassee, Florida 32399-1600 Voice: (850) 488-4676

Hearing/spaech-Impaired: (800) 955-8771 (T) (800) 955-8770 (V)

MyFWC.com

July 22, 2016

John Szerlag, City Manager City of Cape Coral 1015 Cultural Park Boulevard Cape Coral, FL 33990

RE: Florida Boating Improvement Program Application #16-006 D&D Property Boat Ramp

Dear Mr. Szerlag:

The Florida Boating Improvement Program (FBIP) Evaluation Committee met on June 29, 2016 to score and rank the applications for fiscal year 2016-2017 funding. Based on the score the application received and it's ranking among the other applications, I am pleased to inform you that your project has been awarded up to \$67,500 in funding.

Our staff will provide the City of Cape Coral with a grant agreement for review. However, do not begin work on the project until the grant agreement has been signed by both parties. The FBIP will not reimburse the City for any funds spent prior to the execution of a grant agreement unless pre-award costs were requested and pre-approved.

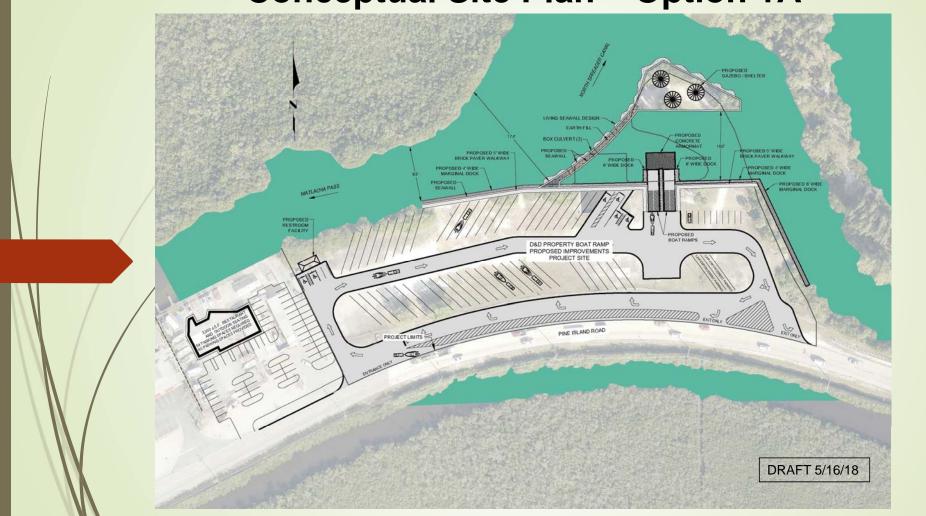
If you have any questions, please contact me at (850) 488-5600, or email <u>fbip@MyFWC.com</u>.

Sincerely,

Tim Woody, Program Administrator Florida Boating Improvement Program Boating and Waterways Section

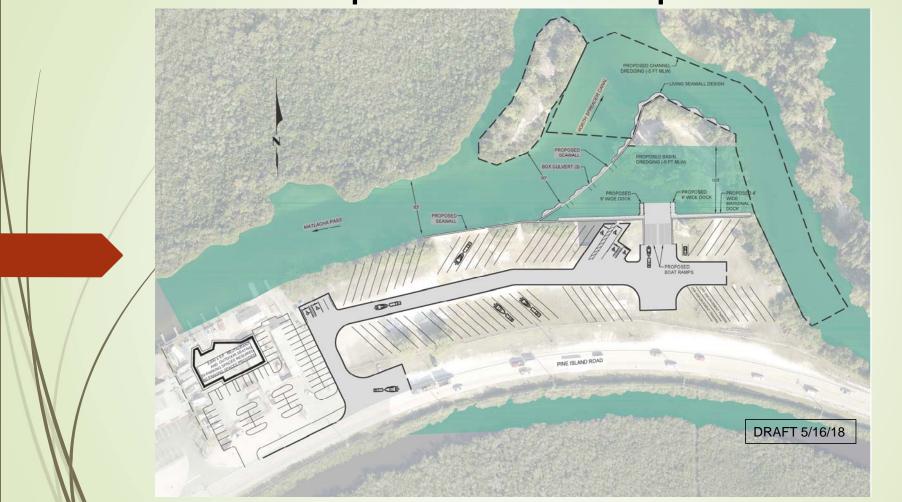
/tw Enclosure

Conceptual Site Plan – Option 1A



P3 on Bait Shop Parcel plus \$3.3M (44 Boat Trailer Spaces)

Conceptual Site Plan – Option 1B



P3 on Bait Shop Parcel plus \$1.7M (53 Boat Trailer Spaces)

Item Number: F.(1) Meeting Date: 6/4/2018 Item APPOINTMENTS TO BOARDS / Type: COMMITTEES / COMMISSIONS

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE: Youth Council - 2 Vacancies

REQUESTED ACTION:

Appoint

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

Action Item #1 Vacancy: 1 Junior from North Fort Myers High School Expiration: Expiration date is 5/1/2020. Applications: Two - Sasha Gorbanovski and Donovan Souppa Advertisement: Both Council Office and City Clerk's personnel reached out to North Fort Myers High School administration to receive applications.

Action Item #2 Vacancy: 1 Junior from Ida S. Baker High School Expiration: Expiration date is 5/1/2020. Applications: Two - Daniel Mikell and Lisa Nguyen Advertisement: Both Council Office and City Clerk's personnel reached out to Ida S. Baker High School administration to receive applications.

LEGAL REVIEW:

EXHIBITS:

Recommendation

PREPARED BY:

Kimberly Bruns

Division- Managerial

Department-City Clerk's Department

SOURCE OF ADDITIONAL INFORMATION:

Kimberly Bruns Assistant City Clerk 1-239-242-3243

Connie Griglin Legislative Executive Assistant to Council 1-239-574-0437 Item A.(1) Number: 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Public Hearings





TITLE:

Ordinance 32-18 Public Hearing (Continued from 5/14 Regular Meeting)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending Cape Coral Code of Ordinances, Chapter 23, Protected Species, Article I, Bald Eagle Protection, to amend definitions; to reduce the size of the Eagle Nest Management Zone; to provide that any development, other than a single-family home or duplex within an Eagle Nest Management Zone shall require the submission of an Eagle Nest Management Plan; to reduce the distance from an active eagle nest prohibiting any development to occur during nesting period; to provide for removal of nest trees if authorized by federal permits; to update the Monitoring Protocol to the current United States Fish and Wildlife Service Bald Eagle Monitoring Guidelines dated September 2007.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Memo dated May 31, 2018 (pages 1 through 4) Attachments to Memo dated May 31, 2018 Ordinance 32-18 Memo Memo dated May 14, 2018 Slide Presented on 6/4/2018 hearing from consultant

PREPARED BY:

Division- Department-City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Vince Cautero, DCD Director Robert Pederson, Planning Manager

ATTACHMENTS:

Description

Туре

- **D** Memo dated May 31, 2018 (Pages 1 through 4)
- Attachments for Memo dated May 31, 2018
- D Ordinance 32-18
- n Memo
- Memo dated May 14, 2018
- Slide presented at hearing on 6/4/2018 by consultant

Backup Material Backup Material Ordinance Backup Material Backup Material

Backup Material

MEMORANDUM

CITY OF CAPE CORAL DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: Mayor Coviello and Council members

FROM: John Szerlag, City Manager Vincent A. Cautero, Community Development Director Robert H. Pederson, Planning Manager

- DATE: May 31, 2018
- SUBJECT: Ordinance No. 32-18 Amendment to the Code of Ordinances Pertaining to Protection of Bald Eagle Nests – Additional Information for June 4 Public Hearing

Executive Summary

Staff has accumulated additional information and data as directed by the City Council regarding the proposed ordinance pertaining to Bald Eagles. We believe this information provides a basis for the City Council to make an informed decision.

Assistance was provided by staff in the Public Works Department, as well as professional environmental consultants on retainer with the City.

Background

Ordinance No. 32-18 was introduced at the April 16 Council meeting and Council held a public hearing on May 14. Following public comment and discussion, this ordinance was continued to June 4. Council members asked for additional information related to the scientific basis for the state and federal 660' protection radius and information regarding eagles and eagle ordinances in other jurisdictions.

Additional Information

1) Memo from the City Attorney's Office

The May 21 memo from Assistant City Attorney Brian Bartos is attached, together with the current United States Fish and Wildlife Service (USFWS) National Bald Eagle Management Guidelines, dated 2007 (2007 Guidelines).

Mayor and Council – Bald Eagle Protection Ordinance – Additional Information May 31, 2018 Page 2 of 4

As noted in Mr. Bartos' memo, the USFWS relied on state and regional bald eagle guidelines, scientific literature on bald eagle disturbance, and recommendations of State and Federal biologists who monitored impacts of human activity on bald eagles. The 2007 Guidelines include 74 citations of related literature on bald eagles.

Mr. Bartos' memo opines that no further study is necessary to reduce the City protection radius to 660' as stated in the USFWS Guidelines. This memo also notes that should Council decide to maintain the current 1,100' protection zone, an argument exists that applying the 1,100' distance to construction activity will require a case-by-case study by the City indicating that such activity would be detrimental and have a negative impact on an active nest.

2) Information from FFWCC

FFWCC staff have also offered to provide information related to the scientific basis for the 660' protection radius. A written communication was received from FFWCC staff on May 29 and is attached. The Bald Eagle division of FFWCC (state) is closed as of January 2018 as they aligned with the federal USFWS Guidelines which were revised in 2017 (attached). They are now redirecting any request to the federal agency.

3) Additional data on eagles in Florida's 20 largest cities by population

Information was provided at the May 14 hearing on whether the 20 largest cities in Florida had local eagle protection ordinances. Staff was asked to research if there are eagle nests in those cities. This information has been added to the table below.

City	Land Area (sq. mi)	Eagle Ordinance	Matches Federal	Addition Protections	Nests per FWC Nestfinder**	Nests per sq. mi
Jacksonville	883.6	No	Yes	No	17	0.02
Miami	55.3	No	Yes	No	0	0.00
Tampa	170.6	No	Yes	No	4	0.02
Orlando	100.6	No	Yes	No	9	0.09
St. Petersburg	132.6	No	Yes	No	5	0.04
Hialeah	19.7	No	Yes	No	0	0.00
Tallahassee	103.1	No	Yes	No	1	0.01
Port St. Lucie	76.7	No	Yes	No	2	0.03
Fort Lauderdale	36	No	Yes	No	0	0.00

Top 20 Florida Cities Ranked by Population

Mayor and Council – Bald Eagle Protection Ordinance – Additional Information May 31, 2018 Page 3 of 4

Cape Coral	119.5	Yes	No	1,100' buffer	14*	0.12
Pembroke Pines	34.4	No	Yes	No	1	0.03
Hollywood	30.8	No	Yes	No	0	0.00
Miramar	31	No	Yes	No	0	0.00
Gainesville	49.1	No	Yes	No	1	0.02
Coral Springs	23.9	No	Yes	No	0	0.00
Clearwater	37.7	No	Yes	No	1	0.03
Miami Gardens	20	No	Yes	No	1	0.05
Palm Bay	66.8	No	Yes	No	1	0.01
West Palm beach	58.2	No	Yes	No	1	0.02
Pompano Beach	25.8	No	Yes	No	0	0.00
**Number of nests alternate nests. FW only nests active si	/C's databas nce 2012 or	e includes later were	nests that a counted.	re now abandoned	. To help acc	ount for this

* Cape Coral eagle monitoring data is more up to date and shows 10 nesting pairs with 13 active or alternate nests.

4) Other Scientific Information

• Article from Human-Wildlife Interactions 7(1):69-76, Spring 2013.

This paper notes that "Bald eagle populations have expanded, even as increasing human presence and activity near nesting sites has increased." This paper also presents the hypothesis that "Generational habituation begins when a juvenile imprints on a nesting area near human activity, then selects a similar nest site when it is reproductively mature." The complete paper is attached.

• Review of Literature cited as source material in the US Fish and Wildlife Service 2007 Guidelines (Table 1 and Table 2).

This information is attached and was compiled by Dr. Maya Robert, Environmental Resources Division Manager. Please note the following:

- To staff's knowledge, the federal buffer zones have been determined based on research literature papers (no federal study). The method/calculations used by the federal agency are currently unknown to us; as we have not received any feedback from the USFWS.
- The parameter mostly used in research is Minimum Approach Distance (MAD). We summarized those distances for several papers cited by

Mayor and Council – Bald Eagle Protection Ordinance – Additional Information May 31, 2018 Page 4 of 4

USFWS, and discriminated between nesting and non-nesting distances (Table 1 and Table 2).

- > Only one study pertained to Florida and the disturbance cited was 'airboats.'
- > None of this research was conducted in urban environments.
- None of this research was conducted with construction as a disturbance, most of them had recreational activities as a trigger (e.g. pedestrian, etc.).
- Summary of the Buffer Zones used in different cities and counties in Florida (Table 3) compiled by staff.

Recommendation

City management recommends approval of Ordinance No. 32-18.

We are available to discuss our recommendation at your convenience.

VAC/RP:eh

Attachments

C: Dolores Menendez, City Attorney Brian R. Bartos, Assistant City Attorney Paul Clinghan, Public Works Director Kevin Higginson, Utilities Extension Manager Maya Robert, Environmental Resources Manager



\$

CITY ATTORNEY'S OFFICE MEMORANDUM

TO:	Mayor and City Council
FROM:	Brian R. Bartos, Assistant City Attorney
DATE:	May 21, 2018
SUBJECT:	Ordinance 32-18: Protected Species (Eagles)

At the May 14th Council Meeting an issue arose concerning the amendment to Chapter 23, Protected Species, Article 1, Bald Eagle Protection, regarding the Eagle Nest Management Zone. The issue is whether a study is required to substantiate a distance requirement of an Eagle Nest Management Zone greater than the distance within the U.S. Fish and Wildlife Service (USFWS) National Bald Eagle Management Guidelines? An Eagle Nest Management Zone is a buffer area around an active eagle nest that should be protected and managed to promote protection and nesting for the bald eagle. As stated further below, no law or regulation mandates such a study. However, as is the best practice for adoption of any ordinance that is legislative in nature, Council should be provided with data and analysis necessary to show a basis as to why the ordinance is so written. This ordinance reduces the City's Eagle Nest Management Zone requirement from eleven hundred (1100') feet, established in 1992 in Ordinance 13-92, to mimic the Federal Guideline distance of six hundred sixty (660') feet. The USFWS stated in its Guidelines that they relied on various scientific literature, studies and recommendations from State and Federal biologists, and other state and regional guidelines, therefore, it is my opinion that no further study is necessary to reduce the Eagle Nest Management Zone to the 660' as stated within the USFWS Guidelines. However, an argument exists that applying the current 1100' distance to construction activity occurring between the Federal distance of 660' and the 1100' feet in the City's current ordinance would require a study by the City indicating such activity would be detrimental and have a negative impact on an active nest. Such studies will require a case by case analysis unless similar factors exist relating to, but not limited to, the location of the nest, normal noise levels, the topography of the property, existing landscape or natural foliage, and construction activity.

Neither the Federal Bald and Golden Eagle Protection Act (16 U.S.C 668 - 668c) nor the Florida Statute, Chapter 379, Fish and Wildlife Conservation, and Florida Administrative Code, Rule 68A-16.002, Bald Eagle, contain language regarding an Eagle Nest Management Zone, a specific area of

protection surrounding an active nest, or the requirement of a study.

However, the USFWS promulgated the National Bald Eagle Management Guidelines (hereafter Guidelines) that provide recommendations based on decades of behavioral observations, science, and conservation measures, to avoid or reduce impacts to eagles. The USFWS relied on state and regional bald eagle guidelines, scientific literature on bald eagle disturbance, and recommendations of State and Federal biologists who monitored impacts of human activity on bald eagles. For building construction activities, the distance varies between 330 feet up to 660 feet from the active nest. Not all bald eagles react to human activities in the same way. This may be related to factors, such as, visibility from the nest, duration of the activity, noise levels, extent of the area affected by the activity, prior experiences with humans, and the tolerance of the nesting eagles:

In addition, at the May 14th Council meeting, an individual stated the City of Bonita Springs was sued, and lost, based on the City's "eagle" ordinance and the failure of the City to produce a study justifying the distance of its Eagle Nest Management Zone (I believe Bonita Springs describes this as a "Fly Zone"). Upon contacting the city attorney for Bonita Springs, this office learned Bonita Springs denied a Developer's request to build structures closer to a nest (330') than Bonita Springs's regulations permit. The development was within a Development of Regional Impact (DRI) allowing the Developer to challenge Bonita Springs decision through the Division of Administrative Hearings (DOAH) process, not an Appeal to the Circuit Court. At the DOAH hearing, which includes testimony from the lower proceeding and may include new testimony or evidence, there was conflicting expert testimony and the City requested restrictions greater than the USFWS biological opinion. An Administrative Law Judge (ALJ) can reweigh the evidence in a DOAH hearing which a Circuit Court Judge cannot do in an Appeal from a local government quasi-judicial hearing. In an Appeal to Circuit Court, the Judge determines whether there was substantial, competent evidence to support the decision of the local government. The Circuit Court Judge reviews the record of the hearing conducted by the local government, the Judge does not hear new testimony or reweighs the testimony provided at the local government hearing. It appears Bonita Springs obtained expert testimony for the DOAH hearing, however the ALJ sided with the Developers expert. Therefore, this Bonita Springs matter is not "on point", or similar, to our situation of amending an ordinance reducing the Eagle Nest Management Zone to that stated in the USFWS Guidelines.

Based on the foregoing, it is a best practice for adoption of any ordinance for Council to be provided with data and analysis necessary to show a basis as to why the ordinance is so written. Ordinance 32-18 reduces the City's Eagle Nest Management Zone requirement to a distance that coincides with the USFWS Guidelines distance of six hundred sixty (660') feet. Since the USFWS stated in its Guidelines that they relied on various scientific literature, studies and recommendations from State and Federal biologists, and other state and regional guidelines, it is my opinion that no further study is necessary to reduce the Eagle Nest Management Zone to the 660' as stated within the USFWS Guidelines. However, should City Council decide to maintain the current Eagle Nest Management Zone of 1100', an argument exists that applying the current 1100' distance to construction activity will require a case-by-case study by the City indicating such activity would be detrimental and have a negative impact on an active nest.

The current USFWS Bald Eagle Management Guideline, dated May 2007, is attached. If you have any questions or desire any additional information, please do not hesitate to contact me or Dolores.

Brian R. Bartos Assistant City Attorney

cc: Dolores D. Menendez, City Attorney John Szerlag, City Manager Vince Cautero, Director - Dept. of Community Development Robert Pederson, Planning Manager - DCD

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NATIONAL BALD EAGLE MANAGEMENT GUIDELINES

U.S. Fish and Wildlife Service

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May 2007

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INTRODUCTION

The bald eagle (*Haliaeetus leucocephalus*) is protected by the Bald and Golden Eagle Protection Act (Eagle Act) and the Migratory Bird Treaty Act (MBTA). The MBTA and the Eagle Act protect bald eagles from a variety of harmful actions and impacts. The U.S. Fish and Wildlife Service (Service) developed these National Bald Eagle Management Guidelines to advise landowners, land managers, and others who share public and private lands with bald eagles when and under what circumstances the protective provisions of the Eagle Act may apply to their activities. A variety of human activities can potentially interfere with bald eagles, affecting their ability to forage, nest, roost, breed, or raise young. The Guidelines are intended to help people minimize such impacts to bald eagles, particularly where they may constitute "disturbance," which is prohibited by the Eagle Act.

The Guidelines are intended to:

(1) Publicize the provisions of the Eagle Act that continue to protect bald eagles, in order to reduce the possibility that people will violate the law,

(2) Advise landowners, land managers and the general public of the potential for various human activities to disturb bald eagles, and

(3) Encourage additional nonbinding land management practices that benefit bald eagles (see Additional Recommendations section).

While the Guidelines include general recommendations for land management practices that will benefit bald eagles, the document is intended primarily as a tool for landowners and planners who seek information and recommendations regarding how to avoid disturbing bald eagles. Many States and some tribal entities have developed state-specific management plans, regulations, and/or guidance for landowners and land managers to protect and enhance bald eagle habitat, and we encourage the continued development and use of these planning tools to benefit bald eagles.

Adherence to the Guidelines herein will benefit individuals, agencies, organizations, and companies by helping them avoid violations of the law. However, the Guidelines themselves are not law. Rather, they are recommendations based on several decades of behavioral observations, science, and conservation measures to avoid or minimize adverse impacts to bald eagles.

The U.S. Fish and Wildlife Service strongly encourages adherence to these guidelines to ensure that bald and golden eagle populations will continue to be sustained. The Service realizes there may be impacts to some birds even if all reasonable measures are taken to avoid such impacts. Although it is not possible to absolve individuals and entities from liability under the Eagle Act or the MBTA, the Service exercises enforcement discretion to focus on those individuals, companies, or agencies that take migratory birds without regard for the consequences of their actions and the law, especially when conservation measures, such as these Guidelines, are available, but have not been implemented. The Service will prioritize its enforcement efforts to focus on those individuals or entities who take bald eagles or their parts, eggs, or nests without implementing appropriate measures recommended by the Guidelines.

The Service intends to pursue the development of regulations that would authorize, under limited circumstances, the use of permits if "take" of an eagle is anticipated but unavoidable. Additionally, if the bald eagle is delisted, the Service intends to provide a regulatory mechanism to honor existing (take) authorizations under the Endangered Species Act (ESA).

During the interim period until the Service completes a rulemaking for permits under the Eagle Act, the Service does not intend to refer for prosecution the incidental "*take*" of any bald eagle under the MBTA or Eagle Act, if such take is in full compliance with the terms and conditions of an incidental take statement issued to the action agency or applicant under the authority of section 7(b)(4) of the ESA or a permit issued under the authority of section 10(a)(1)(B) of the ESA.

The Guidelines are applicable throughout the United States, including Alaska. The primary purpose of these Guidelines is to provide information that will minimize or prevent violations only of *Federal* laws governing bald eagles. In addition to Federal laws, many states and some smaller jurisdictions and tribes have additional laws and regulations protecting bald eagles. In some cases those laws and regulations may be more protective (restrictive) than these Federal guidelines. If you are planning activities that may affect bald eagles, we therefore recommend that you contact both your nearest U.S. Fish and Wildlife Service Field Office (see the contact Information on p.16) and your state wildlife agency for assistance.

LEGAL PROTECTIONS FOR THE BALD EAGLE

The Bald and Golden Eagle Protection Act

The Eagle Act (16 U.S.C. 668-668c), enacted in 1940, and amended several times since then, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles, including their parts, nests, or eggs. The Act provides criminal and civil penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb," "Disturb" means:

"Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle=s return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.

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A violation of the Act can result in a criminal fine of \$100,000 (\$200,000 for organizations), imprisonment for one year, or both, for a first offense. Penalties increase substantially for additional offenses, and a second violation of this Act is a felony.

The Migratory Bird Treaty Act

The MBTA (16 U.S.C. 703-712), prohibits the taking of any migratory bird or any part, nest, or egg, except as permitted by regulation. The MBTA was enacted in 1918; a 1972 agreement supplementing one of the bilateral treaties underlying the MBTA had the effect of expanding the scope of the Act to cover bald eagles and other raptors. Implementing regulations define "take" under the MBTA as "pursue, hunt, shoot, wound, kill, trap, capture, possess, or collect."

Copies of the Eagle Act and the MBTA are available at: http://permits.fws.gov/itr/itr.shtml.

State laws and regulations

Most states have their own regulations and/or guidelines for bald eagle management. Some states may continue to list the bald eagle as endangered, threatened, or of special concern. If you plan activities that may affect bald eagles, we urge you to familiarize yourself with the regulations and/or guidelines that apply to bald eagles in your state. Your adherence to the Guidelines herein does not ensure that you are in compliance with state laws and regulations because state regulations can be more specific and/or restrictive than these Guidelines.

NATURAL HISTORY OF THE BALD EAGLE

Bald eagles are a North American species that historically occurred throughout the contiguous United States and Alaska. After severely declining in the lower 48 States between the 1870s and the 1970s, bald eagles have rebounded and re-established breeding territories in each of the lower 48 states. The largest North American breeding populations are in Alaska and Canada, but there are also significant bald eagle populations in Florida, the Pacific Northwest, the Greater Yellowstone area, the Great Lakes states, and the Chesapeake Bay region. Bald eagle distribution varies seasonally. Bald eagles that nest in southern latitudes frequently move northward in late spring and early summer, often summering as far north as Canada. Most eagles that breed at northern latitudes migrate southward during winter, or to coastal areas where waters remain unfrozen. Migrants frequently concentrate in large numbers at sites where food is abundant and they often roost together communally. In some cases, concentration areas are used year-round: in summer by southern eagles and in winter by northern eagles.

Juvenile bald eagles have mottled brown and white plumage, gradually acquiring their dark brown body and distinctive white head and tail as they mature. Bald eagles generally attain adult plumage by 5 years of age. Most are capable of breeding at 4 or 5 years of age, but in healthy populations they may not start breeding until much older. Bald eagles may live 15 to 25 years in the wild. Adults weigh 8 to 14 pounds (occasionally reaching 16 pounds in Alaska) and have wingspans of 5 to 8 feet. Those in the northern range are larger than those in the south, and females are larger than males.

Where do bald eagles nest?

Breeding bald eagles occupy "territories," areas they will typically defend against intrusion by other eagles. In addition to the active nest, a territory may include one or more alternate nests (nests built or maintained by the eagles but not used for nesting in a given year). The Eagle Act prohibits removal or destruction of both active and alternate bald eagle nests. Bald eagles exhibit high nest site fidelity and nesting territories are often used year after year. Some territories are known to have been used continually for over half a century.

Bald eagles generally nest near coastlines, rivers, large lakes or streams that support an adequate food supply. They often nest in mature or old-growth trees; snags (dead trees); cliffs; rock promontories; rarely on the ground; and with increasing frequency on humanmade structures such as power poles and communication towers. In forested areas, bald eagles often select the tallest trees with limbs strong enough to support a nest that can weigh more than 1,000 pounds. Nest sites typically include at least one perch with a clear view of the water where the eagles usually forage. Shoreline trees or snags located in reservoirs provide the visibility and accessibility needed to locate aquatic prey. Eagle nests are constructed with large sticks, and may be lined with moss, grass, plant stalks, lichens, seaweed, or sod. Nests are usually about 4-6 feet in diameter and 3 feet deep, although larger nests exist.



Copyright Birds of North America, 2000

The range of breeding bald eagles in 2000 (shaded areas). This map shows only the larger concentrations of nests; eagles have continued to expand into additional nesting territories in many states. The dotted line represents the bald eagle's wintering range.

When do bald eagles nest?

Nesting activity begins several months before egg-laying. Egg-laying dates vary throughout the U.S., ranging from October in Florida, to late April or even early May in the northern United States. Incubation typically lasts 33-35 days, but can be as long as 40 days. Eaglets make their first unsteady flights about 10 to 12 weeks after hatching, and fledge (leave their nests) within a few days after that first flight. However, young birds usually remain in the vicinity of the nest for several weeks after fledging because they are almost completely dependent on their parents for food until they disperse from the nesting territory approximately 6 weeks later.

The bald eagle breeding season tends to be longer in the southern U.S., and re-nesting following an unsuccessful first nesting attempt is more common there as well. The following table shows the timing of bald eagle breeding seasons in different regions of the country. The table represents the range of time within which the majority of nesting activities occur in each region and does not apply to any specific nesting pair. Because the timing of nesting activities may vary within a given region, you should contact the nearest U.S. Fish and Wildlife Service Field Office (see page 16) and/or your state wildlife conservation agency for more specific information on nesting chronology in your area.

Chronology of typical reproductive activities of bald eagles in the United States.

Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.
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Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug

How many chicks do baid eagles raise?

The number of eagle eggs laid will vary from 1-3, with 1-2 eggs being the most common. Only one eagle egg is laid per day, although not always on successive days. Hatching of young occurs on different days with the result that chicks in the same nest are sometimes of unequal size. The overall national fledging rate is approximately one chick per nest, annually, which results in a healthy expanding population.

What do bald eagles eat?

Bald eagles are opportunistic feeders. Fish comprise much of their diet, but they also eat waterfowl, shorebirds/colonial waterbirds, small mammals, turtles, and carrion. Because they are visual hunters, eagles typically locate their prey from a conspicuous parch, or soaring flight, then swoop down and strike. Wintering bald eagles often congregate in large numbers along streams to feed on spawning salmon or other fish species, and often gather in large numbers in areas below reservoirs, especially hydropower dams, where fish are abundant. Wintering eagles also take birds from rafts of ducks at reservoirs and rivers, and congregate on melting ice shelves to scavenge dead fish from the current or the soft melting ice. Bald eagles will also feed on carcasses along roads, in landfills, and at feedlots.

During the breeding season, adults carry prey to the nest to feed the young. Adults feed their chicks by tearing off pleces of food and holding them to the beaks of the eaglets. After fledging, immature eagles are slow to develop hunting skills, and must learn to locate reliable food sources and master feeding techniques. Young eagles will congregate together, often feeding upon easily acquired food such as carrion and fish found in abundance at the mouths of streams and shallow bays and at landfills.

The impact of human activity on nesting bald eagles

During the breeding season, bald eagles are sensitive to a variety of human activities. However, not all bald eagle pairs react to human activities in the same way. Some pairs nest successfully just dozens of yards from human activity, while others abandon nest sites in response to activities much farther away. This variability may be related to a number of factors, including visibility, duration, noise levels, extent of the area affected by the activity, prior experiences with humans, and tolerance of the individual nesting pair. The relative sensitivity of bald eagles during various stages of the breeding season is outlined in the following table.

Phase	Activity	Sensitivity to Human Activity	Comments
ł	Courtship and Nest Building	Most sensitive period; likely to respond negatively	Most critical time period. Disturbance is manifested in nest abandonment. Bald eagles in newly established territories are more prone to abandon nest sites.
n	Egg laying	Very sensitive period	Human activity of even limited duration may cause nest describen and abandonment of territory for the breeding season.
10	Incubation and early nestling period (up to 4 weeks)	Very sensitive period	Aduits are less likely to abandon the nest near and after hatching. However, flushed aduits leave eggs and young unattended; eggs are susceptible to cooling, loss of moisture, overheating, and predation; young are vulnerable to elements.
īv	Nestling period, 4 to 8 waeks	Moderately sensitive period	Likelihood of nest abandonment and vulnerability of the nestings to elements somewhat decreases. However, nestings may miss feedings, affecting their survival.
v	Nestlings 8 weeks through fiedging	Very sensitive period	Gaining flight capability, nestlings 8 weeks and older may flush from the nest prematurely due to disruption and die.

Nesting Bald Eagle Sensitivity to Human Activities

If agitated by human activities, eagles may inadequately construct or repair their nest, may expend energy defending the nest rather than tending to their young, or may abandon the nest altogether. Activities that cause prolonged absences of adults from their nests can jeopardize eggs or young. Depending on weather conditions, eggs may overheat or cool too much and fail to hatch. Unattended eggs and nestlings are subject to predation. Young nestlings are particularly vulnerable because they rely on their parents to provide warmth or shade, without which they may die as a result of hypothermia or heat stress. If food delivery schedules are interrupted, the young may not develop healthy plumage, which can affect their survival. In addition, adults startled while incubating or brooding young may damage eggs or injure their young as they abruptly leave the nest. Older nestlings no longer require constant attention from the adults, but they may be startled by loud or intrusive human activities and prematurely jump from the nest before they are able to fly or care for themselves. Once fledged, juveniles range up to ¼ mile from the nest site, often to a site with minimal human activity. During this period, until about six weeks after departure from the nest, the juveniles still depend on the adults to feed them.

The impact of human activity on foraging and roosting bald eagles

Disruption, destruction, or obstruction of roosting and foraging areas can also negatively affect bald eagles. Disruptive activities in or near eagle foraging areas can interfere with feeding, reducing chances of survival. Interference with feeding can also result in reduced productivity (number of young successfully fledged). Migrating and wintering bald eagles often congregate at specific sites for purposes of feeding and sheltering. Bald eagles rely on established roost sites because of their proximity to sufficient food sources. Roost sites are usually in mature trees where the eagles are somewhat sheltered from the wind and weather. Human activities near or within communal roost sites may prevent eagles

from feeding or taking shelter, especially if there are not other undisturbed and productive feeding and roosting sites available. Activities that permanently alter communal roost sites and important foraging areas can altogether eliminate the elements that are essential for feeding and sheltering eagles.

Where a human activity agitates or bothers roosting or foraging bald eagles to the degree that causes injury or substantially interferes with breeding, feeding, or sheltering behavior and causes, or is likely to cause, a loss of productivity or nest abandonment, the conduct of the activity constitutes a violation of the Eagle Act's prohibition against disturbing eagles. The circumstances that might result in such an outcome are difficult to predict without detailed site-specific information. If your activities may disturb roosting or foraging bald eagles, you should contact your local Fish and Wildlife Service Field Office (see page 16) for advice and recommendations for how to avoid such disturbance.

RECOMMENDATIONS FOR AVOIDING DISTURBANCE AT NEST SITES

In developing these Guidelines, we relied on existing state and regional bald eagle guidelines, scientific literature on bald eagle disturbance, and recommendations of state and Federal biologists who monitor the impacts of human activity on eagles. Despite these resources, uncertainties remain regarding the effects of many activities on eagles and how eagles in different situations may or may not respond to certain human activities. The Service recognizes this uncertainty and views the collection of better biological data on the response of eagles to disturbance as a high priority. To the extent that resources allow, the Service will continue to collect data on responses of bald eagles to human activities conducted according to the recommendations within these Guidelines to ensure that adequate protection from disturbance is being afforded, and to identify circumstances where the Guidelines might be modified. These data will be used to make future adjustments to the Guidelines.

To avoid disturbing nesting bald eagles, we recommend (1) keeping a distance between the activity and the nest (distance buffers), (2) maintaining preferably forested (or natural) areas between the activity and around nest trees (landscape buffers), and (3) avoiding certain activities during the breeding season. The buffer areas serve to minimize visual and auditory impacts associated with human activities near nest sites. Ideally, buffers would be large enough to protect existing nest trees and provide for alternative or replacement nest trees.

The size and shape of effective buffers vary depending on the topography and other ecological characteristics surrounding the nest site. In open areas where there are little or no forested or topographical buffers, such as in many western states, distance alone must serve as the buffer. Consequently, in open areas, the distance between the activity and the nest may need to be larger than the distances recommended under Categories A and B of these guidelines (pg. 12) if no landscape buffers are present. The height of the nest above the ground may also ameliorate effects of human activities; eagles at higher nests may be less prone to disturbance.

In addition to the physical features of the landscape and nest site, the appropriate size for the distance buffer may vary according to the historical tolerances of eagles to human activities in particular localities, and may also depend on the location of the nest in relation

to feeding and roosting areas used by the eagles. Increased competition for nest sites may lead bald eagles to nest closer to human activity (and other eagles).

Seasonal restrictions can prevent the potential impacts of many shorter-term, obtrusive activities that do not entail landscape alterations (e.g. fireworks, outdoor concerts). In proximity to the nest, these kinds of activities should be conducted only outside the breeding season. For activities that entail both short-term, obtrusive characteristics and more permanent impacts (e.g., building construction), we recommend a combination of both approaches: retaining a landscape buffer and observing seasonal restrictions.

For assistance in determining the appropriate size and configuration of buffers or the timing of activities in the vicinity of a bald eagle nest, we encourage you to contact the nearest U.S. Fish and Wildlife Service Field Office (see page 16).

Existing Uses

Eagles are unlikely to be disturbed by routine use of roads, homes, and other facilities where such use pre-dates the eagles' successful nesting activity in a given area. Therefore, in most cases *ongoing* existing uses may proceed with the same intensity with little risk of disturbing bald eagles. However, some *intermittent*, occasional, or *irregular* uses that pre-date eagle nesting in an area may disturb bald eagles. For example: a pair of eagles may begin nesting in an area and subsequently be disturbed by activities associated with an annual outdoor flea market, even though the flea market has been held annually at the same location. In such situations, human activity should be adjusted or relocated to minimize potential impacts on the nesting pair.

ACTIVITY-SPECIFIC GUIDELINES

The following section provides the Service-s management recommendations for avoiding bald eagle disturbance as a result of new or intermittent activities proposed in the vicinity of bald eagle nests. Activities are separated into 8 categories (A - H) based on the nature and magnitude of impacts to bald eagles that usually result from the type of activity. Activities with similar or comparable impacts are grouped together.

In most cases, impacts will vary based on the visibility of the activity from the eagle nest and the degree to which similar activities are already occurring in proximity to the nest site. Visibility is a factor because, in general, eagles are more prone to disturbance when an activity occurs in full view. For this reason, we recommend that people locate activities farther from the nest structure in areas with open vistas, in contrast to areas where the view is shielded by rolling topography, trees, or other screening factors. The recommendations also take into account the existence of similar activities in the area because the continued presence of nesting bald eagles in the vicinity of the existing activities indicates that the eagles in that area can tolerate a greater degree of human activity than we can generally expect from eagles in areas that experience fewer human impacts. To illustrate how these factors affect the likelihood of disturbing eagles, we have incorporated the recommendations for some activities into a table (categories A and B).

First, determine which category your activity fails into (between categories A - H). If the activity you plan to undertake is not specifically addressed in these guidelines, follow the recommendations for the most similar activity represented.

If your activity is under A or B, our recommendations are in table form. The vertical axis shows the degree of visibility of the activity from the nest. The horizontal axis (header row) represents the degree to which similar activities are ongoing in the vicinity of the nest. Locate the row that best describes how visible your activity will be from the eagle nest. Then, choose the column that best describes the degree to which similar activities are ongoing in the vicinity of the eagle nest. Then, choose the column that best describes the degree to which similar activities are ongoing in the vicinity of the eagle nest. The box where the column and row come together contains our management recommendations for how far you should locate your activity from the nest to avoid disturbing the eagles. The numerical distances shown in the tables are the closest the activity should be conducted relative to the nest. In some cases we have included additional recommendations (other than recommended *distance* from the nest) you should follow to help ensure that your activity will not disturb the eagles.

Alternate nests

For activities that entail permanent landscape alterations that may result in bald eagle disturbance, these recommendations apply to both active and alternate bald eagle nests. Disturbance becomes an issue with regard to alternate nests if eagles return for breeding purposes and react to land use changes that occurred while the nest was inactive. The likelihood that an alternate nest will again become active decreases the longer it goes unused. If you plan activities in the vicinity of an alternate bald eagle nest and have information to show that the nest has not been active during the preceding 5 breeding seasons, the recommendations provided in these guidelines for avoiding disturbance around the nest site may no longer be warranted. The nest itself remains protected by other provisions of the Eagle Act, however, and may not be destroyed.

If special circumstances exist that make it unlikely an inactive nest will be reused before 5 years of disuse have passed, and you believe that the probability of reuse is low enough to warrant disregarding the recommendations for avoiding disturbance, you should be prepared to provide all the reasons for your conclusion, including information regarding past use of the nest site. Without sufficient documentation, you should continue to follow these guidelines when conducting activities around the nest site. If we are able to determine that it is unlikely the nest will be reused, we may advise you that the recommendations provided in these guidelines for avoiding disturbance are no longer necessary around that nest site.

This guidance is intended to minimize disturbance, as defined by Federal regulation. In addition to Federal laws, most states and some tribes and smaller jurisdictions have additional laws and regulations protecting bald eagles. In some cases those laws and regulations may be more protective (restrictive) than these Federal guidelines.

Temporary Impacts

For activities that have temporary impacts, such as the use of loud machinery, fireworks displays, or summer boating activities, we recommend seasonal restrictions. These types of activities can generally be carried out outside of the breeding season without causing disturbance. The recommended restrictions for these types of activities can be lifted for alternate nests within a particular territory, including nests that were attended during the current breeding season but not used to raise young, after eggs laid in another nest within the territory have hatched (depending on the distance between the alternate nest and the active nest).

In general, activities should be kept as far away from nest trees as possible; loud and disruptive activities should be conducted when eagles are not nesting; and activity between the nest and the nearest foraging area should be minimized. If the activity you plan to undertake is not specifically addressed in these guidelines, follow the recommendations for the most similar activity addressed, or contact your local U.S. Fish and Wildlife Service Field Office for additional guidance.

If you believe that special circumstances apply to your situation that increase or diminish the likelihood of bald eagle disturbance, or if it is not possible to adhere to the guidelines, you should contact your local Service Field Office for further guidance.

Category A:

Building construction, 1 or 2 story, with project footprint of ½ acre or less. Construction of roads, trails, canals, power lines, and other linear utilities. Agriculture and aquaculture – new or expanded operations. Alteration of shorelines or wetlands. Installation of docks or moorings. Water impoundment.

Category B:

Building construction, 3 or more stories. Building construction, 1 or 2 story, with project footprint of more than ½ acre. Installation or expansion of marinas with a capacity of 6 or more boats. Mining and associated activities.

Oil and natural gas drilling and refining and associated activities.

	If there is no similar activity within 1 mile of the nest	If there is similar activity closer than 1 mile from the nest
if the activity will be visible from the nest	660 feet. Landscape buffers are recommended.	660 feet, or as close as existing tolerated activity of similar scope. Landscape buffers are recommended.
if the activity will not be visible from the nest	Category A: 330 feet. Clearing, external construction, and landscaping between 330 feet and 660 feet should be done outside breeding season. Category B: 660 feet.	330 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping within 660 feet should be done outside breeding season.

The numerical distances shown in the table are the closest the activity should be conducted relative to the nest.

Category C. Timber Operations and Forestry Practices

- Avoid clear cutting or removal of overstory trees within 330 feet of the nest at any time.
- Avoid timber harvesting operations, including road construction and chain saw and yarding operations, during the breeding season within 660 feet of the nest. The distance may be decreased to 330 feet around alternate nests within a particular territory, including nests that were attended during the current breeding season but not used to raise young, after eggs laid in another nest within the territory have hatched.
- Selective thinning and other silviculture management practices designed to
 conserve or enhance habitat, including prescribed burning close to the nest tree,
 should be undertaken outside the breeding season. Precautions such as raking
 leaves and woody debris from around the nest tree should be taken to prevent
 crown fire or fire climbing the nest tree. If it is determined that a burn during the
 breeding season would be beneficial, then, to ensure that no take or disturbance
 will occur, these activities should be conducted only when neither adult eagles nor
 young are present at the nest tree (i.e., at the beginning of, or end of, the breeding
 season, either before the particular nest is active or after the young have fledged
 from that nest). Appropriate Federal and state biologists should be consulted
 before any prescribed burning is conducted during the breeding season.
- Avoid construction of log transfer facilities and in-water log storage areas within 330 feet of the nest.

Category D. Off-road vehicle use (including snowmobiles). No buffer is necessary around nest sites outside the breeding season. During the breeding season, do not operate off-road vehicles within 330 feet of the nest. In open areas, where there is increased visibility and exposure to noise, this distance should be extended to 660 feet.

Category E. Motorized Watercraft use (including jet skis/personal watercraft). No buffer is necessary around nest sites outside the breeding season. During the breeding season, within 330 feet of the nest, (1) do not operate jet skis (personal watercraft), and (2) avoid concentrations of noisy vessels (e.g., commercial fishing boats and tour boats), except where eagles have demonstrated tolerance for such activity. Other motorized boat traffic passing within 330 feet of the nest should attempt to minimize trips and avoid stopping in the area where feasible, particularly where eagles are unaccustomed to boat traffic. Buffers for airboats should be larger than 330 feet due to the Increased noise they generate, combined with their speed, maneuverability, and visibility.

Category F. Non-motorized recreation and human entry (e.g., hiking, camping, fishing, hunting, birdwatching, kayaking, canceing). No buffer is necessary around nest sites outside the breeding season. If the activity will be visible or highly audible from the nest, maintain a 330-foot buffer during the breeding season, particularly where eagles are unaccustomed to such activity.

Category G. Helicopters and fixed-wing aircraft.

Except for authorized biologists trained in survey techniques, avoid operating aircraft within 1,000 feet of the nest during the breeding season, except where eagles have demonstrated tolerance for such activity.

Category H. Blasting and other loud, intermittent noises.

Avoid blasting and other activities that produce extremely loud noises within 1/2 mile of active nests, unless greater tolerance to the activity (or similar activity) has been demonstrated by the eagles in the nesting area. This recommendation applies to the use of fireworks classified by the Federal Department of Transportation as Class B explosives, which includes the larger fireworks that are intended for licensed public display.

RECOMMENDATIONS FOR AVOIDING DISTURBANCE AT FORAGING AREAS AND COMMUNAL ROOST SITES

- 1. Minimize potentially disruptive activities and development in the eagles' direct flight path between their nest and roost sites and important foraging areas.
- 2. Locate long-term and permanent water-dependent facilities, such as boat ramps and marinas, away from important eagle foraging areas.
- Avoid recreational and commercial boating and fishing near critical eagle foraging areas during peak feeding times (usually early to mid-morning and late afternoon), except where eagles have demonstrated tolerance to such activity.
- 4. Do not use explosives within ½ mile (or within 1 mile in open areas) of communal roosts when eagles are congregating, without prior coordination with the U.S. Fish and Wildlife Service and your state wildlife agency.
- 5. Locate aircraft corridors no closer than 1,000 feet vertical or horizontal distance from communal roost sites.

ADDITIONAL RECOMMENDATIONS TO BENEFIT BALD EAGLES

The following are additional management practices that landowners and planners can exercise for added benefit to bald eagles.

- 1. Protect and preserve potential roost and nest sites by retaining mature trees and old growth stands, particularly within ½ mile from water.
- 2. Where nests are blown from trees during storms or are otherwise destroyed by the elements, continue to protect the site in the absence of the nest for up to three (3) complete breeding seasons. Many eagles will rebuild the nest and reoccupy the site.
- 3. To avoid collisions, site wind turbines, communication towers, and high voltage transmission power lines away from nests, foraging areas, and communal roost sites.
- 4. Employ industry-accepted best management practices to prevent birds from colliding with or being electrocuted by utility lines, towers, and poles. If possible, bury utility lines in important eagle areas.
- 5. Where bald eagles are likely to nest in human-made structures (e.g., cell phone towers) and such use could impede operation or maintenance of the structures or jeopardize the safety of the eagles, equip the structures with either (1) devices engineered to discourage bald eagles from building nests, or (2) nesting platforms that will safely accommodate bald eagle nests without interfering with structure performance.
- 6. Immediately cover carcasses of euthanized animals at landfills to protect eagles from being poisoned.
- Do not intentionally feed bald eagles. Artificially feeding bald eagles can disrupt their essential behavioral patterns and put them at increased risk from power lines, collision with windows and cars, and other mortality factors.
- 8. Use pesticides, herbicides, fertilizers, and other chemicals only in accordance with Federal and state laws.
- 9. Monitor and minimize dispersal of contaminants associated with hazardous waste sites (legal or illegal), permitted releases, and runoff from agricultural areas, especially within watersheds where eagles have shown poor reproduction or where bioaccumulating contaminants have been documented. These factors present a risk of contamination to eagles and their food sources.

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CONTACTS

The following U.S. Fish and Wildlife Service Field Offices provide technical assistance on bald eagle management:

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Alabama	Daphne	(251) 441-5181	New Hampshire	Concord	(603) 223-2541
Alaska	Anchorage	(907) 271-2888	New Jersey	Pleasantville	(609) 646-9310
	Fairbanks	(907) 456-0203	New Mexico	Albuquerque	(505) 346-2525
	Juneau	(907) 780-1160	<u>New York</u>	Cortland	(607) 753-9334
Arizona	Phoenix	(602) 242-0210		Long Island	(631) 776-1401
Arkansas	Conway	(501) 513-4470	North Carolina	Raleigh	(919) 856-4520
California	Arcata	(707) 822-7201		Asheville	(828) 258-3939
<u>Controlling</u>	Barstow	(760) 255-8852	North Dakota	Bismarck	(701) 250-4481
	Carlsbad	(760) 431-9440	Ohio	Reynoldsburg	(614) 469-6923
	Red Bluff	(530) 527-3043	Oklahoma	Tulsa	(918) 581-7458
	Sacramento	(916) 414-6000	Oregon	Bend	(541) 383-7146
	Stockton	(209) 946-6400		Klamath Falls	(541) 885-8481
	Ventura	(805) 644-1766		La Grande	(541) 982-8584
	Yreka	(530) 842-5763		Newport	(541) 867-4558
Colorado	Lakewood	(303) 275-2370		Portland	(503) 231-6179
		n (970) 243-2778		Roseburg	(541) 957-3474
Connecticut	(See New Har		<u>Pennsvivania</u>	State College	(814) 234-4090
Delaware	(See Maryland		Rhode Island	(See New Han	npshire)
Florida	Panama City	(850) 769-0552	South Carolina	Charleston	(843) 727-4707
<u>r tynoa</u>	Vero Beach	(772) 562-3909	South Dakota	Pierre	(605) 224-8693
	Jacksonville	(904) 232-2580	Tennessee	Cookeville	(931) 528-6481
Georgia	Athens	(706) 613-9493	Texas	Clear Lake	(281) 286-8282
Geoldia	Brunswick	(912) 265-9336	Utah	West Vailey City	(801) 975-3330
	Columbus	(706) 544-6428	Vermont	(See New Han	npshire)
Idaho	Boise	(208) 378-5243	Virginia	Gloucester	(804) 693-6694
	Chubbuck	(208) 237-6975	Washington	Lacey	(306) 753-9440
illinois/lowa	Rock Island	(309) 757-5800		Spokane	(509) 891-6839
Indiana	Bloomington	(812) 334-4261		Wenatchee	(509) 665-3508
Kansas	· Manhattan	(785) 539-3474	West Virginia	Elkins	(304) 636-6586
Kentuckv	Frankfort	(502) 695-0468	Wisconsin	New Franken	(920) 866-1725
Louisiana	Lafayette	(337) 291-3100	Wyoming	Cheyenne	(307) 772-2374
Maine	Old Town	(207) 827-5938		Cody	(307) 578-5939
Maryland	Annapolis	(410) 573-4573		·	
Massachusetts	(See New Har	• • • • • • • • • • • • • • • • • • • •	National Office	3 8	
<u>Michigan</u>	East Lansing	(517) 351-2555	U.S. Fish and	Wildlife Service	
<u>Minnesota</u>	Bloomington	(612) 725-3548	Division of M	Igratory Bird Man	agement
Mississippi	Jackson	(601) 865-4900	4401 North F	airfax Drive, MBS	P-4107
Missouri	Columbia	(573) 234-2132	Arlington, VA	22203-1610	
<u>Montana</u>	Helena	(405) 449-5225	(703) 358-17	14	1
<u>Nebraska</u>	Grand Island	(308) 382-6468	http://www.fv	vs.gov/migratoryb	irds
<u>Nevada</u>	Las Vegas	(702) 515-5230			
	Reno	(775) 861-6300			

State Agencies

To contact a state wildlife agency, visit the Association of Fish & Wildlife Agencies' website at http://www.fishwildlife.org/where_us.html

GLOSSARY

The definitions below apply to these National Bald Eagle Management Guidelines:

Communal roost sites – Areas where bald eagles gather and perch overnight – and sometimes during the day in the event of inclement weather. Communal roost sites are usually in large trees (live or dead) that are relatively sheltered from wind and are generally in close proximity to foraging areas. These roosts may also serve a social purpose for pair bond formation and communication among eagles. Many roost sites are used year after vear.

Disturb – To agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, feeding, or sheltering behavior.

In addition to immediate impacts, this definition also covers impacts that result from humancaused alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle=s return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.

Fledge – To leave the nest and begin flying. For bald eagles, this normally occurs at 10-12 weeks of age.

Fledgling – A juvenile bald eagle that has taken the first flight from the nest but is not yet independent.

Foraging area – An area where eagles feed, typically near open water such as rivers, lakes, reservoirs, and bays where fish and waterfowl are abundant, or in areas with little or no water (i.e., rangelands, barren land, tundra, suburban areas, etc.) where other prey species (e.g., rabbit, rodents) or carrion (such as at landfills) are abundant.

Landscape buffer - A natural or human-made landscape feature that screens eagles from human activity (e.g., strip of trees, hill, cliff, berm, sound wall).

Nest – A structure built, maintained, or used by bald eagles for the purpose of reproduction. An active nest is a nest that is attended (built, maintained or used) by a pair of bald eagles during a given breeding season, whether or not eggs are laid. An alternate nest is a nest that is not used for breeding by eagles during a given breeding season.

Nest abandonment – Nest abandonment occurs when adult eagles desert or stop attending a nest and do not subsequently return and successfully raise young in that nest for the duration of a breeding season. Nest abandonment can be caused by altering habitat near a nest, even if the alteration occurs prior to the breeding season. Whether the eagles migrate during the non-breeding season, or remain in the area throughout the non-breeding season, nest abandonment can occur at any point between the time the eagles return to the nesting site for the breeding season and the time when all progeny from the breeding season have

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dispersed.

Project footprint - The area of land (and water) that will be permanently altered for a development project, including access roads.

Similar scope – In the vicinity of a bald eagle nest, an existing activity is of similar scope to a new activity where the types of impacts to bald eagles are similar in nature, and the impacts of the existing activity are of the same or greater magnitude than the impacts of the potential new activity. Examples: (1) An existing single-story home 200 feet from a nest is similar in scope to an additional single-story home 200 feet from the nest; (2) An existing multi-story, multi-family dwelling 150 feet from a nest has impacts of a greater magnitude than a potential new single-family home 200 feet from the nest; (3) One existing singlefamily home 200 feet from the nest has impacts of a lesser magnitude than three singlefamily homes 200 feet from the nest; (4) an existing single-family home 200 feet from a communal roost has impacts of a lesser magnitude than a single-family home 300 feet from the roost but 40 feet from the eagles' foraging area. The existing activities in examples (1) and (2) are of similar scope, while the existing activities in example (3) and (4) are not.

Vegetative buffer – An area surrounding a bald eagle nest that is wholly or largely covered by forest, vegetation, or other natural ecological characteristics, and separates the nest from human activities.

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Robert Pederson

From:	Faulhaber, Cralg <cralg.faulhaber@myfwc.com></cralg.faulhaber@myfwc.com>
Sent:	Tuesday, May 29, 2018 7:39 AM
To:	Robert Pederson
Subject:	RE: eagle protection
Attachments:	NationalBaldEagleManagementGuidelines.pdf; Eagle_Plan_April_2008.pdf

Bob,

I asked our eagle research biologist to examine the origin of the 660-foot buffer. Rather than using a single source – or even a few sources – to determine the appropriate buffer, the U.S. Fish and Wildlife Service used a combination of sources, including state and regional bald eagle guidelines, scientific literature, reviews of monitoring reports, and expert opinion from state and federal biologists that monitor impacts of human activities on bald eagles. As noted in FWC's 2008 Bald Eagle Management Plan (attached for reference):

The USFWS and FWC have approved the installation of infrastructure and external residential/commercial construction within the secondary zone (750–1,500 feet) of bald eagle nests during the nesting season in Florida since the mid-1990s, with the provision that monitoring be conducted to evaluate the response of the eagles to authorized activities. These joint monitoring guidelines were formalized in 2002 to ensure that nest monitoring was conducted consistently, and to serve as a database for evaluating the ongoing and future changes in management recommendations. Results of this monitoring indicate that actions that occurred in the secondary zone were not likely to have a direct negative impact on bald eagles. The Bald Eagle Monitoring Guidelines subsequently were modified on three occasions to obtain data used to evaluate eagles' response to the revised buffer-zone distances already implemented in Florida and incorporated into the National Bald Eagle Management Guidelines (USFWS 2007b) and to reflect current USFWS policy and regulatory changes in Florida. Initial review of the information in these more recent monitoring reports suggests the current USFWS guidelines are appropriate.

The National Bald Eagle Management Guidelines (attached) contains a long list of references that contributed to formation of the Guidelines.

I hope this helps. Please let me know if you need additional information. I can also provide contact information for the U.S. Fish and Wildlife Service, who may have additional insight.

Cheers, Craig

Craig Faulhaber Avian Conservation Coordinator Florida Fish and Wildlife Conservation Commission 1239 SW 10th Street Ocala, FL 34471 Office (352)620-7346 Cell (352)239-2642 Fax (352)732-1391

Generational habituation and current bald eagle populations

JEREMY E. GUINN,¹ Department of Biological Sciences, North Dakota State University, Fargo, ND 55801, USA jguinn@ ultc.edu

Abstract: Bald eagle (Haliaeetus leucocephalus) populations have expanded, even as ADSURACE: Baid eagle (Heliaeetus leucocephalus) populations have expanded, even as increasing human presence and activity near nesting sites has increased. The generational habituation hypothesis may explain current bald eagle behaviors associated with human presence. Generational habituation begins when a juvenile imprints on a nest area near human activity, then selects a similar nest site when it is reproductively mature. Successive generations also may imprint on nest sites near human activity, expanding the population into areas that once were considered suboptimal nesting habitat. Generational habituation has implications in several areas important to basic and applied ecology in a wide range of taxa. Generational habituation may be responsible for relatively repid changes in a population's general behaviors, particularly in human-dominated systems. general behaviors, particularly in human-dominated systems.

Key words: bald eagle, habituation, Hallaeetus leucocephalus, human-wildlife conflicts, natal habitat preference

HABITUATION IS DEFINED as a reduction in an animal's responsiveness upon repeated exposure to stimuli (Goodenough et al. 2001). In occurrences of habituation, an animal does not perform a characteristic behavior, because the stimulus has proved to be harmless and is not associated with any threat (Clark 1960, Hinde 1970, Goodenough et al. 2001). The adaptive benefit of habituation is conservation of the energy that would be used responding to frequently occurring stimuli that have no detrimental effect on the animal's welfare without diminishing reactions to significant stimuli (Goodenough et al. 2001). A habituated animal retains its instinctual ability to respond to threats without continually reacting to benign activities (Rose and Rankin 2001).

During the early years of eagle conservation efforts, the bald eagle (Haliaeetus leucocephalus) population had generally contracted to areas devoid of human persecution (Gerrard and Bortolotti 1988). Among the dangers of living in close proximity to humans was having a nest raided by egg collectors, being shot either for predator control purposes or for target practice, and having a tree cut out from beneath a nest (Redig et al. 1983, Stalmaster 1987). Fyfe and Olendorf (1976) and Stalmaster (1987) reported decreased reproductive success due to contact with human activities. In 1982, Andrew and Mosher (1982) stressed the importance of nest Knight 1984, Fraser et al. 1985, Buehler et al. sites being located away from occupied human 1991, McGarigal et al. 1991). Steidl and Anthony

structures, but as early as 1990, Johnsgard (1990) identified that the requirement that nest locations be free from human presence was highly variable.

Bald eagles, which once were referred to as the wilderness monarchs (Gerrard and Bortolotti 1988), have shown an ability to successfully nest in areas closer to human activity than initially reported (Fraser et al. 1985, Guinn 2004, Millsap et al. 2004, Isaacs and Anthony 2011). In contrast to several decades ago, bald eagles are currently nesting in relatively high densities near human presence in many areas of the United States and Canada. Baid eagle populations have increased in the face of increasing human recreation and development along shorelines within prime eagle habitat, and they also have expanded into new areas close to human activities. Growth in both populations has resulted in more frequent interactions with humans (Johnsgard 1990).

Bald eagle populations in the contiguous United States present a useful research model for investigating habituation. Many studies have attempted to quantify the effects of human activities on nesting bald eagles, with varying results (Mathisen 1968, McEwan and Hirth 1979, Fraser et al. 1985, Anthony and Isaacs 1989). Many studies examined the distance at which eagles flushed in response to approaching human activity (Knight and 3

¹Present Address: Department of Environmental Science, United Tribes Technical College, Bismarck, ND 58504, USA

(2000) reported changes in bald eagle behaviors related to human presence near nest sites and the diminishing responses by eagles throughout 24-hour treatments.

The purpose of this paper is to suggest a mechanism (i.e., the generational habituation hypothesis) that describes animal habituation to human presence over time and may explain recent changes in bald eagle distribution. Generational habituation concerns a specific circumstance by which habituation is carried over to subsequent generations. Consideration of the potential effects of generational habituation should be included in developing management strategies for wildlife species in human-dominated systems.

Previous habituation research

Buehler et al. (1991) suggested that eagles become more tolerant of human activity as the breeding season progresses. However, an alternative explanation is that individuals that appear more tolerant of human activities may actually be increasing their attentiveness to their young nestlings (i.e., staying near the nest rather than flushing) in contrast to when they were defending eggs during the incubation stage or defending an empty nest before egg laying. In other words, adult eagles have invested more energy in raising nestlings to the point of fledging and, therefore, may be less likely to abandon the nest in the presence of a similar activity. Steidl and Anthony (1996) did not detect habituation by bald eagles to repeated approaches throughout the breeding season, but they agreed with Russell (1980) and Knight and Knight (1984) that eagles in areas with high human activity levels either habituate to human presence or relocate to areas with lower levels of human presence.

Animal habituation to human presence, results in desensitization to disturbance over time and is well-studied under controlled conditions in both invertebrates (Clark 1960, Rushforth 1965, Maldenado 1972, Carew and Kandel 1973) and vertebrates (Gubernick and Wright 1979, Bonardi et al. 1991). It is important to recognize that habituation may occur only when human presence is not accompanied by any harmful activity (Grier 1984, Van Krunkelsven et al. 1999). Observations of the acceptance of human activities by some bald

eagle pairs led to reports that those pairs became habituated to human presence during their lives, or perhaps, during a single breeding season (Stalmaster and Newman 1978, Russell 1980). Previous research has concentrated on quantifying an eagle's response to human activity through direct observations over a limited amount of time (Fraser et al. 1985, Smith 1988). Grubb and King (1991) studied bald eagle responses to a variety of human activities in northern Minnesota. Buehler et al. (1991) found that bald eagle flush-distances from boats and pedestrian traffic on the Chesapeake Bay were greater during winter than during summer.

Generational habituation

The question for long-term management is not whether a single individual (or breeding pair) becomes desensitized to human activity, but whether the bald eagle population is becoming habituated to human activities over several generations. Are bald eagles more tolerant of human presence today than they were in the 1970s? Although Bowerman et al. (2005) suggest that suitable remote habitats may limit nesting eagle populations, observations of current eagle populations suggest that many eagles are more accepting of human activities near nests and wintering sites (Watson et al. 1999, Anthony 2001, Millsap et al. 2004). Baker and Monstad (2005) reported an increase in active bald eagle nests within the metropolitan area of Minneapolis-St. Paul, Minnesota, from 35 nests in 2000 to 78 nests in 2005. It is likely that a nestling hatched and fledged in an area of high human activity will identify with that type of nesting area and choose a similar location when it becomes reproductively mature. Herlugson (1981) found that male and female mountain bluebirds (Sialia currucoides) chose the same style box as their natal nest box. Although genetics and experience may play some role in choosing a nest site, the nestselection image is not likely to be either innate or obtained through a period of trial and error later in life. The nest-selection image is likely established during the nesting stage (Ratcliffe 1980) through nest-site imprinting. In New York, nestling eagles from as far away as Alaska were translocated in attempts to restore breeding bald eagle populations (Nye 1981, Engel and Isaacs 1982). These efforts relied heavily on

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nest-site imprinting, as the plan predicted that the translocated eagles would eventually breed in the area. The first 2 eagles released during the program, successfully nested in 1980 and fledged young from a nest not far from the original hacking site.

The initial step in the generational habituation process is for a nestling to imprint on a nest site. The nestling experiences a certain level of human activity during surveys in the area around its nest before fledging. The nestling identifies human activity, but without any direct persecution by humans; it does not associate human presence with any negative effects. Over the next 4 to 5 years, the subadult eagle may continue to utilize areas with human activity levels similar to its natal site. Upon maturity, the eagle has no reason to avoid selecting a nest site with similar human activity levels. This process continues with the next generation of eagles born to that bird and raised in high human activity areas. Generational habituation provides a logical explanation for changes in nesting habitat selection in species that are experiencing human encroachment.

Changes in population behavior

Generational habituation not only provides a mechanism for understanding the transmission of the nest-selection image from parent to offspring, it also explains how the offspring develop a different nest-selection image from the parent. A major question in discussions of bald eagle management is the rapid recovery of the species and accounting for eagles nesting in close proximity to humans. Generational habituation provides a theoretical mechanism for explaining how bald eagles have developed from a wilderness species to a species that routinely nests near human presence in the matter of a few decades. The following example is a hypothetical case in which a nestling deviates from its parents' ideal nesting situation. A breeding pair returns to a traditionally secluded nest site and lays eggs. At the time of hatching (or, perhaps later in the season), some form of human activity begins (e.g., construction, recreational activity, a seasonal cabin becomes occupied). The adults, though possibly disturbed by the presence of this activity, continue to care for the nestlings until dispersal. When mature, the chicks from potentially is testable in an experimental field

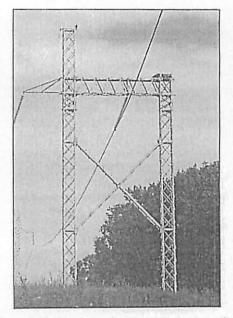


Figure 1: Bald eagle nest on transmission tower in western Minnesota.

that nest choose a nest site without avoiding similar human activity. Habituation above the scale of the individual proceeds as successive generations choose not to avoid nest sites in close proximity to human activity.

Another change in behavior predicted by the generational habituation hypothesisis in the use of nesting substrate. Although osprey (Pandion haliaetus) readily nest on telephone poles, buoys, and other human constructions (Henny and Noltemeier 1975), eagle nests on manmade structures have been rare until recently. Hypothetically, eagles raised near human habitation would also begin to utilize man-made structures as nesting substrates. Millsap et al. (2004) described 9 bald eagle nests on human structures in Florida, while Isaacs and Anthony (2011) described the first record of bald eagles nesting on a man-made structure in Oregon in 2004. Bohm (1988) provided the first record of bald eagles nesting on transmission towers in Minnesota, and Guinn (2004) described several additional nests on similar structures in the state (Figure 1). This trend may continue if more eagles that fledged from these tower nests survive to maturity, select similar nest sites, and reproduce (Millsap et al. 2004).

The generational habituation hypothesis

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project with bald eagles. Groups of nests within different disturbance regimes would be selected and evaluated for human activity and eagle productivity, and fledglings would be marked for individual identification. Generational habituation would be detected by following the fledglings until they are of reproductive age and by evaluating their nest sites. If nest sites are similar to natal sites, generational habituation would be supported. However, this study would be challenging to complete. To limit the biases associated with unknown effects of inheritance, nestlings would need to be transferred from nests in high human activity areas to nests in low activity areas. Low survival of eagles entering the breeding population would be a concern, reducing sample size, and, therefore, requiring banding of a large number of nestlings that are within each disturbance regime. Bald eagles become reproductively mature at 4 to 5 years of age, requiring resilient tracking equipment, as well as good fortune throughout the study.

In addition, the mechanism controlling a pair's nest-site choice is not well-understood and would confound the study further. For example, if 1 gender is responsible for choosing the nest site, then the other gender simply complies. Similarly, complexities may arise due to a collective selection if both genders contribute to choosing the nest site. Is there a compromise between a male from a high human activity natal site and a female from a low activity site? Perhaps, even the essence of pair formation is driven by the nest site image of each individual. This is an area that requires much more research for bald eagles and other species.

Bald eagle populations may be undergoing generational habituation in many areas, including Minnesota and Florida, where they increasingly are nesting close to human presence with no observed effects on their productivity (Guinn 2004, Millsap et al. 2004; Figure 2). As habituation focuses the animal's attention and energy on the important aspects of the environment, such as prey and territory defense (Leibrecht and Askew 1980), it is likely that humans no longer pose a strong threatassociation for many bald eagles. However, the need for certain protective measures near nest sites is still necessary, as there is likely a



Figure 2: Typical view during aerial survey of bald eagle nest (circle) in western Minnesota prairie and croplands. Note freshly plowed agricultural field within 80 m of nest.

threshold distance within which human activity will disturb the majority of eagles (McGarigal et al. 1991). Currently, protective measures, such as buffer zones, continue to be useful management strategies in many areas.

Natal habitat preference induction

Recently, researchers have identified an important area of animal behavior that is closely related to generational habituation (Davis and Stamps 2004, Stamps and Swaisgood 2007). Natal Habitat Preference Induction (NHPI) describes a state in which experience with stimuli in an individual's natal habitat increases the probability that the individual will, following dispersal, select a habitat that contains comparable stimuli (Davis and Stamps 2004). Davis and Stamps (2004) provide a thorough review of research related to this phenomenon and describe necessary measures for future research projects. Little vertebrate research has been conducted in this area, although NHPI has applications in translocations, captiverelease programs, and colonization of empty or restored habitats (Stamps and Swaisgood 2007).

Davis and Stamps (2004) provide 3 essential factors for conducting future research in this area, including: (1) assigning individuals to alternative habitats; (2) moving animals to alternative habitats just before normal dispersal from the natal area; and (3) examining habitat preferences when the animals would normally

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begin dispersal. However, habitat imprinting research on avian species must begin before the crucial learning period during the nesting stage (i. e., much sooner than at the time of dispersal). Eagles likely become acquainted with their natal habitat and human presence in an area while still on the nest, not at dispersal.

If habitat preferences are formed independently of natal experience, offspring would be likely to return to the types of habitat used by the rest of the population. However, if natal experience is a key determinant of a habitat search image, offspring are more likely to recruit to a novel type of habitat. Biased dispersal may affect the rates of colonization of empty patches, which is apparent in the range expansion of bald eagles into the prairies of western Minnesota in the past 10 years (Baker and Monstad 2005) and into arid south-central Oregon in the past 15 years (Isaacs and Anthony 2011). If habitat preferences are formed independently of natal experience, their offspring would be likely to return to the types of habitat used by the rest of the population. If eagles respond in accordance with NHPI, offspring would be more likely to recruit to a novel type of habitat. Natal philopatry has been observed in breeding bald eagles (Nye 1981, Buehler 2000, Wood 2009, Isaacs and Anthony 2011); however, the distance from the natal area often allows for different habitat types and degrees of human presence.

The generational habituation hypothesis extends NHPI to include nest site selection and behavioral changes of populations over time. Bald eagle nestlings that are surrounded by human presence before and immediately after fledging likely will not avoid sites with similar human presence levels after dispersal and for nesting. Generational habituation suggests that next-generation chicks also will not avoid nesting in areas of similar human presence. Populations of bald eagles in areas with increasing human development will respond through generational habituation; however, there will be an interval of time before populations begin to recover, and there is likely a threshold amount of human development beyond which eagles will no longer find the environmental features necessary for successful nesting (Steidl and Anthony 2000, Guinn 2004). This threshold has proven to be much higher

than predicted, as there are now eagles nesting in many suburban areas and in close proximity to houses (Watson et al. 1999, Millsap et al. 2004, Baker and Monstad 2005).

Management Implications

Generational habituation, which is an important type of learning often overlooked by researchers, is not limited to bald eagles or to other bird species, but it can be observed in many species that thrive in urban areas with constant human activity. The tolerance of a species to human presence may be associated with innate knowledge or learned experience.

Identifying this type of developmental learning at the population level is more critical than quantifying habituation within a single pair or single generation. A population that is undergoing generational habituation is more important, from an evolutionary and management perspective than a single individual that has become habituated to a disturbance. In individual habituation, each individual during every successive generation must become habituated to human presence gradually over their lifetime. In generational habituation, however, each successive generation builds upon the behavioral changes made by immediately prior generations. Generational habituation may be responsible for faster changes in behavioral responses to human activities. Therefore, generational habituation may be a primary mechanism by which some species respond relatively quickly to the rapid human encroachment and habitat fragmentation that has occurred since the early twentieth century.

Future management of species, including bald eagle populations, near areas of human activity would benefit from incorporating the generational habituation hypothesis. For example, areas that traditionally have been described as suboptimal habitat for nesting bald eagles are now being used regularly and successfully (Baker and Monstad 2005, Johnson 2011). Isaacs and Anthony (2011) found low productivity of eagles during any new breeding area's first year, but a higher than usual productivity after 3 to 5 years of use. Many nests in these and other nontraditional areas are very productive (Guinn, unpublished data), while nesting eagles in traditional wilderness areas may suffer from high conspecific competition (Grim and Kallemeyn 1995, Anthony 2001), which may occur when nests are closer than 3.2 km of shoreline distance apart (Isaacs and Anthony 2011). But nesting is also highly dependent on the productivity of the fishery (Gerrard and Bortolotti 1988). Therefore, there is a trend in some areas that a higher number of offspring per nest are being produced from nests in nontraditional areas. If the generational habituation hypothesis holds true and wilderness habitat is limited, then, the number of young eagles that will choose a nest site with little regard to human presence may increase faster than those that require a wilderness setting for the nest. Baker and Monstad (2005) indicated that the greatest increases in nesting bald eagles in Minnesota were at the edge of their range in the state, expanding into the prairies and cropland of southwestern Minnesota. Similar trends were observed in North Dakota, as bald eagles are now nesting in shelterbelts or single trees surrounded by cropland (Johnson 2011).

It is important to recognize that generational habituation is a dynamic and continuing process. It is unlikely that bald eagle populations currently are fully habituated to human presence. Although relatively recent research in Minnesota (Guinn 2004) and Florida (Millsap et al. 2004) suggested that eagles do not avoid areas of human activity, there is likely a threshold of human activity that will cause many eagles to abandon their nests. Tinkler (2000) suggested that refugia are still actively sought out by eagles nesting in suburban areas. Generational habituation provides a method for explaining previous trends in eagle biogeography associated with human presence and predicts future changes in the behavior of individuals of the population. If protections are enforced and public support continues, it is likely that bald eagles will become increasingly habituated to human presence near their nests. This bodes well for bald eagles and other species that may be more resilient than initially suspected.

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in Bismarck, North Dakota. He holds a B.S. degree in biology from Bridgewater College (Virginia), an M.S. degree in biological sciences from Western Illinois University, and a Ph.D. degree in zoology from North Dakota State University. He is an educator, focusing on the integration of research in undergraduate science curricula. a falconer, and a predator specialist.

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Partial Review of Literature cited in US Fish and Wildlife Service's 2007 Bald Eagle Guidelines

Buffer Zone Tables for the Bald Eagle, Haliaeetus Leucocephalus

prepared for the City of Cape Coral by

Maya Robert, PhD., Environmental Resources Division Manager,

Public Works Department

Justin Heller, M.S., Planning Division,

Department of Community Development

Katie R. McBride, M.S., Environmental Biologist, Environmental Resources

Division, Department of Public Works

May 25, 2018

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Table 1. Non-nesting Birds

Year	State	Location .	Rurai or Urban	Type of disturbance	Minimum Approach Distance (MAD) in feet	MAD note	Reference	Cited in 2007 USFWS guidelines?
2003	FL	East Lake Tohopekaliga, Lake Tohopekaliga, Lake Cypress, Lake Marian, and Lake Kissimmee	Rural	Recreational: airboat	1194		Rodgers JA, Schwikert ST. 2003. Buffer zone distances to protect foraging and loafing waterbirds from disturbance by airboats in Florida. Waterbirds 26:437– 443.	YES
1991	MD	Chesapeake Bay		Recreational: pedestrian, vehicle, etc.	2231	1,400 m inland from the water's edge and encompass at least 1,360 m of shoreline edge (680-m buffers on both sides and inland from the site). This size (190 ha) slightly exceeds the minimum size of the forest stands that contained communal roosts (110 ha). Forest management within these stands should protect existing tall, large diameter trees and promote their growth in stands where they are lacking.	Buehler DA, Mersmann TJ, Fraser JD, Seegar JKD. 1991. Nonbreeding bald eagle communal and solitary roosting behavior and roost habitat on the northern Chesapeake Bay. Journal of Wildlife Management 55:273–281.	YES
1991	WA	Columbia River Estuary	Rural	Recreational: boat	1312		McGarigal K, Anthony RG, Isaacs FB. 1991. Interactions of humans and bald eagles on the Columbia River Estuary. Wildlife Monograph 115:1–47.	YES
1997	WA	Nisqually River and Muck Creek on the Fort Lewis Army Reservation	Rurai	Military: boat and aircraft	984.	At least 984-1640 horizontally or vertically; 1312-2625 would be effective	Stalmaster MV, Kaiser JL. 1997. Flushing responses of wintering bald eagles to military activity. Journal of Wildlife Management 61:1307–1313.	YES

.

Table 1. Non-nesting Birds, continued

Year	State	Location	Rural or Urban	Type of disturbance	Minimum Approach Distance (MAD) in feet	MAD note	Reference	Cited in 2007 USFWS guidelines?
1997	WA	Nisqually River and Muck Creek on the Fort Lewis Army Reservation,	Rural	Military: explosion, blasting	2625	Findings suggest that recommended buffer zones of 984-1640 feet (US Fish and Wildlife Service 1986:53) would be effective for boat and aircraft operation, but may be marginally adequate for explosives (blasting).	Stalmaster MV, Kaiser JL. 1997. Flushing responses of wintering bald eagles to military activity. Journal of Wildlife Management 61:1307–1313.	YES
1997	WA	Skagit River Bald Eagle Natural Area	Rural	Military: pedestrian, boat	1312	Would protect >95% of ground- feeding birds from recreationists	Stalmaster MV, Kaiser JL. 1998. Effects of recreational activity on wintering bald eagles. Wildlife Monograph 137:1–46.	YES
1997	WA	Nooksack River	Rural	Military: pedestrian		Activity restriction zones are suggested for bald eagle wintering grounds. In open regions where activities are common (Riverbank), boundaries of 820 feet would be sufficient to protect 99 percent of the population [from flushing]. Similarly, boundaries on river channels of 820 feet would protect 90 percent of the birds [from flushing].	Stalmaster MV, Newman JR. 1978. Behavioral responses of wintering bald eagles to human activity. Journal of Wildlife Management 42:506–513.	YES
1995		Pacific Northwest	Rural	Recreational: pedestrian, vehicle, boats, etc.			Anthony RG, Steidl RJ, McGarigal K. 1995. Recreation and bald eagles in the Pacific Northwest. Pages 223–241 in Knight RL, Gutzwiller KJ, editors. Wildlife and recreationists: coexistence through management and research. Island Press, Washington D.C.	NO

Table 2. Nesting Birds

Year	State	Location	Rural or Urban	Type of disturbance	Minimum Approach Distance (MAD) in feet	MAD note	. Reference	Cited in 2007 USFWS guidelines?
2000	AK	Northern US	Rural	Recreational: camping	1640	Human activity near nests caused clear and consistent changes in behaviors of breeding eagles, suggesting that frequent human activities near nests could adversely affect nestling survival, and therefore reproductive success.	Steidl, R. J., & Anthony, R. G. (2000). Experimental effects of human activity on breeding bald eagles. Ecological Applications, 10(1), 258- 268.	YES
1985	MN	Northern US	Rural	Recreational	1640	A more conservative, but perhaps less realistic approach, would be to assume that any flushing is likely to be bad and to base buffer zone sizes on empirically determined flush distances in a variety of populations and conditions	Fraser JD, Frenzel LD, Mathisen JE. 1985 The impact of human activities on breeding bald eagles in north- central Minnesota. Journal of Wildlife Management 49:585–592.	YES
1991	AZ	Southwest			1476-5249		Grubb TG, King RM. Assessing human disturbance of breeding bald eagles with classification tree models. Journal of Wildlife Management 55:500–511.	YES
1993	US				197	By maintaining [helicopter] flight approach distances of >197 from nest	Watson JW. Responses of nesting bald eagles to helicopter surveys. Wildlife Society Bulletin 21:171–178.	YES
1995		Pacific Northwest	Rural	Recreational: pedestrian, vehicle, boats, etc.			Anthony RG, Steidl RJ, McGarigal K. 1995. Recreation and bald eagles in the Pacific Northwest. Pages 223–241 in Knight RL, Gutzwiller KJ, editors. Wildlife and recreationists: coexistence through management and research. Island Press, Washington D.C.	YES

Table 3. Local Buffers in Florida

Location	Buffer (feet)	Notes
Fort Myers Beach	750 to 1,500	Primary protection zone with a radius of 750 to 1,500 feet around active nests within which no development should occur
Bonita Springs	660	Buffer areas may range in any distance averaging 660
Estero	660	660 feet from a nest and be irregularly shaped areas, except that a larger buffer area may be offered voluntarily in accordance with section 14-120(3)
Naples	660	Adheres to the Bald Eagle Management Plan utilized by the FFWCC, same as USFWS
Alachua County	660	 Adheres to the Bald Eagle Management Plan utilized by the FFWCC, same as USFWS with additional nesting zone restrictions. a. Excluding existing bona fide agricultural use of land in the nesting zone, the following land uses shall be prohibited in the nesting zone without a special use permit issued by the Board consistent with Article VIII, Special Use Permits, of Chapter 402: Logging; Iand clearing; Construction; Seismographic activities employing explosives; Mining; Well drilling; Residential subdivisions, commercial, or industrial development; Tree cutting; Use of chemicals toxic to wildlife such as herbicides and pesticides; and Helicopter or fixed-wing aircraft operation within 500 feet vertical distance or 1,000 feet horizontal distance from an eagle's nest.
Collier County	660	Adheres to the Bald Eagle Management Plan utilized by the FFWCC, same as USFWS
Hillsborough County	660	Adheres to the Bald Eagle Management Plan utilized by the FFWCC, same as USFWS If an applicant proposes activities within 1,500 feet of a nest known to have been active within the last 5 years, the applicant must solicit FGFWF recommendations (see Habitat Management Guidelines for the Bald Eagle (USFWS).
Martin County	660	Adheres to the Bald Eagle Management Plan utilized by the FFWCC, same as USFWS and states: It is unlawful for any person to kill, maim or molest any bald eagle in Martin County; or to cut down or otherwise destroy any tree in which there is located any live bald eagle's nest, unless it has been abandoned for two years, or until permission is obtained from the State Board of Conservation or one of its authorized representatives; or to use any aerial spray or dust on any tree in which a live bald eagle's nest is located, unless such spraying or dusting is approved by the State Board of Conservation, or its authorized representative, as being harmless to bald eagles
Volusia County	660	Adheres to the Bald Eagle Management Plan utilized by the FFWCC with additional provision for USFWS Wetlands, watercourses, water bodies and associated buffers, land within 660 feet of an active bald eagle nest, lands conserved for protection of native or endangered flora, fauna, and habitat, and other selected areas which contain attractive spaces that are unique to the rural character of the site, as determined by the on-site review of the property and agreed to as part of the conceptual development plan. Such lands shall be managed as natural open space and maintained in a natural or restored condition as set forth in the conservation management plan required herein. Boardwalks, walking trails and interpretative signage may be allowed.

A Species Action Plan for the Bald Eagle Haliaeetus leucocephalus

November 20, 2017





Florida Fish and Wildlife Conservation Commission 620 South Meridian Street Tallahassee, FL 32399-1600 Visit us at <u>MyFWC.com</u>

BALD EAGLE ACTION PLAN TEAM

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Team Members: Janell Brush, Andrew Cox, Craig Faulhaber, Erin Leone, Brie Ochoa, Tyler Pittman, Michelle van Deventer, Jared Zimmerman.

Acknowledgements: Mark Barrett, Brian Beneke, Claire Sunquist Blunden, Robin Boughton, Guy Carpenter, Brad Gruver, Jonathan Ruggiero, Dan Sullivan, Avery Tubbs, Melissa Tucker.

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EXECUTIVE SUMMARY

This plan was developed in response to the Florida Fish and Wildlife Conservation Commission (FWC) sunset of the 2008 Bald Eagle Management Plan. The goal of this plan is to maintain or improve the conservation status of the bald eagle so that the species will not again need to be listed on the Florida Endangered and Threatened Species List. The objectives of this plan are to maintain a stable or increasing population of bald eagles in Florida, and to maintain the current extent of occurrence for bald eagles in Florida.

This plan was developed by the FWC in collaboration with stakeholders and the actions outlined in the plan underscore the importance of continued outreach to targeted audiences. Successful conservation of bald eagles through implementation of this plan requires the cooperation of local, state, and federal governmental agencies, non-governmental organizations, business and industrial interests, universities and researchers, and the public.

The actions outlined in this plan are designed to meet the objectives and include beneficial land management activities, preservation of suitable habitat, and minimizing disturbance during key phases of the bald eagle life cycle. Actions to minimize mortality and impacts from threats are also included. Given that the bald eagle population in Florida has met or exceeded the objectives of FWC's 2008 Bald Eagle Management Plan and continues to show stable or positive trends, annual statewide monitoring of nesting eagles and the considerable associated expense are no longer warranted. Future monitoring and research may include nest surveys, review of existing data, coordination with the U.S. Fish and Wildlife Service and local governments, and ongoing partnerships with volunteer-based organizations.

It is likely that bald eagles experienced habitat loss and direct persecution as early as the 1700s, resulting in population decline. In the mid-1900s, the decline steepened due to widespread use of organochlorine pesticides such as dichlorodiphenyltrichloroethane (DDT), which affected bald eagles and many other avian species through both direct toxicity to aquatic prey and a reduction in productivity through eggshell thinning. The effects of DDT compounded losses from habitat destruction and shooting, and bald eagles became extirpated from many areas of their historic range. The Environmental Protection Agency banned use of DDT in 1972, reversing the 30-year decline in eagle productivity (Curnutt 1996).

Bald eagles reclaimed their entire historic range by the late 1990s, and their estimated population in the lower 48 states increased from an estimated 417 pairs in 1963 to 9,789 pairs by 2007. In August 2007, the U.S. Fish and Wildlife Service (USFWS) removed the bald eagle from the list of species protected by the Endangered Species Act. In 2008, the bald eagle was removed from the Florida Endangered and Threatened Species List. Today the bald eagle is celebrated as one of America's great conservation success stories.

This plan details the actions necessary to maintain or improve the conservation status of the bald eagle. As outlined in Florida's Imperiled Species Management Plan (FWC 2016*a*), species action plans are reviewed every 7 years. At the time of review, revisions will be incorporated to reflect current knowledge. While not a part of Florida's Imperiled Species Management Plan, the Species Action Plan for the Bald Eagle will fall under this revision schedule.

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GLOSSARY OF TERMS AND ACRONYMS

- Adaptive Management: A method that integrates design, management, and monitoring to systematically test assumptions in order to modify and adapt management and activities in response to observations.
- Active Nest: A nest that shows or showed evidence of breeding by bald eagles, such as an adult attending the nest or in incubating position, a clutch of eggs, or a brood of nestlings.
- Active Nesting Territory: An area used for nesting by one pair of bald eagles; a nest territory may contain multiple nests, but only one active nest per breeding season.
- AVM: Avian vacuolar myelinopathy, a non-infectious neurological disease resulting from the newly characterized cyanobacterium, *Aetokthonos hydrillicola*.
- Bald and Golden Eagle Protection Act: The federal law (16 U.S.C. 668a-668c) enacted in 1940 to prevent persecution of cagles. Since the eagle was removed from the protections of the Endangered Species Act, this law again serves as the primary protection for bald eagles nationally.
- Communal Roost: An area where bald eagles gather and perch overnight, or during the day during inclement weather. Communal roosts are usually in large trees (alive or dead) or manmade structures close to foraging areas.
- Cluster Nesting Area: An area containing a high density of bald cagle nesting territories (Figure <u>4: Brush et al., manuscript in prep.</u>). Together, cluster nesting areas support a majority of Florida's known, active nesting territories.
- DDT: Dichlorodiphenyltrichloroethane, a pesticide that dramatically reduced avian populations.
- DEP: Florida Department of Environmental Protection
- Disturb (as defined in <u>Rule 68A-16.002, F.A.C.</u>): "To agitate or bother a bald cagle to the degree that causes, or is likely to cause (a) injury to an eagle, (b) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (c) nest abandonment, by substantially interfering with normal breeding, feeding, feeding, or sheltering behavior."
- Endangered Species Act: The federal law, enacted in 1973, intended to provide protections to species facing extinction. When the bald eagle was removed from the list of species protected under the Endangered Species Act on August 8, 2007, the Bald and Golden Eagle Protection Act became the primary protection to eagles nationwide.

F.A.C.: Florida Administrative Code.

GLOSSARY OF TERMS AND ACRONYMS

- Fledgling: A young cagle that is capable of sustained and coordinated flight, usually at 10-12 weeks of age. Fledglings typically return to the nest for several weeks (until 14-23 week of age) to be fed or to roost. Compare with Nestling.
- FWC: The Florida Fish and Wildlife Conservation Commission, the state agency legally mandated to protect and manage Florida's native wildlife resources.
- FWRI: Fish and Wildlife Research Institute, the research branch of the Florida Fish and Wildlife Conservation Commission.
- ISMP: Florida's Imperiled Species Management Plan
- Nest: Any assemblage of materials built, maintained, or used by bald eagles for the purpose of reproduction.
- Nesting Season: In Florida, the majority of bald eagle nesting occurs between October 1 and May 15. However, nest building or maintenance can begin in September, and some nests may still contain dependent young after May 15.
- Nesting Territory: An area that contains 1 or more eagle nests within the home range of a mated pair of eagles, regardless of whether such nests were built by the current resident pair. In rare cases a nest may be absent from a nesting territory, such as when the nest was destroyed by severe weather.
- Nestling: A young eagle that is incapable of flight and dependent on its parents. Once fledged (capable of sustained and coordinated flight), it becomes a fledgling.
- Productivity: Metric used to describe the number of young produced. FWC describes productivity for bald eagles using several different metrics, such as: 1) the number of young per active nest; 2) the number of young per successful nest; 3) total number of young produced (hatched) by a pair or specific population.
- SGAR: Second generation anticoagulant rodenticides

Successful Nest: A bald eagle nest that produces at least 1 fledgling.

Take (as defined in <u>Rule 68A-1.004. F.A.C.)</u>: "Taking, attempting to take, pursuing, hunting, molesting, capturing, or killing any wildlife or freshwater fish, or their nests or eggs by any means whether or not such actions result in obtaining possession of such wildlife or freshwater fish or their nests or eggs."

U.S.C.: United States Code.

USFWS: The United States Fish and Wildlife Service, the federal agency mandated to protect and manage the nation's native wildlife resources.

GLOSSARY OF TERMS AND ACRONYMS

WCPR: Wildlife Conservation, Prioritization, and Recovery. A program administered by the FWC on FWC-managed areas to ensure protected lands are managed for the greatest benefit to wildlife.

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INTRODUCTION

Biological Background

Species Description

The bald eagle is a charismatic symbol of national pride, easily recognized by its distinct silhouette, size, and unique coloration. Within their North American range, eagles exhibit a gradient of smaller to larger birds from south to north. With a wingspan of approximately 2.1 m (7 ft) in the southern portion of their range, the bald eagle is among the largest birds commonly observed in Florida. Mature bald eagles are best known for the striking contrast of white plumage on the head and tail with the solid dark brown plumage covering the wings and body.

First-year eagles are typically entirely dark brown, though white speckling is common on the underside of the tail and under the wings. The plumage of sub-adults is highly variable, according to age, with a decreasing amount of white on the body and an increasing amount of white on the head and tail attained with each successive molt. The eyes and bill turn yellow during an eagle's fourth year, and full adult plumage is attained during a bird's fifth or (usually) sixth year (Buehler 2000). The sexes are indistinguishable by plumage, but females are as much as 25% larger than males.

Taxonomy

The bald eagle is a member of the family Accipitridae and the order Accipitriformes. It is 1 of 8 members of the genus Haliaeetus, derived from the Greek word meaning sea eagle; the bald eagle's full scientific name means white-headed sea eagle. The bald eagle is the only member of its genus that occurs regularly in North America. Two other species, the white-tailed eagle (H. albicilla) of Eurasia and the Steller's sea-eagle (H. pelagicus) of Asia, have strayed to the United States, and the white-tailed eagle has bred in Alaska (American Ornithologists' Union 1998). Fossil evidence comes from several sites (including 3 in Florida) and dates back at least 1,000,000 years (Buehler 2000). Subspecies recognized by some ornithologists are the larger H. l. alascanus (breeding north of 40E N latitude) and the smaller H. l. leucocephalus (breeding to the south). However, these subspecies may not be distinct, but could instead reflect the size and mass decrease along a north-to-south gradient (Curnutt 1996, Buehler 2000). The only other eagle occurring regularly in North America is the golden eagle (Aquila chrysaetos), which in Florida is a rare, non-breeding winter visitor, primarily of the panhandle (Stevenson and Anderson 1994).

Longevity

The longest documented lifespan for a bald eagle in the wild is 38 years (Deatrick 2015). Eagles follow a pattern typical of raptors, with survival rates lowest in juveniles and increasing to adulthood (Buehler 2000, Millsap et al. 2004). More recent estimates of annual survival in the Southeast U.S. are 86% for first-year bald eagles, and 91% for bald eagles after their first year (U.S. Fish and Wildlife Service [USFWS] 2016).

Food

Bald eagles are opportunistic foragers, feeding or scavenging on a wide variety of prey. For eagles in Florida, primary prey includes various fish and waterfowl species. Prey from a study in

INTRODUCTION

north-central Florida was composed of 78% fish (mostly catfish, especially brown bullhead [*Ictalurus nebulosus*]), 17% birds (mainly American coot [*Fulica americana*]), 3% mammals, and 1% amphibians and reptiles combined (McEwan and Hirth 1980). In Florida Bay, hardhead catfish (*Arius felis*) are a dietary staple for bald eagles and are estimated to comprise more than 50% of prey items (Hanson and Baldwin 2017). Most prey is captured from the surface of the water, but bald eagles often harass ospreys (*Pandion haliaetus*) in flight to drop fish that they have captured. Scavenging for carcasses along roadways and among garbage at landfills is also common (Millsap et al. 2004).

Habitat

Bald eagles typically use forested habitats for nesting and roosting, and expanses of shallow

fresh or salt water for foraging (Figure 1). Nesting habitat generally consists of tall, mature trees that offer panoramic views of surroundings and proximity to foraging areas (Buehler 2000). Nests in manmade structures are documented in Florida, and can be locally abundant, as in the Tampa Bay area. Daytime roosts are typically in super-canopy (tallest) trees adjacent to shorelines, and within 3 miles of water (Buehler 2000, Mojica 2006). Outside of breeding season, eagles may be found in large groups (50 or more), known as communal roosts. The Center for Conservation Biology lists 45 communal roosts observed in Florida (Center for Conservation Biology 2016). The quality of foraging habitat is characterized by the diversity, abundance, and vulnerability of eagle prey; the structure of the aquatic habitat (e.g., presence of shallow water); and the extent of human disturbance (Buehler 2000). The greatest numbers of bald eagle nesting territories in Florida are found along the Gulf coast and around the larger inland lakes and river systems in the peninsula (Figure 2).



Figure 1. Healthy estuaries support abundant fish and can offer prime foraging sites for bald eagles in Florida. Photograph of Apalachicola National Estuarine Research Reserve by Tim Donovan, FWC.

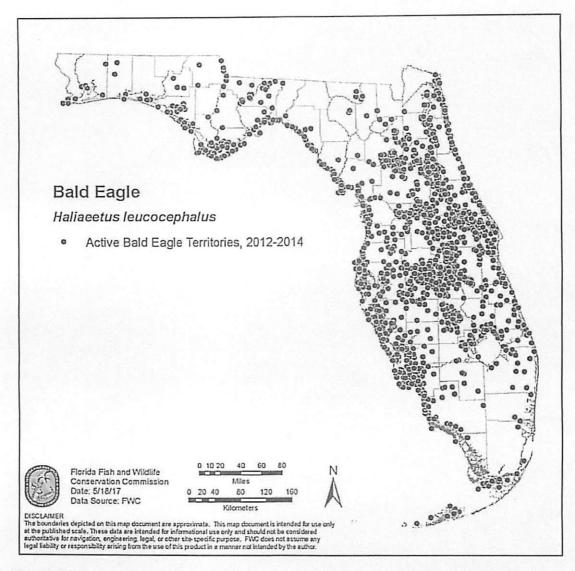


Figure 2. Distribution of active bald eagle nesting territories from 2012-2014 (Zimmerman et al. 2017).

Breeding Behavior

Bald eagles are highly social outside of the nesting season but are extremely territorial when nesting. They are capable of breeding in their fourth year while still in sub-adult plumage, but may not breed until their sixth or seventh year where breeding competition is intense (Buehler 2000). Bald eagles are thought to be monogamous, with pair bonds persisting for years, though this is largely unproven. Eagles are single-brooded, though pairs may renest if the first clutch is lost.

Bald eagles typically return to their nesting territory each breeding season for many years, and will frequently reuse the same nest. Nest material is added throughout the year and in subsequent seasons, resulting in very large nest structures.

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Nests tend to be built in a living tree with a view of the surrounding area that can support the eagles' sizeable nest (Figure 3). The majority (an estimated 75%) of bald eagle nests in Florida



Figure 3. A bald eagle attending to a nest containing young. The sizable nest is constructed in a mature, living, native pine tree. Photograph by Karen Parker, FWC.

are in living native pines such as longleaf pine (*Pinus palustris*) and slash pine (*P. elliottii*); FWC unpublished data). Because bald eagles in Florida strongly prefer living native pines to all other substrates, the retention of mature native pines is key to maintaining breeding habitat. Eagles in Florida have also been documented nesting in cypress (*Taxodium* spp.), mangroves (*Avicennia germinans* and *Rhizophora mangle*), manmade structures, and (rarely) on the ground (Broley 1947, Shea et al. 1979, Curnutt and Robertson 1994, Curnutt 1996, Millsap et al. 2004).

Bald eagles are known to also nest on manmade structures in Florida, such as communication towers, transmission towers, and raptor nesting platforms. The number of eagle nests on manmade structures in Florida remains a relatively small (less than 10 percent, FWC unpublished data 2014) portion of the statewide breeding population. However, bald eagle nests on manmade structures can be important to some local populations and may represent a significant portion of the local breeding population in places such as Pinellas and Hillsborough Counties,

and near cluster nesting areas along the 1-4 corridor in central Florida. In these urbanized settings bald eagles may be selecting manmade structures for a combination of reasons, such as increased height, distance from surrounding activity, reduced availability of suitable mature trees, or near proximity of high-quality aquatic foraging habitat.

Nearly all bald eagle nests in Florida are built within 2.9 km (1.8 mi) of water (Wood et al. 1989). Average territory size varies from 2.8 km² (1.08 mi²) in areas with the most suitable habitat and highest prey density (i.e., cluster nesting areas) to a statewide average of 3.2 km² (1.23 mi²) (FWC, unpublished data). Nests are spaced apart to ensure sufficient food resources for nestlings and to raise young with minimal disturbance from other eagles. Prime foraging habitat for bald eagles includes 3 classes: 1) lakes equal to or greater than 100 ha (247 ac), 2) large rivers equal to or greater than 100 ha (247 ac), and 3) coastal areas (bays, estuaries, oceans). Eagle pairs often build more than 1 nest, which allows them to move within their nesting territory should it be necessary. Throughout their range, eagles maintain an average of 1.5 nests per territory, ranging from 1-5 nests (Stalmaster 1987, Buehler 2000).

In Florida, the majority of bald eagle nesting activity occurs between October 1 and May 15, though some eagles may begin nesting prior to October 1, and young may fledge after May 15. Nest building or nest maintenance can begin in late September or early October. Most clutches of eggs in Florida are laid between December and early January, though eggs may be laid as early

as October and as late as April, the latter often representing renesting attempts (Millsap et al. 2004). Mean clutch size throughout the bald eagle's range is 1.87 eggs, with most nests containing 2 eggs (Stalmaster 1987). Incubation lasts about 35 days. Nestlings in Florida fledge at around 11 weeks of age and remain with their parents near the nest for an additional 4–11 weeks (Wood 1992, Wood et al. 1998). Fledglings begin widespread local movements before initial dispersal, which occurs from April to July (Millsap et al. 2004). Average productivity during 1973–2004 was 1.16 fledglings for all active nests and 1.54 fledglings per successful nest. The most recent 5-year average (2009-2014) of fledglings per successful nest was 1.54, indicating that productivity is currently stable (Zimmerman et al. 2017).

Bald eagles are extremely territorial when establishing or defending their nesting territories and may be badly injured or even killed during territorial battles. Intraspecific aggression, often a consequence of a large population, accounts for 7% of documented eagle mortality in the state (Forrester and Spalding 2003). Along with food availability and inclement weather, intraspecific aggression is among the primary regulators of eagle populations where human interactions are limited, especially in areas where bald eagle populations are close to their carrying capacity (Buehler 2000).

Migration

Most of Florida's breeding bald eagles, especially those nesting in the extreme southern peninsula, remain in the state year-round, but most sub-adults and non-breeding adults migrate out of Florida (Stevenson and Anderson 1994, Curnutt 1996, Mojica 2006). Eagles migrate northward between April and August and return southward from late July through late December. Juveniles migrate northward later than older sub-adults (Broley 1947, Wood and Collopy 1995, Mojica 2006). Most juveniles disperse at about 128 days of age and spend their first summer as far north as Newfoundland, with peak numbers summering around Chesapeake Bay and the coastal plain of North Carolina (Broley 1947, Millsap et al. 2004, Mojica 2006). Florida's bald eagles use 3 migration flyways—the Atlantic coast, Appalachian Mountains, and the Mississippi River valley—with equal frequency, and they use stopover sites for resting or foraging (Mojica 2006). Eagles also exhibit nomadic wandering, mostly by sub-adults. Northernbreeding bald eagles occasionally winter in Florida (Stevenson and Anderson 1994).

Distribution

Bald eagles historically bred from central Alaska and the Maritime Provinces south to Baja California and Florida. It is widely believed that eagles were abundant in coastal and inland areas with high quality forested and aquatic habitats. In Florida, the eagle was called "abundant" (Bailey 1925) and "common" (Howell 1932) during the early 1900s. The size of Florida's historic bald eagle population is unknown, but it "must have been well in excess of 1,000 nesting pairs," with numbers around Tampa Bay and Merritt Island thought to be "among the densest breeding concentrations of a large raptor known anywhere on earth" (Peterson and Robertson 1978). Bald eagle recovery in the lower 48 states has been dramatic, with an estimated 417 pairs in 1963 increasing to an estimated 16,048 bald eagle breeding pairs in 2009 that occupy the entirety of the species' historic range (Millsap et al. 2016). In Florida, surveys began in 1973 and documented an increase from 88 active nest territories to nearly 1,500 in 2014 (Zimmerman et al. 2017). Bald cagles breed in almost every county in Florida. Most nests are found on privately-owned lands (64% in 2014; FWC, unpublished data) which underscores the importance of private lands in the conservation of eagles in Florida. The growth of the state's eagle population has occurred alongside a high rate of human population growth. This could be attributed to a combination of factors, including habitat and nest protection measures, adequate prey availability, as well as increasing exposure to and tolerance of human activities (Guinn 2013).

The FWC has identified 23 areas of concentrated bald eagle nesting activity that contain a majority of the known nesting territories in Florida (Figure 4; Brush et al., manuscript in prep.). Referred to as *cluster nesting areas*, many have persisted for decades, suggesting the presence of high-quality breeding and foraging habitats.

Although surveys have shown that cluster nesting areas have no difference in productivity compared to areas with lower nest density, they produce an estimated 65% of the known young in the state each year. Cluster nesting areas therefore have a high biological value. Cluster nesting areas are concentrated around several significant wetland systems along the Gulf coast from St. Vincent Island to Lee County, and inland from the lower St. Johns River to Lake Okeechobee. Florida has a relatively high density of bald eagle nesting territories when compared to other areas of the species' range, but areas that support the highest densities (cluster nesting areas) likely contain the best available nesting habitat in the state.

Conservation History

The bald eagle is emblematic of successful species conservation. The objectives of FWC's 2008 Bald Eagle Management Plan were continuously met or exceeded during that plan's implementation. The recovery of the population in Florida and nationally demonstrates both the resiliency of the species and the triumph of decades of conservation efforts to improve the bald eagle's population status.

Historically, the outlook for cagles was dire; the eagle population in the U.S. began to decline during the 1700s from loss of breeding habitat and direct persecution—more than 128,000 bald eagles were shot in Alaska between 1917 and 1952 by people seeking a bounty that was created to protect the salmon fishery (Robards and King 1966). The population decline intensified during the mid-1900s with widespread use of DDT compounding the continuing losses from habitat destruction and direct persecution. DDT is an organochlorine pesticide that was widely used in agriculture and mosquito control beginning in the 1940s. Widespread use of DDT, which disrupted calcium metabolism in birds, was banned in the U.S. in 1972. This calcium reduction resulted in eggshells that ruptured during incubation, causing significant and widespread reproductive failure in bald cagles and other birds (Stalmaster 1987, Buehler 2000). Broley (1950) documented "heavy nesting failures" of eagles in Florida, and Cruickshank (1980) wrote of their "alarming decrease" and near-extirpation as a breeding species in Brevard County after 1950.

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Figure 4. Bald eagle cluster nesting areas in Florida. A nearest-neighbor hierarchal clustering method was used to identify clusters of active eagle nests within each survey year (1998-2008). Nest clusters for each year were represented by a dispersion ellipse, which were added to a GIS; multiple ellipses that overlapped within and among years were combined into a single cluster, resulting in 23 cluster nesting areas (Brush et al. manuscript in prep.).

Substantial recovery of the bald eagle, continentally and in Florida, began in the 1970s, following the DDT ban and a reduction in persecution brought on, in part, by passage of the U.S. Endangered Species Act of 1973. The Florida eagle population has increased greatly since statewide nesting season surveys began in 1972 (Figure 5; Zimmerman et al. 2017). Using post-delisting monitoring data from 2009, the USFWS estimated a total population size of bald eagles at nearly 143,000 birds, with approximately 12,190 individuals in the southeast U.S. (Millsap et al. 2016).

The estimated number of active bald eagle nesting territories in Florida after the 2014 nesting season was approximately 1,499 (Zimmerman et al. 2017). This represents an increase from an estimated 1,218 active nesting territories in Florida when bald eagles were removed from the list of federally Endangered species in 2007.

Figure 5 shows the number of active nesting territories as documented through 30 years of survey data. The number of active nesting territories can be expected to fluctuate from year to year; mortality rates can also be expected to fluctuate over time.

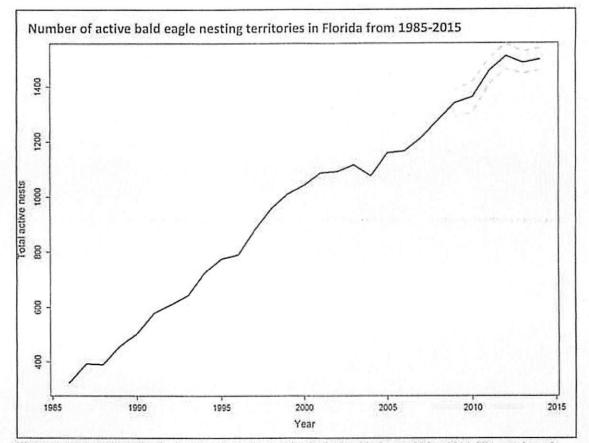


Figure 5. The number of active bald eagle nesting territories in Florida from 1986 to 2014. The number of active territories from 2009 to 2014 was estimated (with confidence limits shown as dashed lines) from a subset of all known nesting territories (Zimmerman et al. 2017).

Threats

Although the population has increased since the 1970s, bald eagles in Florida continue to face both natural and human-related threats. These threats, individually or in combination, could impair reproductive and survival rates. Most natural mortalities, including those from intraspecific aggression, probably go undetected. The FWC sends eagle carcasses to the Southeastern Cooperative Wildlife Disease Study at the University of Georgia or the National Wildlife Health Center for necropsy when cause of mortality is not immediately apparent, or if there are circumstances or evidence that warrant further investigation.

Trauma

In a study of the cause of death for nearly 3,000 bald eagles from 48 states, trauma and poisoning were identified as the leading causes of death (Russell and Franson 2014). Because of their size and behavior of foraging on roadkill, bald eagles are especially vulnerable to vehicle collision. In Florida, from 1963-1994, trauma resulted in 59% of known cases of bald eagle mortality; the most frequent cause was vehicle collision (81 of 182 mortalities, or 44%), but other causes included gunshot (10%), intraspecific aggression (7%), and powerline collision (4%) (Forrester and Spalding 2003).

Poisoning

Bald eagles most often ingest poisons from secondary sources, such as feeding on carcasses or prey containing poisons. Second generation anticoagulant rodenticides (SGARs), including those registered for use in the U.S. (brodifacoum, bromadiolone, difethialone, and difenacoum), are a documented source of secondary poisoning. During an 18-month study beginning in 2014, FWC conducted necropsies on bald eagle carcasses recovered in Florida when cause of death was not immediately clear, or poisoning was suspected; 100% of carcasses tested showed presence of SGARs, with 17 of the 33 documenting SGARs as the cause of, or possible contributing factor in the eagles' deaths (Van Deventer et al. 2017). Eagles have also been poisoned after feeding on improperly disposed carcasses of euthanized animals containing pentobarbital (Forrester and Spalding 2003). Lead poisoning from feeding on waterfowl or other animals imbedded with lead shot is another cause of secondary poisoning. While the use of lead shot for waterfowl hunting was banned in 1991, lead poisoning remains a significant cause of death for bald eagles. Of 762 eagles submitted to the National Wildlife Health Center between 1975 and 2013 that died of poisoning, 484 (64%) died from lead poisoning. Moreover, a statistically significant increase in lead poisoning was documented after 1991,

implying that lead shot used to kill other animals still poses a threat of secondary poisoning (Russell and Franson 2014).

Disease

Forrester and Spalding (2003) list 112 diseases or parasites that have been found on or in the bodies of bald eagles in Florida. Most parasites are not lethal, however, several infectious diseases have been implicated in the deaths of bald eagles. Avian pox (Avipoxvirus spp.), transmitted by biting insects, has been associated with illness and mortality in bald eagles (Figure 6; Millsap et al. 2004, Schmeling and Locke 1982). One-third of bald eagle pox cases confirmed by the National Wildlife Health Center between 1975 and 2013 were carcasses submitted from Florida (Russell and Franson 2014). The state's warm climate, where biting insects remain active for much of the year, and the large population of nesting eagles are likely to contribute to increased incidents in this state relative to other regions.



Figure 6. Severe avian pox infection in a young bald engle from Seminole County, Florida in 2016. Photograph by Resee Collins, U.S. Fish and Wildlife Service.

West Nile virus (*Flavivirus*), which is transmitted through mosquitoes and other biting insects, colonized much of the continental U.S. within a few years of its discovery in 1999, and has been documented in 285 species of birds in North America, including bald eagles (Centers for Disease Control and Prevention 2006). Accurate information on rates of West Nile virus in bald eagles is still largely unknown, though dozens of eagle deaths were attributed to West Nile virus in Utah in 2013 (USGS 2014). One documented eagle mortality resulting from West Nile virus occurred in 2017 in Sarasota County (Southeastern Cooperative Wildlife Disease Study necropsy report, 2017).

Avian vacuolar myelinopathy (AVM) is a non-infectious neurological disease resulting from a newly characterized cyanobacterium (*Aetokthonos hydrillicola*) which grows on submerged aquatic vegetation such as invasive hydrilla (*Hydrilla verticillata*), a plant prevalent in freshwater lakes in Florida (Wilde et al. 2014). Under certain conditions, this cyanobacterium produces a toxin which causes neurologic impairment in species that directly ingest it. Subsequently, the toxin can transfer to species higher on the food chain (Birrenkott et al. 2004). Clinical signs of AVM-affected birds are loss of motor coordination and inability to swim, fly, obtain food, and eventually death (Larsen et al. 2002). AVM has been implicated in the deaths of hundreds of bald eagles in Arkansas, Georgia, North Carolina, and South Carolina (Rocke et al. 2002; Wilde et al. 2005). The presence of *A. hydrillicola* has been confirmed in several lakes in central Florida (Williams et al. 2009), but no AVM-related die-offs of wild birds have been documented in Florida to date.

An outbreak of New World screw-worm (*Cochliomyia hominivorax*) in south Florida in 2016 may represent a potentially emerging threat for wildlife in the region. New World screw-worm larvae are deposited in open wounds of warm-blooded animals, and feed on the flesh of their host. This potentially lethal parasitic larvae has been documented in birds (Al-Khalidi and A. M. Shareef 1985).

Habitat Loss and Degradation

Although the bald eagle population has grown concurrently with the growth of the human population in Florida, the continued conversion of nesting or foraging habitats to development can be expected to reduce the amount and quality of eagle habitats. Some of the most intense development pressure in peninsular Florida is occurring along the shores of large inland lakes that support cluster nesting areas (Figure 4), such as Lake Tohopekaliga in Osceola County. Bald eagle nests are protected by law, but little or no emphasis has yet been placed on regulatory protections for roosting or foraging habitats (Mojica 2006).

Some eagles in Florida have shown great tolerance for nesting in suburban or urban areas—in some cases even establishing new territories in these habitats (Millsap et al. 2004). Documented survival rates were similar for juveniles from rural and suburban nests, but mortality of those from suburban areas was more often a result of direct or indirect human interactions than mortality of rural birds (Millsap et al. 2004). Bald eagles raised in suburban habitats seem to become acclimated to human-related landscape features and do not regard these features with the same amount of caution that is shown by eagles raised from rural nests (Millsap et al. 2004, Guinn 2013). The use of manmade substrates for nesting may be a consequence of habitat loss or degradation, particularly in urban areas with abundant foraging habitat but a lack of suitable trees

for nesting. Although there may be some risks unique to or more pronounced for nests in manmade structures (e.g., entanglement, electrocution, disturbance from structure repair or maintenance, increased exposure to lightning, heat) it is unclear if these potential risks are outweighed by the benefit of the additional nesting habitat that manmade structures can provide.

In the coming century, projections indicate that Florida will be severely impacted by climate change (FWC 2016b). Climate change impacts include an increase in sea level rise, dynamic shifts in precipitation and air temperature, increased frequency and intensity of storm events, and changes in water chemistry (FWC 2016b). Increasing severity of storms could affect eagle habitats through flooding of nesting areas (potentially resulting in loss of native pines), as well as impacts to water quality caused by storm surges, potentially reducing prey availability or increasing risk of poisoning. Much of Florida's coastline is susceptible to inundation following a moderate rise in sea level, which would reduce a substantial portion of coastal habitat and change the structure of the shallow waters where bald eagles forage. Saltwater intrusion into coastal estuaries may also alter vegetation and prey base.

Other Threats

Hurricanes and other severe storms can damage or blow down eagle nests or nest trees, and storms that occur during the eagle nesting season can break eggs or kill nestlings. Forrester and Spalding (2003) detail several instances of storm-related mortality of bald eagles in Florida. Nesbitt (2005) determined that more than 1/3 of all eagle nesting territories monitored in Florida during 2004–2005 were within the paths of Hurricanes Charley, Frances, and Jeanne. Although there was significant local damage (e.g., 5 of the 6 nests in DeSoto County were destroyed), fewer than 10% of the nests within the paths of the storms showed any lasting impacts, and most destroyed nests were rebuilt in the same or a nearby tree within weeks (Nesbitt 2005). Eagles will utilize nesting material blown down as they rebuild. However, storms can result in the loss of trees large enough to support eagle nests and may cause local shortages of nesting sites in developed areas, where such trees may be scarce.

Powerlines can cause eagle injury and mortality by both collision (see *Trauma*) and electrocution. Powerlines accounted for 19% of the mortality of bald eagles in Florida during



Figure 7. Pine tree (far right) affected by southern pine beetle infestation. Photograph by Brie Ochoa, FWC.

1963–1994, with electrocution representing more than 86% of this total (Forrester and Spalding 2003).

Native to the southeastern U.S, the southern pine beetle (*Dendroctonus frontalis*) occurs in forested areas, where it inhabits stressed or dead pine trees. This species disrupts the flow of nutrients through the tree, causing stressed trees to die. Southern pine beetles are responsible for hundreds of acres of dead pine trees in Florida, and can be locally problematic. Responsible forestry practices such as tree thinning, prescribed fire, and reduction of dense understory, can minimize loss of pine trees.

In areas where suitable nesting trees are scarce, southern pine bettle infestation may threaten bald eagle habitat.

Although protected from direct persecution for more than 50 years, bald eagles are occasionally still shot in Florida.

Listing Status and Protections

Current protections for bald eagles in Florida include regulations at federal, state, and local levels. Bald eagles are federally protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a-668c) and the Migratory Bird Treaty Act (16 U.S.C. 703-711). In Florida, <u>Rule 68A-16.002</u>, Florida Administrative Code (F.A.C.), prohibits take (as defined in Rule 68A-1.004), feeding, disturbance, possession, and sale of bald eagles, their nests and eggs, or parts thereof. Additionally, 68A-16.002 prohibits entry into areas posted as closed for bald eagle protection on public lands. Some counties in Florida maintain additional protections for bald eagles and their nests.

The bald eagle was first listed in 1967 under the federal Endangered Species Preservation Act, a precursor to the Endangered Species Act of 1973. In 1972, the bald eagle was added to Florida's list of endangered species. In August 2007, the U.S. Fish and Wildlife Service acknowledged the recovery of the species and removed the bald eagle from the list of species protected by the Endangered Species Act. In 2008, the bald eagle was removed from the Florida Endangered and Threatened Species List. The bald eagle is currently not listed on the Florida Endangered and Threatened Species List, or under the federal Endangered Species Act.

CONSERVATION GOAL AND OBJECTIVES

Goal

The conservation status of the bald cagle is maintained or improved so that the species will not again need to be listed on the Florida Endangered and Threatened Species List.

Objectives

Conservation objectives are benchmarks used to measure progress toward the conservation goal. The following conservation objectives have been met or exceeded in Florida, and maintaining these objectives will help to ensure that the conservation goal is sustained. Nest surveys conducted from 1972-2016 provide the data used to establish the following objectives. Population monitoring will contribute to measuring progress towards these objectives. Maintaining a stable or increasing population of eagles throughout their current distribution will prevent the need to relist eagles under FWC's imperiled-species regulations.

1. Maintain a stable or increasing population of bald cagles in Florida.

Rationale

Because there are fewer than 10,000 mature bald eagles in Florida, the population size criterion is the most likely of the state-listing criteria to be met by bald eagles, should a population decline occur. Thus, maintaining a stable or increasing population will support the goal through ensuring this criterion is not met. Given the likelihood of annual, short-term, and local population fluctuations, long-term, statewide trends will be used to evaluate this objective. Florida's listing criteria are outlined in <u>Rule 68A-27.0001(3)</u>, Florida Administrative Code.

2. Maintain current extent of occurrence of bald eagles in Florida.

Rationale

Currently, bald cagles nest in almost all counties within Florida. Maintaining breeding bald cagles throughout the state can help to protect the statewide population against effects from local declines, acute threats, and natural or other events affecting a specific area (e.g., hurricanes, chemical spills). Cluster nesting areas (locations of high nest-density) in Florida are important breeding areas and may represent the highest quality habitat; however high nest-density can increase the population's vulnerability to local impacts; maintaining statewide extent of occurrence will further protect the population against such impacts.

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The following sections describe the conservation actions that will make the greatest contribution toward achieving the objectives. Actions are grouped by category (e.g., Habitat Conservation and Management, Population Management). The Conservation Action Table (<u>Table 1</u>) provides information on action priority, urgency, potential funding sources, likely effectiveness, identified partners, and leads for implementation.

Habitat Conservation and Management

Habitat conservation and management, along with protection from disturbance, are important to address threats to bald eagles. The USFWS protects bald eagles and their habitat through regulatory processes, including permitting, technical assistance, and guidelines. These protections largely support the actions in this section.

Action 1 Implement and encourage land management practices that benefit bald eagles by maintaining healthy natural communities, decreasing the risk of catastrophic fire, and providing suitable nest trees.

Bald eagles are largely habitat generalists. Maintaining heathy natural communities benefits water quality (thereby supporting healthy forage conditions) and provides suitable nesting habitat. Land management practices can benefit bald eagles by decreasing the risk of catastrophic wildfire, maintaining healthy forests, and providing suitable nest trees. These practices include the use of prescribed fire, removal of non-native species, reduction of excess fuel loads, thinning of overstocked stands, replanting native species (primarily pines), and uneven-aged timber management. Retaining large-diameter native pines will ensure that suitable potential nest trees may be available in the future; the average diameter of nest trees has been documented as 28 cm (Wood 1989). Selective thinning that maintains at least 50% of the total canopy, and preserves large native pine trees, is recommended. These practices are often incorporated into management plans for public lands, which guide implementation at individual sites.

Public lands can provide a high level of security for wildlife because of statutory provisions for long-term management funding and for guiding habitat management on those lands (Florida Statutes 253.034, 259.105, and 259.032). Managers of public lands should continue to implement management practices designed to maintain natural communities supporting diverse wildlife. More specifically, management practices to maintain or improve conditions for bald eagle nesting and foraging habitats are encouraged.

Although natural community management is beneficial to eagles, some management actions have the potential to cause disturbance. When possible, conducting management activities outside of the nesting season is advised. All land management practices conducted near bald eagle nests should be in accordance with the protections outlined by the USFWS, including the <u>National Bald Eagle Management Guidelines</u> (USFWS 2007), which outline safe buffer distances and measures to avoid disturbance to nesting eagles. The USFWS may provide technical assistance, issue permits specific to land management conducted near eagle nests, or issue permits for activities that may cause short-term disturbance but provide long-term net benefit to eagles and their habitat (such as prescribed burns required during the nesting season).

CONSERVATION ACTIONS

The FWC will continue to carry out land-management practices that benefit bald eagles and other wildlife on FWC-managed lands. Bald eagles are among a suite of focal species in FWC's Wildlife Conservation Prioritization and Recovery (WCPR) program. The goal of the WCPR program is to provide proactive assessment, planning, and restoration support for FWC-managed lands in order to facilitate conservation of wildlife. There are 48 wildlife management areas for which FWC has lead management authority that are covered by a WCPR strategy. The WCPR strategies include specific management practices to be undertaken for the benefit of focal species, including bald eagles, for areas where species are known to occur. Each WCPR strategy is reviewed and updated every 10 years.

Action 2 Protect nests from disturbance.

The USFWS maintains regulatory framework to protect bald eagle nests from disturbance likely to cause take. Through the <u>National Bald Eagle Management Guidelines</u> (USFWS 2007), permit conditions, and technical assistance, nests are provided adequate buffers from activities which may disturb nesting eagles, their eggs, or young.

Other efforts to prevent disturbance include education (e.g., <u>USFWS Guidance for Use of</u> <u>Cameras at Bald Eagle Nests</u>, and outreach by conservation organizations), and modifications to the activity. Where recreational activities occur near a nest when bald eagles are breeding, additional protections, such as posting signs or creating seasonal no-entry boundaries, may be warranted to further minimize potential disturbance. On public lands in Florida, entry into a posted bald eagle nesting area is prohibited under <u>Rule 68A-16.002. F.A.C.</u> When planning new, or modifying existing recreational opportunities, efforts should be undertaken to site the opportunity so that adequate buffers are provided. For all activities, minimum buffer distances outlined by the USFWS should be followed to avoid disturbance. For situations where avoidance is not possible, the USFWS permitting program should be consulted.



Figure 8. A bald eagle's wingspan averages 7 feet in length. FWC photograph.

Action 3 Protect lands that provide bald eagle nesting and foraging habitats, especially where these lands are compatible with priorities for imperiled species.

Long-term security of suitable habitat directly supports maintaining a healthy population in perpetuity. The FWC, other state agencies, federal and local governments, and private organizations acquire habitat through a variety of programs. Conservation easements are one tool to protect private lands from future development, and are an important component of the conservation of bald eagles. Acquiring, managing, and restoring additional lands that support bald eagle habitats should remain a priority, provided the acquisitions are compatible with priorities for imperiled species.

In addition to protecting habitat through acquisition, protection through adaptation to changing climate conditions is necessary. The Florida Adaptation Guide, in development by FWC, is designed to enable FWC and other natural resource management agencies and groups to better address projected impacts of climate change on wildlife habitats. The guide will also provide example adaptation strategies that can be integrated into various programs and planning processes.

Population Management

Action 4 Minimize mortality and injury through response to known and emerging threats.

Minimizing mortality from specific, known threats is important to prevent population decline (see <u>Threats</u>). Focusing response on threats that have potential population-level impacts supports the objectives of this plan. To the extent possible, specific threats can be avoided, minimized, or contained through early detection and adaptive management responses. The following threats are among the known or potential causes of mortality for bald eagles:

- vehicle collision
- secondary poisoning (e.g., lead, pentobarbital, rodenticide)
- electrocution from and collision with power lines
- insect-transmitted disease (e.g., West Nile virus)
- avian vacuolar myelinopathy

Response to address impacts from threats can include management action, education and outreach, coordination with partners, and monitoring to assess the effectiveness of these efforts. Examples of response include minimizing risk of secondary pentobarbital poisoning, which occurs when eagles feed on carcasses of cuthanized animals, often at landfills; FWC will continue to emphasize the need to quickly incinerate or bury the bodies of euthanized animals to prevent scavenging by eagles and other wildlife. During instances of secondary poisoning in the past, FWC officers have followed up with local entities that regularly cuthanize animals to ensure responsible disposal occurs.

As another example, electrocution- and collision-related mortality can be minimized or prevented when utility companies incorporate "avian-friendly" devices and fittings on their equipment. Suggested practices are outlined by the <u>Avian Powerline Interaction Committee</u>. FWC can work with utility companies to develop and implement avian protection plans, which outline proactive measures to protect birds from impacts caused by equipment.

The FWC is currently developing an AVM surveillance and response plan to ensure early detection and to minimize impacts from this potential threat to bald eagles and other species.

FWC staff will continue to review data on eagle mortality as available from records of eagle carcasses collected by FWC law enforcement officers, findings for bald eagle necropsies, and the USFWS eagle mortality database. Because wildlife rehabilitators often invest resources into determining the cause of injury or death for animals they care for, close coordination with these partners is key to early identification of trends in mortality.

Action 5 Respond to local or regional population declines through adaptive management.

Should local or regional declines be projected or observed, factors contributing to the decline should be identified and addressed through appropriate conservation and management strategies. Actions to address the causes of decline may include coordination with USFWS, local governments, conservation partners, and law enforcement. Where causes include environmental changes (e.g., water quality) or the source of decline is disease or poisoning, efforts may need to be both swift and ongoing to minimize loss. The FWC and partner agencies maintain an <u>online reporting system for wild bird die-offs</u> used to report all bird mortalities, including bald eagle mortalities. Coordinating with partners, including the USFWS, land managers, wildlife rehabilitators, and non-governmental organizations (e.g., conservation groups, utility companies) is key to understanding and minimizing mortality. This coordination is addressed in <u>Coordination with Other Entities</u>. Additionally, monitoring and research to gain a better understanding of demographic parameters can lead to improved management for areas that may be experiencing local declines; this is further addressed in <u>Monitoring and Research</u>.

Monitoring and Research

Action 6 Develop a strategy for monitoring through 2032.

FWC will develop a monitoring strategy in 2018, which will guide future FWC efforts to collect data on bald eagles in Florida. The 2008 Bald Eagle Management Plan (FWC 2008*a*) recommended monitoring through 2032 to document a stable or increasing population over 3 generations (estimated at 24 years; 2008-2032) following removal from the Florida Endangered and Threatened Species List; 3 generations is the timeframe for status evaluations under the state's listing criteria.

Background

The FWC began monitoring nesting bald eagles in Florida in 1972, the same year the Environmental Protection Agency enacted a ban on use of DDT; the bald eagle population in Florida was at a historic low. Monitoring efforts during this time were designed to be comprehensive and intensive, focusing on documenting active nests and recording productivity data. The 1972-1973 nesting season survey, conducted by fixed-wing aircraft, documented 88 active nest territories in Florida (Nesbitt 1999).

Aerial surveys of all known and newly reported nesting territories were conducted during each nesting season from 1972-2008. A subset of active nests was surveyed to determine productivity. These surveys provided information on nest location, status, and numbers; they documented the continued population growth of bald eagles throughout the state, from 88 active nest territories in 1973 (Nesbitt 1999) to nearly 1,280 in 2008 (FWC 2008b). In 2008, the bald eagle was removed from the Florida Endangered and Threatened Species List, following delisting under the Endangered Species Act in 2007; nationwide, bald eagle populations were stable or growing.

In 2009, FWC implemented a new survey protocol based on a stratified sampling method (Zimmerman et al. 2017). Under the new protocol, a portion of nest territories were surveyed each year to determine number of active nests, and a portion of those active nests were revisited

to determine productivity. The areas surveyed changed each year to ensure coverage of documented nests over a series of nesting seasons (e.g., from 2009-2014 all previously documented nests in the state were surveyed twice). These changes were made in an effort to identify a more sustainable method for surveying eagle nests and to accurately estimate the breeding population size and productivity in Florida. As the number of nests in Florida increased, additional flights were required to survey all known nests during a relatively short window of time (November-March). The safety of those conducting the aerial surveys, the increased cost of continuing to survey all documented nests annually, and the challenge of generating statewide metrics for productivity led to implementation of the subsampling method.

Future monitoring

The current status of Florida's bald cagle population suggests that annual statewide monitoring of all nesting territories is no longer warranted. Nevertheless, the iconic status of the species and its use of habitats that are often altered for human use necessitate continued monitoring and research at a scale that will ensure the objectives of this plan are met. FWC intends to develop a monitoring strategy in 2018 that will be reprioritized as warranted to ensure the highest priority information needs are met, and information is gathered that will lead to more effective management of Florida's bald cagle population.

The monitoring strategy will outline topics that most directly inform progress toward the conservation objectives of this plan. It will identify opportunities for incorporating partner-collected data more effectively. It will also prioritize information needs based on evaluation of existing and new monitoring data and will initially focus on suspected local and/or regional declines (see Actions 4 and 5). Focal topics may include:

- nest numbers, locations, and status
- productivity
- rates and causes of bald eagle mortality (i.e. trauma, disease, toxins, etc.)
- population modeling to identify life stages limiting population growth
- impacts of land-use and water quality changes
- impacts of habitat management (i.e., prescribed fire, vegetation management)
- use of manmade structures for nesting

The FWC bald eagle nest location database includes locations and nest information for documented eagle nests in Florida. The nest status and location information is not current for all nests, and may not be updated for all nest territories in the future. However, the eagle nest database may still be useful in the short term as a tool for land management planning. The FWC will evaluate the long term usefulness of the publicly available database and will adapt its role to match priorities and information needs as they are identified.

Rule and Permitting Intent

No actions are identified under Rule and Permitting Intent.

Rules

Regulatory protections for the bald eagle currently exist at federal, state, and local levels. Bald eagles are federally protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a-668c) and the Migratory Bird Treaty Act (16 U.S.C. 703-711). In Florida, <u>Rule 68A-16.002</u>,

CONSERVATION ACTIONS

F.A.C., prohibits take (as defined in Rule 68A-1.004), feeding, disturbance, possession, and sale of bald eagles, their nests and eggs, or parts thereof. Additionally, 68A-16.002 prohibits entry into areas posted as closed for bald eagle protection on public lands. Some counties in Florida maintain additional protections for bald eagles and their nests.

Permitting

The U.S. Fish and Wildlife Service is the regulating body responsible for issuing permits for bald eagles. In 2017, the need to obtain a state permit for take of bald eagles or their nests in Florida was eliminated following revisions to <u>Rule 68A-16.002</u>, F.A.C. However, a USFWS permit is still needed. The USFWS provides technical assistance and maintains associated guidelines. Permitting information and application forms are available on the <u>USFWS bald eagle permitting</u> webpage.

Law Enforcement

Law enforcement efforts to protect bald eagles include the following actions: responding to calls of illegal activity in progress; investigating reports of illegal activity; documenting and referring illegal acts for prosecution; transporting sick or injured eagles to rehabilitation facilities; retrieving and storing carcasses of non-evidentiary eagles for submittal for necropsy or directly to the National Eagle Repository; and providing proactive, public guidance about bald eagle conservation. All new recruits to FWC law enforcement receive training specific to bald eagle biology and regulations, and training is ongoing for law enforcement to ensure current information is applied.

Action 7 Ensure compliance of state and federal protections for bald eagles through education.

One of the most important components of an enforcement strategy is ensuring compliance through education. For bald eagles, education may include explaining how certain activities may cause disturbance, and how to avoid causing disturbance by maintaining safe distance, modifying the activity, or waiting until eagles are no longer utilizing the area. The FWC's law enforcement officers understand the importance of explaining wildlife laws to the public to avoid unintentional violations. However, FWC law enforcement officers actively pursue and refer for prosecution those who intentionally violate wildlife laws. The FWC law enforcement officers also educate the public on how to identify and report violations. The FWC's Division of Law Enforcement administers the Wildlife Alert program, which receives information via a toll-free number (1-888-404-3922) that is answered 24 hours a day, 7 days a week. Cash rewards are offered to callers who provide information about any illegal activity which results in an arrest. Callers may remain anonymous and are not required to testify in court.



Figure 9. A law enforcement officer prepares to transport an injured eagle for rehabilitation. FWC photograph.

ORDINANCE 32 - 18

AN ORDINANCE AMENDING CHAPTER 23, PROTECTED SPECIES, ARTICLE I, BALD EAGLE PROTECTION, OF THE CITY OF CAPE CORAL CODE OF ORDINANCES, TO AMEND DEFINITIONS; TO REDUCE THE SIZE OF THE EAGLE NEST MANAGEMENT ZONE; TO PROVIDE THAT ANY DEVELOPMENT, OTHER THAN A SINGLE-FAMILY HOME OR DUPLEX, WITHIN AN EAGLE NEST MANAGEMENT ZONE SHALL REQUIRE THE SUBMISSION OF AN EAGLE NEST MANAGEMENT PLAN; TO REDUCE THE DISTANCE FROM AN ACTIVE EAGLE NEST PROHIBITING ANY DEVELOPMENT TO OCCUR DURING NESTING PERIOD; TO PROVIDE FOR REMOVAL OF NEST TREES IF AUTHORIZED BY FEDERAL PERMITS; TO UPDATE THE MONITORING PROTOCOL TO THE CURRENT UNITED STATES FISH AND WILDLIFE SERVICE BALD EAGLE MONITORING GUIDELINES DATED SEPTEMBER 2007; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 23, Article I, is hereby amended as follows:

§ 23-1 - Purpose.

The purpose of this chapter is to protect and preserve the Bald Eagle by protecting, enhancing and preserving the nest of the eagle and its immediate environs. With reasonable compensation incentives and proper management, the population of the Bald Eagle in Cape Coral can be maintained.

§ 23-2 - Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BALD EAGLE (HALIAEETUS LEUCOCEPHALUS). A North American eagle (Haliaeetus leucocephalus) characterized by As per the Federal Endangered Species List- and the State Threatened Species List, a mature eagle with white plumage on its head and tail feathers in the adult, or an immature eagle with dark plumage in the juvenile, which resides throughout Florida around estuarine areas and along the lakes and river drainage basins within the interior of the state.

CITY. The City of Cape Coral, Florida.

COMMISSION. The Florida Fish and Wildlife Conservation Commission.

CRITICAL EAGLE HABITAT. Lands which are essential to the feeding, breeding, sheltering and other vital behavioral patterns of eagles.

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DEVELOPMENT OF **REGIONAL** IMPACT (DRI). Any development which, because of its character, magnitude or location, would have a substantial effect upon the health, safety or welfare of citizens of more than one county, as defined by § 380.06, as the same now exists or may from time to time be amended.

EAGLE NEST MANAGEMENT ZONE. A buffer area that shall consist of a circular area with the active nest of the bald eagle in the center with a radius of $\frac{1,100}{1,100}$ feet or an irregularly shaped area of approximately equivalent acreage that should be protected and managed to promote optimum protection and nesting conditions for the bald eagle.

FFWCC. The Florida Fish and Wildlife Conservation Commission.

UNIFIED CONTROL. The unrestricted right of any owner or agent to enforce whatever conditions are placed on the use and development of a parcel of land through the provisions of this chapter, by binding his or her heirs, assigns or other successors in title or interest with covenants or restrictions of the development and subsequent use of the land.

USFWS. The United States Fish and Wildlife Service.

§ 23-3 - Applicability.

The regulations contained in this chapter shall apply to all parcels of land located within an Eagle Nest Management Zone. For purposes of this chapter, all nests of bald eagles are presumed to be active nests until determined to be abandoned by the city in accordance with this section. For the purpose of determining whether a particular nest has been abandoned, the city shall utilize the Commission's annual Bald Eagle Nesting Survey FFWCC bald eagle nest database in conjunction with eagle monitoring records maintained by the city's Department of Community Development. The Commission's annual Bald Eagle Nesting Survey FFWCC bald eagle nest database shall be conclusive as to all nests identified in the survey database. With respect to other nests, abandonment nest status shall be determined by the city based on competent evidence. Where eagle nests and/or nest trees which that have been identified in Commission FFWCC or city records are damaged or lost as a result of natural causes, including but not limited to, electrical storms, wind storms, hurricanes, tornadoes or floods which are not the result of human action or inaction, the provisions of this section shall continue to apply for a period of time as established by the Commission USFWS.

§ 23-4 - Regulations.

- (a) Except as provided elsewhere in this chapter, no construction or development shall take place within an Eagle Nest Management Zone until the plans for construction or development have first been submitted to and reviewed by the city and the Commission.
- (b) Developments on parcels of one acre or more of any parcel, other than a single family residence or duplex, including, but not limited to planned development projects and developments of regional impact, which that contain all or part of an Eagle Nest Management Zone shall be required to submit a Bald Eagle Management Plan which complies with the requirements set forth in § 23-7 below. This plan shall be submitted at the time the initial environmental survey for the project is submitted to the city.
- (c) Within that portion of an Eagle Nest Management Zone located within 350 330 feet of an active bald eagle's nest, the city may prohibit any development or construction from taking place <u>during the nesting period</u>. In the event the city prohibits the development or construction with respect to a parcel and the owner or developer is unable to reasonably accommodate this restriction through planning and design of conservation open space so that this restriction has the effect of depriving the owner of the practical use of the parcel, then the city shall, at the owner's request, purchase the parcel at its fair market value. For purposes of this chapter, the fair market value of the parcel shall be the value as determined by an independent real estate appraiser chosen by mutual agreement of the city and the owner. In the event the city and the owner are unable to mutually agree on the selection of an appraiser, then the city shall select an appraiser and the owner shall select an appraiser and those two appraisers shall then select a third appraiser, who shall then determine the fair market value of the parcel.

§ 23-5 - Restricted activities.

(a) Prohibited activities.

(1) During eagle nesting season, or until there is sufficient evidence that all young eagles in the nest have successfully fledged, or until the United States Fish and Wildlife Service USFWS or the Commission verifies that a nest is not being used or that no fledgling has survived, the following activities are prohibited within Eagle Nest Management Zones, except as provided in subsection (b) below:

- a. All construction and development activities, including, but not limited to, excavation, land clearing, tree trimming or tree cutting; and
- b. Lot mowing on vacant lots.
- (2) The use of any chemicals which are known to be toxic to wildlife is prohibited at all times within Eagle Nest Management Zones.
- (3) No person shall be permitted within 150 feet of the base of any tree which is occupied by an eagle or an eagle's nest, or beyond the edge of the nearest street to the tree, whichever is the greater distance, during eagle nesting season or until all young eagles have successfully fledged. This section shall not, however, be construed to, in any way, limit or restrict normal vehicular travel on or along any public roadway or street located within the 150 feet distance. Furthermore, this section shall not be construed to prohibit or unduly restrict activities which that are normally associated with residential living for persons who may reside within the 150 feet distance.
- (4) The use by any person of any device, including, but not limited to, any foodstuff or lure, to entice a bald eagle away from its nest for any purpose, including, but not limited to, photography or observation, is prohibited without the prior written consent of the Commission FFWCC or USFWS.
- (5) <u>Except as authorized by applicable federal permits</u>, <u>Nn</u>est trees shall not be removed, cut, trimmed or otherwise disturbed in any manner at any time unless the nest has first been declared to be abandoned pursuant to the provisions of this chapter.
- (6) Perch trees located within an Eagle Management Zone shall not be removed, cut, trimmed or otherwise disturbed in any manner at any time unless the prior written approval of the city's Department of Community Development is obtained. It shall be the responsibility of the owner to request the prior written approval from the city's Department of Community Development and to provide the city's Department of Community Development sufficient evidence that the location of the particular perch tree is such as to deprive the owner of the practical use of the parcel or that the perch tree is dead and, by its continued existence, poses a danger to life and property. In the event the removal of the perch tree is approved by the city, then the owner may be required to provide an alternative eagle perch if the alternative perch would mitigate the negative effects of the removal of the perch tree.

(b) Exceptions.

. . .

- (1) If construction is begun and is substantially complete prior to nesting season, an owner may be permitted to perform light construction activities so as to complete the principal structure during nesting season if approved by the city and the commission. However, construction of accessory structures, including, but not limited to pools, pool enclosures (other than those which are fabricated off-site), docks, piers, seawalls, gazebos or worksheds shall not take place during nesting season.
- (2) Scientific investigations approved by the Commission and/or the United States Fish and Wildlife Service FFWCC or USFWS shall be permitted, provided that the city's Planning and Environmental Resource Divisions are is given prior notification of all the investigations and are provided with all study reports and publications.
- (3) Licensed veterinarians shall be permitted to provide medical attention to any sick or injured eagle.

(9) Construction work which is expressly authorized by the USFWS.

§ 23-6 - Building permits.

All building permits issued by the city for property located within all or part of an Eagle Nest Management Zone shall have affixed thereto a label which clearly states that the property lies within the Eagle Nest Management Zone. The City Building Official, Code Enforcement Officer or other person as may be designated by the City Council, shall issue stop work orders for any development or construction that is not in compliance with the provisions of this chapter or until any suspected infractions have been inspected and resolved.

§ 23-7 - Bald Eagle Management Plan.

- (a) <u>When required, a</u> Bald Eagle Management Plans shall be prepared by qualified experts with knowledge and experience in the biology of the Bald Eagle.
- (b) The Bald Eagle Management Plan shall be reviewed by the Director of the Department of Community Development or the Director's designee concurrently with other development plans for the project. The Director or the Director's designee shall approve the Bald Eagle Management Plan if the Director or the Director's designee determines that the Bald Eagle Management Plan provides appropriate safeguards to prevent disturbing the bald eagle to the degree that it interferes with or interrupts normal breeding, feeding or shelter habits, causing injury, death or nest abandonment and to avoid potential violations of federal, state and local laws. The Department of Community Development shall provide the applicant with written comments concerning the plan. Those comments may include, but not be limited to, modifications necessary to obtain development permits for the project.
- (c) Approved Bald Eagle Management Plans, and amendments thereto, shall run with the land and be binding on the owner, his or her successors, and assigns.
- (d) The owner, or the owner's agent, shall prepare, on an annual basis, a monitoring report on the condition of the eagle habitat. Monitoring reports shall be required for a period of five years from the date when final approval of the project was obtained or for such period of time as required by the FFWCC.
- (c) All bald eagle management plans shall include, at a minimum, the following:
 - (1) Site plan. A site plan, drawn to scale, shall <u>meet the requirements in the adopted</u> <u>FFWCC Bald Eagle Management Plan and, at a minimum, include</u> be submitted and shall depict the following:
 - a. Location of any and all bald eagle nests and nest trees which are either on the site or within the Eagle Nest Management Zone applicable to the site;
 - b. Areas of the parcel proposed to be cleared of any vegetation;
 - c. Location of all existing and proposed structures, accessory structures and parking areas;
 - d. Location of all perch trees frequented by eagles;
 - e. Proposed densities on the parcel;
 - f. A listing of all proposed uses by type (e.g. single-family, multi-family, commercial, professional, industrial);
 - g. Height of all structures;
 - h. Location of proposed and existing roadways;

- i. Phasing plans for construction, indicating activities proposed during nesting and non-nesting periods; and
- j. Size and location of areas proposed for designation as a Critical Eagle Habitat.
- (2) Outline of management activities. An outline of proposed management activities shall be submitted, including, but not limited to, a and shall address the following:
 - a. Proposed preservation of any exotic trees, including, but not limited to, Melaleuca, Brazilian Pepper and Australian Pine which are actually used as eagle nest or perch trees and any proposed removal of exotic vegetation from the site; and
 - b. Pproposed education plan for residents or occupants of the site through the use of written materials including, but not limited to, brochures and signage.
- (3) Statement of qualifications. For bald eagle management plans that are seeking permission to perform heavy construction and/or development activities within an Eagle Nest Management Zone during the eagle nesting period, a proposed Qualified Eagle Monitor shall be identified and a statement of the qualifications including, but not limited to, relevant education, training and experience, of the proposed Qualified Eagle Monitor shall be submitted included within the proposed Bald Eagle Management Plan and entitled "Qualified Eagle Monitor Qualifications".
- (f) The city may approve Bald Eagle Management Plans that will permit heavy construction and development activities within an Eagle Nest Management Zone during the eagle nesting period. A Bald Eagle Management Plan shall be considered for approval only if it identifies a Qualified Eagle Monitor, approved by the Director of the Department of Community Development or the Director's designee, who will monitor the heavy construction and development activities during the eagle nesting period. Monitoring shall be implemented in accordance with the monitoring protocol described in the United States Fish and Wildlife Service Bald Eagle Monitoring Guidelines ("USFWS Guidelines"), dated September 20067, except that the monitoring protocol shall be applied to the entire 1,100 feet of the Eagle Nest Management Zone as opposed to any lesser dimension that may be identified in the USFWS Guidelines. The purpose of monitoring bald eagle nests under this section is to prevent disturbing the bald eagle to the degree that it interferes with or interrupts normal breeding, feeding or shelter habits, causing injury, death or nest abandonment and to avoid potential violations of federal, state and local laws. The Monitor shall immediately notify the City of Cape Coral if there is observation of abnormal behavior of the adult eagles or their chicks that may be elicited in response to development activities occurring within the Eagle Nest Management Zone, as described in the United States Fish and Wildlife Service Monitoring Guidelines or the FFWCC Bald Eagle Management Plan. If the Director of the Department of Community Development, or the Director's designee and/or the Monitor observes abnormal behavior, the city shall stop all construction and development activity. The city will report any suspension of work activities and/or observed abnormal eagle behavior to the Developer, and the United States Fish and Wildlife Service USFWS and the Commission. The City of Cape Coral, United States Fish and Wildlife Service and the USFWC Commission will coordinate a review of the reported behavior and circumstances associated with any suspension of work activities to make a written recommendation as to whether construction should resume or be modified, or if monitoring frequency should be increase. Any written recommendations requiring modifications to the approved Bald Eagle Management shall be recorded in such approved Bald Eagle Management Plan.
- (g) Any amendments to an <u>approved</u> Bald Eagle Management Plan must first be approved by the City Council after review and recommendations from the city's Planning and Environmental Resources Divisions and the Commission Director of the Department of

Community Development or the Director's designee. Proposed amendments which that would have the effect of decreasing or diminishing the development <u>activity</u> or construction restrictions with respect to a parcel may be permitted only if the applicant submits sufficient evidence that is found by the Director of the Department of Community Development or the Director's designee to be sufficient to establish that the degree of protection offered by the original plan is no longer necessary <u>and the modified</u> <u>Bald Eagle Management Plan is sufficient to meet the requirements of this section</u>.

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§ 23-9 - Supplemental regulations.

This chapter does not replace the Federal Endangered Species Act, the Federal Migratory Bird Act, the Federal Bald <u>and Golden</u> Eagle <u>Protection</u> Act, the Florida Threatened Species Act <u>Rule 68A-16.002</u>, Florida Administrative Code, or any other like regulation. Rather, this chapter is intended to supplement those laws to ensure protection of Critical Eagle Habitat.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	
GUNTER	
CARIOSCIA	
STOUT	

NELSON ______ STOKES ______ WILLIAMS _____ COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM CITY CLERK

APPROVED AS TO FORM:

BRIAN R. BARTOS

ASSISTANT CITY ATTORNEY Ord/BB/Eagle Protection – Protected Species

MEMORANDUM

CITY OF CAPE CORAL COMMUNITY DEVELOPMENT DEPARTMENT

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager Vincent A. Cautero, Community Development Director Robert H. Pederson, Planning Manager

DATE: April 11, 2018

SUBJECT: Ordinance No. 32-18 – Amendment to the Code of Ordinances Pertaining to Protection of Bald Eagle Nests

Background

The Species Management Stakeholder Group held several meetings last fall and one topic of discussion was the requirements of Chapter 23, Protected Species, Article I of the City Codes, which established local protections for Bald Eagle nests.

The City Code establishes an 1,100' protection radius around all active Bald Eagle nests during nesting season. The current ordinance also prohibits certain construction activities during nesting season unless the property owner: 1) has a Bald Eagle Management Plan prepared by a qualified professional; and 2) engages a qualified professional to periodically monitor construction during nesting season. This ordinance has been in effect in its current form since 2006.

Subsequently, the state and federal governments reduced their respective protection zones from 1,100'. to 660'. In 2009, the City Council initiated an Ordinance to reduce the protection radius to 660' but failed to adopt the ordinance following a public hearing.

Species Management Group Recommendation

At their November 8, 2017 meeting, a majority of the members of the Species Management Stakeholders Group advised the City Manager he should recommend that the City Council amend the current ordinance to reduce the protection radius from 1,100' to 660' during nesting season to be consistent with state and federal guidelines.

Mayor Coviello and Council Members – Bald Eagle Protection Ordinance April 11, 2018 Page **2** of **2**

Agency Review

Following the November 2 meeting, the draft ordinance has been reviewed several times by the Florida Fish and Wildlife Conservation Commission (FFWCC) staff to ensure that all references to either the FFWCC or the United States Fish and Wildlife Service (USFWS) were correct.

The USFWS declined to review the ordinance.

Recommendation

Administration recommends approval of Ordinance No. 32-18.

We are available to discuss our recommendation at your convenience.

VC/RP

C: Dolores Menendez, City Attorney

MEMORANDUM

CITY OF CAPE CORAL DEPARTMENT OF COMMUNITY DEVELOPMENT

- TO: Mayor Coviello and Council Members
- FROM: John Szerlag, City Manager Vincent A. Cautero, Community Development Director Robert H. Pederson, Planning Manager
- DATE: May 14, 2018
- SUBJECT: Ordinance No. 32-18 Amendment to the Code of Ordinances Pertaining to Protection of Bald Eagle Nests Additional Information

Background

On November 8, 2017, the Species Management Stakeholders Group discussed a potential amendment to the current ordinance to reduce the protection radius from 1,100' to 660' during nesting season to be consistent with state and federal guidelines. The majority of the group present at the meeting favored the amendment. All agency representatives did not provide a recommendation.

Ordinance No. 32-18 was introduced at the April 16 Council meeting. Several individuals addressed this ordinance during Citizens Comments. Council members also asked for additional information regarding eagles and eagle nests, which is contained below.

Agency Review

The draft ordinance has been reviewed several times by the Florida Fish and Wildlife Conservation Commission (FFWCC) staff to ensure that all references to either the FFWCC or the United States Fish and Wildlife Service (USFWS) were correct.

The USFWS declined to review the ordinance.

Updated Information

The following information on the number of Bald Eagle nests comes from the City Eagle Watch Volunteer program:

Nesting Season	Active Nests	Inactive/Alternate Nests	Total
2017-2018	10	3	13
2016-2017	9	6	15
2015-2016	9	4	13
2014-2015	5	6	11
2013-2014	9	6	15
2012-2013	10	5	15
2011-2012	10	5	15
2010-2011	10	6	16
2009-2010	10	7	17
2008-2009	9	8	17
2007-2008	9	5	14
2006-2007	8	3	11
2005-2006	8	4	12
2004-2005	8	3	11
2003-2004	8	3	11
2002-2003	8	3	11
2001-2002	9	2	11
2000-2001	8	2	10
Average	9	4	13

Bald Eagle Nests in the City of Cape Coral

Notes: Six nests were recently downgraded to lost: One due to Hurricane Irma, and five are no longer present either due to falling out of tree and not being rebuilt yet or inactive for multiple seasons and deteriorated to no nest present.

These numbers represent the number of known bald eagle nests and do not represent the total eagle population for Cape Coral. Based off City monitoring data, Cape Coral has a stable population of nesting eagles with an average of 9 active nests each season since 2000.

Eagle Fledging Data

Nest ID	2017/18	2016/17	2015/16	2014/15	2013/14	2012/13	2011/12	2010/11
LE-01						2	2	
LE-27		3	2		2	2		1
LE-35		2				2		2
LE-36								
LE-42			-			1		
LE-55							1	
LE-62	2*	1			2	1	1	1
LE-67						2	2	
LE-82				2	1	3	3	2
LE-91	2	1	1	2	2	2		
LE-92			2	2		2		1
LE-103 (966)		1	1					
LE-972	1*							
LE-973	2	1						
LE-99	2		1	2				
Total Fledged	9	9	7	8	7	17	9	7

Number of Eaglets Fledged 2010-2018

* Have not officially fledged yet.

Bald Eagle Ordinances in Other Jurisdictions

City	Has Eagle Ordinance	Matches Federal	Addition Protections
Jacksonville	No		
Miami	No		
Tampa	No		
Orlando	No		
St. Petersburg	No		
Hialeah	No		
Tallahassee	No		
Port St. Lucie	No		
Fort Lauderdale	No		
Cape Coral	Yes	No	1,100 foot buffer

Pembroke Pines	No		
Hollywood	No		
Miramar	No		
City	Has Eagle Ordinance	Matches Federal	Addition Protections
Gainesville	No		
Coral Springs	No		
Clearwater	No		
Miami Gardens	No		
Palm Bay	No		
West Palm Beach	No		
Pompano Beach	No		

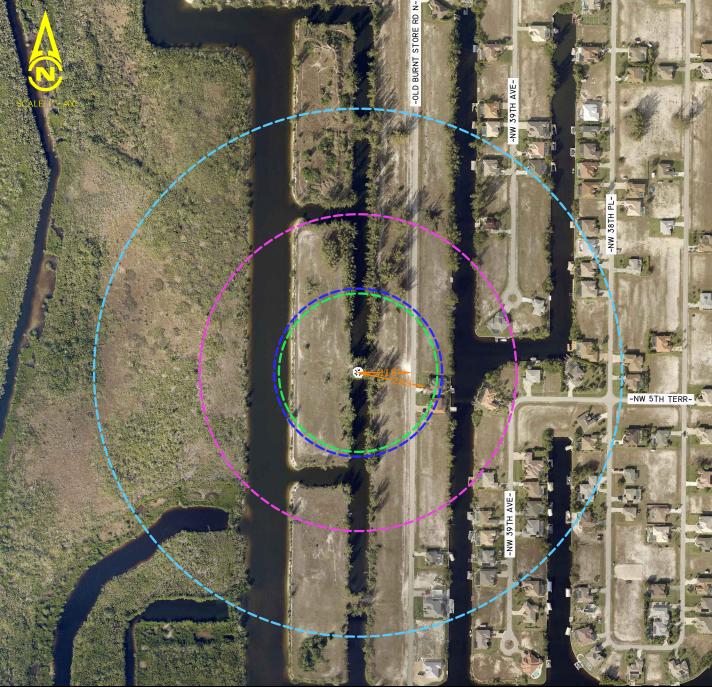
Recommendation

City management recommends approval of Ordinance No. 32-18.

We are available to discuss our recommendation at your convenience.

VC/RP:eh (memo_eagle_ordinance_update_05-09-2018.docx)

C: Dolores Menendez, City Attorney



AERIAL WITH BALD EAGLE NEST BUFFERS AND ACREAGES SEVEN ISLANDS BALD EAGLE NEST

A DESCRIPTION OF THE OWNER.	Supplication () () () () () () () () () (
DRAWN BY	DATE
D.B.	5/30/18
REVIEWED BY	DATE
M.M.	5/30/18
REVISED	DATE



LEGEND: SEVEN ISLANDS BALD EAGLE NEST (LE-972) 1,100' ZONE - (87.27 Ac.±) 660' ZONE - (31.42 Ac.±) 350' ZONE - (8.83 Ac.±) 330' ZONE - (7.85 Ac.±)

NOTES:

AERIAL PHOTOGRAPHS WERE ACQUIRED THROUGH THE LEE COUNTY PROPERTY APPRAISER'S OFFICE WITH A FLIGHT DATE OF JANUARY 2018.

BALD EAGLE NEST LOCATION APPROXIMATED.

Item A.(2) Number: 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Public Hearings





TITLE:

Ordinance 9-18 Public Hearing

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No

2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 8, Fire Prevention and Emergency Management, Article II, Fire Prevention, by amending Section 8-10, City of Cape Coral Fire Prevention and Protection Code Adopted; Amendments to Fire Codes, to be consistent with the current edition of the National Fire Codes; Establishing Section 8-14, Burn Ban Implementation Procedures, providing procedures to ban open burning when extreme dry conditions warrant a ban; by amending Article IV, Emergency Management, to provide for the declaration of a state of local emergency in preparation for or response to an emergency or disaster; to prohibit the sale of beer in the Alcoholic Beverage Prohibition; to amend Removal of Debris to include conditions affecting public health and safety; amending termination provisions.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Memo - revised Ordinance 9-18 - revised PowerPoint Presentation

PREPARED BY:

Division- Department-City Attorney

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description

- Memo revised
- D Ordinance 9-18 revised
- D Updated PowerPoint Presentation

Туре

Backup Material Backup Material Backup Material





CAPE CORAL FIRE DEPARTMENT

OFFICE OF THE INTERIM FIRE CHIEF

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager Ryan W. Lamb, Acting Interim Fire Chief

DATE: May 4, 2018

SUBJECT: Ordinance 9-18: Amend City of Cape Coral Code of Ordinances Chapter 8; Introduction at the Regular Council Meeting on May 7, 2018

The reason for this action is to request approval to amend the City of Cape Coral Code of Ordinances, Chapter 8, Fire Prevention and Emergency Management, addressing the following: adoption of the Florida Fire Prevention Code; establishment of Burn Ban implementation procedures; and amendments to states of local emergency.

Below is a summary of several areas included in the requested amendments to Chapter 8:

1. Adoption of the Florida Fire Prevention Code:

The City adopts the current Florida Fire Prevention Code every three years, in accordance with *Florida State Statute 633.0215 (3)(b)*. Ordinance 9-18 will amend Code of Ordinances, Chapter 8, Article II, Section 8-10, to adopt the current *Florida Fire Prevention Code*, 6th Edition.

2. Establishment of Burn Ban Implementation Procedures:

Ordinance 9-18 will amend Code of Ordinances, Chapter 8, Article II, establishing Section 8-14, Burn Ban Implementation Procedures. The Burn Ban will allow the City Manager to sign an Executive Order prohibiting all open burning in the City when dry weather conditions result in a Keetch-Byram Drought Index reading at 600 or higher, and will also allow for the enforcement of the ban. Prohibition of open burning will not include barbecue grills or pits when conducted safely and on the owner's property, provided the fuel area does not exceed three (3) feet in diameter and two (2) feet in height.

 Amendments to States of Local Emergency: A review of approximately sixty (60) municipalities was conducted to determine best practices during states of local emergency. Ordinance 9-18 will amend Code of Mayor Coviello and Council Members May 4, 2018 Page 2 of 2

Ordinances, Chapter 8, Article IV, to be in-line with other local governments. The revisions include, but are not limited to:

- Language clean-up
- Clarification of intent
- Section 8-25 will authorize the City Manager to declare a state of local emergency in preparation for or response to all potential local emergencies or disasters, at any time (no longer limited to hurricanes between June 1 and November 30)
- Section 8-28 will include beer in the alcoholic beverage prohibition
- Section 8-31 will expand the types of debris and the timeframe within which the City Manager may authorize its collection, thus expediting the process to return the City to normalcy
- Section 8-33 will align Chapter 8 with Florida Statutes to terminate a state of local emergency, when declared in the event of overt acts of violence or the imminent threat of such violence, 72 hours from its commencement

If you have questions or require additional information, please contact Acting Interim Fire Chief Lamb at 242-3601 (x3601).

JS:RWL:lak



ORDINANCE 9 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 8, FIRE PREVENTION AND EMERGENCY MANAGEMENT, ARTICLE II, FIRE PREVENTION, BY AMENDING SECTION 8-10, CITY OF CAPE CORAL FIRE PREVENTION AND PROTECTION CODE ADOPTED; AMENDMENTS TO FIRE CODES; TO BE CONSISTENT WITH THE CURRENT EDITION OF THE NATIONAL FIRE CODES; ESTABLISHING SECTION 8-14, BURN BAN IMPLEMENTATION PROCEDURES, PROVIDING PROCEDURES TO BAN OPEN BURNING WHEN EXTREME DRY CONDITIONS WARRANT A BAN; BY AMENDING ARTICLE IV, EMERGENCY MANAGEMENT, TO PROVIDE FOR THE DECLARATION OF A STATE OF LOCAL EMERGENCY IN PREPARATION FOR OR RESPONSE TO AN EMERGENCY OR DISASTER; TO PROHIBIT THE SALE OF BEER IN THE ALCOHOLIC BEVERAGE PROHIBITION; TO AMEND REMOVAL OF DEBRIS TO INCLUDE CONDITIONS AFFECTING PUBLIC HEALTH AND SAFETY; AMENDING TERMINATION PROVISIONS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the National Fire Protection Association and the Florida Fire Prevention Code have been amended; and

WHEREAS, the City of Cape Coral desires to amend the local amendments to the Florida Fire Prevention Code as permitted; and

WHEREAS, the City of Cape Coral finds it necessary to protect the health, safety, and welfare of its citizens and their property when extreme dry weather conditions exist.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 8, Article II, is hereby amended as follows:

CHAPTER 8: - FIRE PREVENTION AND EMERGENCY MANAGEMENT

ARTICLE I: - GENERAL PROVISIONS

§ 8-1 - False fire alarm.

It shall be unlawful for any person to give a false alarm of fire within this city.

ARTICLE II: - FIRE PREVENTION CODE

§§ 8-2-8-8. - Reserved.

§ 8-9 - Purpose and scope; enforcement.

(a) Purpose and scope. This code shall be known as the Cape Coral Fire Prevention Code. The Cape Coral Fire Prevention Code is established to provide the City of Cape Coral with rules and regulations to improve public safety by promoting the control of fire hazards; regulating the installation, use and maintenance of equipment; regulating the use of structures, premises and open areas; providing for the abatement of fire and life safety hazards; establishing the responsibilities and procedures for code enforcement; and establishing the standards for compliance and achievement of these objectives.

(b) Enforcement. The City of Cape Coral Fire Prevention Code shall be enforced by the Fire Chief/Emergency Management Director of the City of Cape Coral Fire Department or his or her designee. Enforcement of parking violations described in the Fire Prevention Code shall be enforced by the Chief of Police of the City of Cape Coral or his or her designee.

§ 8-10 - City of Cape Coral Fire Prevention and Protection Code adopted; amendments to Fire Codes.

(a) Adoption. The Florida Fire Prevention Code is hereby adopted by the City of Cape Coral. The standards and code sections of the "National Fire Codes", as published by the National Fire Protection Association (NFPA), as adopted by the rules of the Division of the State Fire Marshal, § 69A-3.012, 69A-60.005, or referenced by the most current edition of NFPA 1 or NFPA 101 adopted by the state's Fire Marshal, known as the Florida Fire Prevention Code, and those listed below by standard number and edition and as amended herein, are hereby adopted by reference and made a part of the "City of Cape Coral Fire Prevention and Protection Code", intended to protect the health, safety, common interest and convenience of the citizens, visitors and residents of the City of Cape Coral, Florida.

(b) Amendments to Fire Codes. The Florida Fire Prevention Code, 56th Edition", based on NFPA 1 and NFPA 101, 20122015 Edition, and as amended from time to time, and as permitted by the Florida Fire Prevention Code, is hereby amended by local amendment as follows:

(1) Chapter 1, Administration, Section 1.3, Application, Subsection 1.3.2.1, is hereby amended to read as follows:

1.3.2.1 Details regarding processes, methods, specifications, equipment testing and maintenance, design standards, performance, installation, or other pertinent criteria contained in those standards and codes listed in Chapter 2 of this code and those adopted pursuant to the Cape Coral Fire Prevention and Protection Code Section 8 shall be considered a part of this code.

(2) Chapter 1, Administration, Section 1.3., Application, Subsection 1.3.3, Conflicts, Subsubsection 1.3.3.1, is hereby amended to read as follows:

1.3.3.1 In the event of any conflict between the provisions of the code adopted by this article and applicable provisions of this Code of Ordinances, state law or city ordinances, rules and regulations, the most restrictive provisions of this Code of Ordinances, state law or city ordinances, rules and regulations shall prevail and be controlling.

(3) Chapter 3, Definitions, is hereby amended to include the following definitions:

Engine Company Assistance or Testing: Any situation where an Engine Company is required for assistance, including, but not limited to, fire pump acceptance tests, special events or functions, and other non-emergency assistance that may be applicable.

(4) Chapter 3, Definitions, Subsection 3.3, General Definitions, Sub-subsection 3.3.423122 is hereby amended as follows:

3.3.122 Fire lane means any driveway, road, or unobstructed area, which may be used by the fire department for the movement of fire vehicles or firefighting operations. If the fire lane serves a multi-story building, road surface shall be pavement, concrete or similar surface material designed to accommodate fire apparatus with a minimum weight of 36 tons.

(5) Chapter 10, General Safety Requirements, Section 10.3, Occupancy, Subsection 10.3.1, is hereby amended to read as follows:

10.3.1 No new construction or existing building shall be occupied in whole or in part in violation of the provision of this code or other applicable City of Cape Coral Code of Ordinances or Land Use and Development Regulations. All tenants and occupants shall obtain a "Certificate of Use" from the Cape Coral Department of Community Development with release by the City of Cape Coral Fire Department prior to the occupancy and use of a new or existing building as evidence of compliance with the Cape Coral Fire Prevention Code. Such original certificate shall be displayed in a prominent location within the structure, building or portion, thereof.

Exemption: Residential dwellings are exempt from the requirement of obtaining a "Certificate of Use."

(6) Chapter 10, General Safety Requirements, Section 10.1110, Open Flame, Candles, Open Fires, and Incinerators, Subsection 10.1110.1, Permits, is hereby amended to read as follows:

10.1110.1 Permits: Permits are required and shall comply with Section 1.12.

Bonfires and Outdoor Rubbish Fires: Kindling or maintaining any open fire or a fire in any public street, alley, road, or other public or private ground requires a fee permit. Instructions and stipulations of permit shall be adhered to.

Exemption: Cooking fires and small recreational fires not intended for vegetation or rubbish disposal when conducted safely and on the owner's property. Notwithstanding the above provisions, for 30 days commencing with the declaration of a state of emergency by the Governor of the State of Florida, because of extended drought and the resulting potential for wildfires, which includes all or parts of Lee County, there shall become effective a prohibition against kindling, creating or maintaining any campfire, bonfire, open or barrel burning of trash, discarding of lighted smoking materials outdoors, smoking in city parks, and the sale or use of sparklers. The use of open barbecues or barbecue pits utilizing charcoal or wood shall be prohibited within 600 yards of any unimproved property, woods, or marsh area within the City of Cape Coral. The prohibitions expressly provided herein may be extended by resolution duly adopted by the State Fire Marshal's office.

For this section only, the definition of a recreational fire is the noncommercial burning of materials, other than rubbish for pleasure, religious, ceremonial, cooking, or similar purpose, in which the fuel burned is not contained in an incinerator, a barbecue grill, or a barbecue pit, and the total fuel area is not exceeding 3 ft. (0.9 m) in diameter and 2 ft. (0.6 m) in height.

(7) Chapter 10, General Safety Requirements, Section 10.4410, Open Flame, Candles, Open Fires, and Incinerators, Subsection 10.4410.1, Permits, Sub-subsection 10.4410.1.1 is hereby amended to read as follows:

10.4410.1.1: Permits shall not be required for cooking fires and small recreational fires not intended for vegetation or rubbish disposal when conducted safely and on the owner's property. The use of open barbecues or barbecue pits utilizing charcoal or wood shall be prohibited within 600 yards of any unimproved property, woods, or marsh area within the City of Cape Coral. The prohibitions expressly provided herein may be extended by resolution duly adopted by the State Fire Marshal's office.

(8) Chapter 10, General Safety Requirements, Section 10.1110, Open Flame, Candles, Open Fires, and Incinerators, Subsection 10.1210.2, is hereby amended to read as follows:

10.4410.2: Notwithstanding the above provisions, for 30 days commencing with the declaration of a state of emergency by the Governor of the State of Florida, because of extended drought and the resulting potential for wildfires, which includes all or parts of Lee County, there shall become effective a prohibition against kindling, creating or maintaining any campfire, bonfire, open or barrel burning of trash, discarding of lighted smoking materials outdoors, smoking in city parks, and the sale or use of sparklers.

(9) Chapter 10, General Safety Requirements, Section 10.4514, Special Outdoor Events, Carnivals, and Fairs, Subsection 10.4514.1, Permits, Sub-subsection 10.4514.1.1, is hereby created to read as follows:

10.1514.1.1: The authority having jurisdiction is hereby authorized to assess and collect reasonable compensation for services rendered to public assemblages and events covered by the provisions of Section 10.1514, as it may deem necessary in accordance with the applicable services resolution of the governing body.

(10) Chapter 10, General Safety Requirements, Section 10.1514, Special Outdoor Events, Carnivals, and Fairs, Subsection 10.1514.3, Life Safety Evaluation, Sub-subsections 10.1514.3.1 and 10.1514.3.2 are hereby amended to include the following:

10.1514.3.1 Where the authority having jurisdiction determines that the gathering of persons in a structure or the nature of the performance, exhibition, display, contest, or activity presents or is predicted to present unusual and significant impact on public safety, including access to buildings, structures, fire hydrants, fire lanes and the like, or other provisions of public safety services, including fire protection and emergency medical services, the authority having jurisdiction shall have the authority to order the development to prescribe a plan for the provision of safety services which provides reasonable degree of safety for the attendees, participants and other affected members of the public. 10.4514.3.2 The plan shall address such items as, but not be limited to, emergency vehicle ingress and egress, fire protection, emergency medical services, fire and safety inspections, public assembly areas and the directing of attendees and vehicles, vendor and food concession distribution, and the need for the presence of law enforcement, fire, and medical services personnel at the event. Said plan shall be submitted to the authority having jurisdiction a minimum of three weeks prior to the starting date of the event.

(11) Chapter 13, Fire Protection Systems, Section 13.2, Standpipe Systems, Subsection 13.2.1, General, Sub-subsections 13.2.1.1 and 13.2.1.2 are hereby created to read as follows:

13.2.1.1 Fire Department valves on standpipe systems shall not be pressure-reducing valves. Pressure restricting devices shall be installed on any valve with pressure in excess of 175 PSI. Pressuring restricting devices shall be so as to be readily removable, leaving hose threads acceptable to the authority having jurisdiction.

13.2.1.2 All Fire Department connections serving a high rise building, shall be located within 50 ft. (15.25m) of a fire hydrant and within 50 ft. (15.25m) of a fire department vehicle access road. Actual locations of fire department connections shall be as approved by the authority having jurisdiction.

Exemption: Fire Department connections supplying fire sprinkler systems in accordance with NFPA 13R that are not a part of a standpipe system.

(12) Chapter 13, Fire Protection Systems, Section 13.3, Automatic Sprinklers, Subsection 13.3.1, General, Sub-subsection 13.3.1.1 is hereby amended by creating 13.3.1.1 as follows:

13.3.1.1.1 All fire sprinkler systems shall activate one or more monitored audio/visual device located on the exterior of the building. The number and location of the device(s) shall be approved by the authority having jurisdiction.

Exemption: Single-Family dwellings, duplexes (two family dwellings), and any structure containing less than seven (7) sprinkler heads connected to domestic water supply.

(13) Chapter 13, Fire Protection Systems, Section 13.4, Fire Pumps, Subsection 13.4.2, Equipment Protection, 13.4.2.1, General Requirements, is hereby amended by creating 13.4.2.1.1.1 as follows:

13.4.2.1.1.1.1 Access directly into fire pump rooms shall be provided from the exterior of buildings

Exemption: Single-Family dwellings and duplexes (two family dwellings).

(14) Chapter 13, Fire Protection Systems, Section, 13.7, Detection, Alarm, and Communications Systems, Subsection 13.7.2, Where Required, Sub-subsection 13.7.2.2729, Special Structures and High-Rise Buildings, 13.7.2.2729.2.2, is hereby amended to read as follows:

13.7.2.2729.2.2 All structures meeting the definitions of high rise buildings shall install twoway telephone communication service and shall be provided for fire department use. This system shall be in accordance with NFPA 72, National Fire Alarm Code. The communications system shall operate between the central control station and every elevator car, every elevator lobby, and each floor level of exit stairs.

(15) Chapter 18, Fire Department Access and Water Supply, Section 18.2 Fire Department Access, Subsection 18.2.1, is hereby amended to read as follows:

18.2.1 All buildings that a fire department may be called to protect that are not readily accessible to an adjacent local street shall be provided with a suitable fire lane or parallel access drive unless the analysis of the fire official indicates the fire access is unnecessary. Such fire access is necessary for all buildings three (3) or more stories in height which are not adjacent to a local street.

(a) Parking spaces adjacent to structures that in the opinion of the fire official may hinder or delay fire fighting forces in the performance of their duties are prohibited. Limited designated parking spaces may be approved by the fire official when alternative arrangements are made prior to construction, which must include automatic fire suppression systems.

(b) The fire official may require additional fire lanes around commercial buildings when his or her analysis indicates additional access to the building is needed.

(16) Chapter 18, Fire Department Access and Water Supply, Section 18.2, Fire Department Access, Subsection 18.2.2, Access to Structures or Areas, and sub-subsection 18.2.2.1, Access Boxes, and 18.2.2.2, Access to Gated Subdivisions or Developments are hereby amended as follows:

18.2.2.1 Access Box(cs). The Authority Having Jurisdiction (AHJ) shall have the authority to require access box(cs) to be installed in an accessible location-where access to or within a structure or area is difficult because of security. The access box(cs) shall be an approved type listed in access-box(cs) shall be an approved type listed in accordance with UL 1037.

18.2.2.2.1 All non-electronic access control gates to structures and properties that may require emergency services that restrict the free ingress and egress of emergency vehicles and are not constantly attended 24 hours a day shall be provided with a key box acceptable to the Fire Official.

18.2.2.2.42 This section is intended to apply to all gate installations except those serving an individual single-family residence.

Exemption: Gates-serving an individual single-family residence.

(17) Chapter 18, Fire Department Access and Water Supply, Section 18.2, Fire Department Access, Subsection 18.2.2, Access to Structures or Areas, Sub-subsection 18.2.2.2, Access to Gated Subdivisions or Developments, is hereby amended by creating 18.2.2.2.2, 18.2.2.2.3, and 18.2.2.2.4 as follows:

18.2.2.2.23 All electronic access control gate to structures and properties that may require emergency services that restrict the free ingress and egress of emergency vehicles and are not constantly attended 24 hours per day shall be provided with an electronic transmitter/receiver system capable of being programmed with a unique activation code and frequency approved by the authority having jurisdiction. Such code or frequency shall not be used by or provided to other gate users. Existing installations shall comply within 180 days subsequent to the notification date by the authority having jurisdiction.

All electronic access control gates shall be compatible with the City of Cape Coral transmitters. Said transmitters are carried only within emergency service vehicles.

18.2.2.34 All electronic access control gates shall have a battery backup with a fail safe override.

18.2.2.2.45 All electronic gates are required to receive a building permit with fire review prior to installation.

(1817) Chapter 18, Fire Department Access and Water Supply, Section 18.3, Water Supplies and Fire Hydrants, Subsection 18.3.1 is hereby amended by creating Sub-subsections 18.3.1.1.1, 18.3.1.1.2, 18.3.1.2, 18.3.3, and 18.3.1.4, as follows:

18.3.1.1.1 The Fire Department Connection (F.D.C.) shall be located not less than forty (40) feet from buildings and in an area accessible to fire apparatus, preferably adjacent to the street rightof-way or easement serving as the means of vehicular ingress to, and egress from, the building.

18.3.1.1.2 Unless a fire hydrant exists that satisfies the requirements of the Florida Fire Prevention Code, and this section, a fire hydrant shall be installed within two hundred fifty (250) feet of the parcel boundary of the building, and the entire building must be within five hundred (500) hose feet of a fire hydrant. A fire hydrant shall be required on the same side of the right-of-way (ROW) that the building abuts if the combined paved surface of the roadway is greater than thirty-five (35) feet in width, or if the ROW contains two lanes, or more, of vehicular traffic in a single direction. Fire hydrants shall be provided on potable water lines six (6) inches, or larger, in diameter that meet the minimum fire flow requirements. Fire hydrants for firefighting purposes shall be prohibited on irrigation water lines. The City's Fire Marshal may authorize exceptions to the above requirements for buildings that contain fire sprinklers that comply with NFPA 13.

18.3.1.2 Adopt 2012 NFPA 1 or subsequent edition Annex E in total.

18.3.1.32 New structures not capable of delivering the required fire flow shall provide automatic sprinkler systems in accordance with NFPA 13, 13R or 13D, 2010 or subsequent editions as applicable.

Owners and developers shall make provisions to install water lines and fire hydrants to meet spacing and fire flow requirements. Where fire mains exist but do not meet the fire flow requirements, alternative arrangements may be made, prior to construction, with the authority having jurisdiction. Failure to meet the fire flow requirements or coming to an agreement on alternative arrangements shall be grounds for refusal for the City to issue building permits.

Exemption: All single-family and duplex (two-family) dwellings and new single-family and duplex (two family) subdivisions that do not contain clubhouses, commercial, or professional structures.

18.3.1.-4-3 Where buildings are constructed with the furthest point of the structure being one hundred fifty (150) feet or more from a public street, such buildings shall require private mains and fire hydrants that meet the required fire flow with spacing to be determined by the fire official. The spacing of hydrants shall not exceed 500 feet between hydrants. Hydrant spacing and required fire flow may be amended by the fire official if, by prior arrangement with the fire official, automatic fire suppression systems are installed in all buildings on the premises.

(1918) Chapter 18, Fire Hydrants, Section 18.5, Marking of Hydrants is hereby amended by creating Sub-subsections 18.5.710.1.1 and 18.5.710.1.2, as follows:

18.5.710.1.1 An approved Florida Department of Transportation (FDOT) blue reflective day/night raised pavement marker (RPM) will be used for rapid location of all fire hydrants in the city. The FDOT Traffic Engineering Manual Topic No. 750-000-005 Section 4.3 will be the standard guideline used for the placement and location of the blue marker on the roadway. Fire hydrants located on State roads will be maintained by the State. Fire hydrants located on County roads will be maintained by the County. The city will maintain all other fire hydrants excluding private fire hydrants.

18.5.710.1.2 All private fire hydrants will use the same FDOT guideline, and will be identified with a FDOT blue reflective day/night raised pavement marker (RPM) by the contractor during installation or on the required annual testing of the hydrant per NFPA 25 standards.

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<u> 8-14 – Burn Ban Implementation Procedures.</u>

(a) Purpose and intent.

The City of Cape Coral finds and declares that the provisions of this Part are necessary to protect the health, safety and welfare for the City of Cape Coral citizens and their property when extreme dry weather conditions due to lack of normal precipitation increases the threat of fire, thereby threatening the safety of life and property. Outside burning in unauthorized areas during dry weather conditions increases the danger of wildfires throughout the City. The purpose and intent of this Part is to provide an orderly and expeditious procedure for implementing a ban on open burning when extreme dry weather conditions warrant such a ban.

(b) Burn ban.

(1) The City Manager shall have the power, duty and responsibility to sign an Executive Order prohibiting all open burning in the City of Cape Coral when dry weather conditions result in a Keetch-Byram Drought Index reading at 600 or higher. Unless otherwise provided, the burn ban shall take effect upon the City Manager signing the Executive Order.

(2) OPEN BURNING, for purposes of this section, shall mean kindling, creating, or maintaining any campfire, bonfire, open or barrel burning of trash, discarding of lighted smoking materials outdoors, smoking in city parks, and the sale or use of sparklers. The use of open barbecues or barbecue pits utilizing charcoal or wood shall be prohibited within 600 yards of any unimproved property, woods, or marsh areas. OPEN BURNING does not include small recreation fires not intended for vegetation or rubbish disposal, or barbecue grills or pits that contain a total fuel area not exceeding 3 feet (0.9 m) in diameter and 2 feet (0.6 m) in height, when conducted safely and on the owner's property.

(3) The burn ban shall not apply to burning done by, or under the direct supervision of, authorized County or municipal personnel or with the authorization of the Florida Department of Agriculture and Consumer Services, Florida Forest Services, The use of barbecues utilizing charcoal, wood, or propane gas shall not be prohibited during a declared burn ban pursuant to this section.

(4) The burn ban prohibition will continue to be in effect in seven (7) day increments for as long as the Keetch-Byram Drought Index is at or above 600, unless rescinded as provided in this Section.

(5) This burn ban prohibition will be lifted after the Keetch-Byram Drought Index has fallen below 600 for at least seven (7) consecutive days.

(6) If the Keetch-Byram Drought Index falls below 600 for at least seven (7) consecutive days calling for the rescinding of the Executive Order, and the City Manager is unavailable, the line Chief is delegated the authority to rescind the Executive Order with notification to the City Manager.

(7) The Cape Coral Fire Marshal and Law Enforcement are authorized to enforce the Burn Ban.

(c) Public notice.

Upon notification by the Fire Chief, the Public Affairs Office shall promptly provide notification to the public of the implementation or cessation of a burn ban pursuant to this section through a press release to newspapers and television, the use of social media, and the City website.

(d) Applicability.

This Part applies to and is effective within the incorporated areas of the City of Cape Coral.

(c) Penalty.

Any person who violates any provision of this section may be punished either by imprisonment for a term not to exceed 60 days or a fine not to exceed \$500.00 or by both.

SECTION 2. The City of Cape Coral Code of Ordinances, Chapter 8, Article IV, is hereby amended as follows:

§ 8-25 - Declaration; time limits.

The City Manager shall have the power, duty, and responsibility to declare a state of local emergency between June 1 and November 30 each year when the National Hurricane Center and/or the eity's duly contracted weather consultant has predicted that hurricane force winds; flooding, and/or other adverse weather conditions resulting from an anticipated hurricane will affect the City of Cape Coral in not more than 72 hours in preparation for or response to an emergency or disaster.

The City Manager shall inform the City Council of the reasons for and status of events requiring the declaration of a state of local emergency either prior to the declaration of emergency or as soon thereafter as practicable. Upon the declaration of a state of local emergency, the City Manager, or his or her designee, shall post a written notice of such declaration at conspicuous place(s) in the Cape Coral City Hall, and shall, as promptly as practicable, file in the office of the City Clerk a notice of a declared state of local emergency. The City Manager, or his or her designee, shall notify the local media, city employees, and residents as soon as possible and in the manner most practicable and expeditious.

§ 8-26 - Powers during emergency.

(a) The City Manager shall be empowered during a state of local emergency:

(1) To implement emergency plans and procedures and take such other prompt and necessary action to save lives and protect property, including but not limited to, the authority to compel and direct timely local evacuation, if necessary.

(2) Pursuant to the established "Comprehensive Emergency Operations Management Plan" (CEMP EOP) of the city, declare that the CEMP EOP is in effect, as appropriate.

(3) To obligate emergency expenditures for payment from the emergency reserve fund when such action is necessary to <u>protect and</u> preserve the <u>public health</u>, safety, health, and welfare <u>of the public</u>. All such transfers and obligations shall be reported to the City Council at the first opportunity following such action, but no later than 30 days after such occurrence.

(4) To act, on behalf of the city, in any matter provided by F.S. § 252.38(2) and (3), as amended.

(5) To determine a threat to public health and safety that may result from the generation of widespread debris throughout the city, that such debris constitutes a hazardous environment for all modes of movement and transportation of the residents as well as emergency aid and relief services, endangerment to all properties in the eity, an environment conducive to breeding disease and vermin, and greatly increased risk of fire, and that it is in the public interest to collect and remove disaster debris from all property whether public lands, public or private roads, and gated communities to eliminate an immediate threat to life, public health and safety to reduce the threat-of additional damage-to improved property and to promote economic recovery of the community at large.

(6) To authorize the city of its contracted agent(s) right of access to private roads or gated communities as needed by emergency vehicles such as, but not limited to, police, fire, medical care, debris removal, and sanitation to alleviate immediate threats to public health and safety.

(b) The granting of power, duty, and responsibility to the City Manager to declare a state of local emergency shall not be construed to abrogate the power and authority to the City Council to declare a state of local emergency in accordance with the City Charter and state law.

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§ 8-28 - Alcoholic beverage prohibition.

(a) During any state of local emergency lawfully declared by either the City Council or the City Manager, the City Council authorizes the City Manager to suspend or regulate the sale of, or offer to sell, alcoholic beverages, with the exception of beer, within the City of Cape Coral.

(b) Any person who knowingly violates any provision of this section shall, upon conviction, be punished according to law and shall be subject to a fine not exceeding the sum of \$500, or imprisonment in the Lee County Jail for a period not exceeding 60 days, or by fine and imprisonment.

§ 8-29 - Unconscionable pricing.

(a) As used in this section:

COMMODITY means any goods, services, materials, merchandise, supplies, equipment, resources or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products and lumber necessary for consumption or use as a direct result of the emergency.

(b) It is prima facic evidence that a price is unconscionable if:

(1) The amount charged represents a gross disparity between the price of the commodity or rental or lease of any dwelling unit or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold or offered for rent or sale in the usual course of business during the 30 days immediately prior to a declaration of a state of <u>local</u> emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or national or international market trends; or

(2) The amount charged grossly exceeds the average price at which the same or similar commodity was readily obtainable in the trade area during the 30 days immediately prior to a declaration of <u>local</u> emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or national or international market trends.

(3) Upon a declaration of a state of <u>local</u> emergency by the Governor, the City Council of the City of Cape Coral, <u>Cape Coral City Manager</u> or the Board of County Commissioners for Lee County that affects the City of Cape Coral and/or Lee County, it shall be unlawful for a person or his or her agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of <u>local</u> emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions or equipment that is necessary for consumption or use as a direct result of the emergency. This prohibition shall remain in effect until all declarations expire or are terminated.

(4) It is unlawful and a violation of this section for any person to impose unconscionable prices for the rental or lease of any dwelling unit or self storage facility during a period of declared state of <u>local</u> emergency.

(5) A price increase approved by an appropriate government agency shall not be a violation of this section.

(6) This section shall not apply to sales by growers, producers or processors of raw or processed food products, except for retail sales of the products to the ultimate consumer within the area of the declared state of <u>local</u> emergency.

(7) All state law enforcement officers and Code Enforcement Officers shall have the power to investigate compliance with, and enforcement requirements of this section and incident thereto may subpoen witnesses, administer oaths and require the production of records.

(8) Any person, who knowingly violates any provision of this section shall, upon conviction, be punished according to law and shall be subject to a fine not exceeding the sum of \$500, or imprisonment in the Lee County Jail for a period not exceeding 60 days, or by fine and imprisonment.

§ 8-30 - Curfew.

(a) During any state of local emergency lawfully declared by either the City Council or the City Manager, the City Council authorizes the City Manager to impose a general curfew throughout Cape Coral for the hours determined by the City Manager when deemed necessary by the City Manager in order to protect the public health, safety, and welfare of the public as the result of conditions related to a hurricane. The curfew may include, but not be limited to, the prohibition of or restriction on pedestrian and vehicular movement, except for the provision of designated, essential services, including, but not limited to, such as fire, police, emergency medical services and hospital services, including the transportation of patients thereto, utility emergency repairs and emergency calls by physicians. Local services designated as essential services shall are requested to do everything possible to provide identification for their employees.

(b) Any person, who knowingly violates any provision of this section shall, upon conviction, be punished according to law and shall be subject to a fine not exceeding the sum of \$500, or imprisonment in the Lee County Jail for a period not exceeding 60 days, or by fine and imprisonment.

§ 8-31 - Removal of debris.

During, and subsequent of, a declared state of local emergency, the City Manager shall have the power to authorize the <u>collection</u>, removal, and disposal of <u>emergency and</u> disaster-generated debris and wreekage resulting from a declared disaster from all property whether public lands, public or private roads, <u>private vacant property</u>, or gated communities to ensure a safe and sanitary living and functioning conditions, and to protect improved property from immediate threat. <u>Debris includes all hazardous conditions created that impact all modes of movement and transportation of the residents as well as emergency services, and endangers properties and waterways in the city. Debris also includes conditions created that increase an environment conducive to breeding disease and vermin, and greatly increases risk of fire, and that is in the public interest to remove and dispose. Debris collection, removal, and disposal is not limited to the timeframe of the state of local emergency, but shall be accomplished expeditiously to ensure protection of the health, safety, and welfare of the community, and the restoration of normalcy to promote economic recovery of the community at large.</u>

§ 8-32 - Time periods tolled.

During a state of <u>local</u> emergency, all procedural and notice time periods affecting the normal functions of the city, to the extent such requirements cannot be complied with due to the emergency, shall be temporarily suspended for a period of seven days from the declaration of <u>local</u> emergency. Such functions include, but are not limited to, permitting, code enforcement matters, municipal approvals, and scheduled public meetings. When necessary, seven-day time extensions may be permitted by approval of the City Council.

§ 8-33 - State of local emergency terminated.

(a) A state of local emergency declared by the City Manager pursuant to this article shall be terminated upon the first to occur of any of the following:

(1) A certification by the City Manager that the conditions leading to or causing the emergency <u>or disaster</u> no longer exist and the city agencies, departments, and staff are able to manage the situation without extraordinary assistance; or

(2) A vote of the City Council declaring the state of local emergency has ended; or

(3) The expiration of seven days from the commencement of the state of <u>local</u> emergency, unless such period is extended by the City Council as authorized by state law. <u>A state</u> of local emergency declared in the event of overt acts of violence or the imminent threat of such violence pursuant to sections 870.041 – 870.048. Florida Statutes, shall terminate seventy-two [72] hours from its commencement, unless extended by the City Council by duly enacted ordinance or resolution in a regular or special meeting.

(b) Notice of the termination of the <u>state of</u> local emergency declaration shall be made to the public by the City Manager by the same means as notice of the declaration of the state of local emergency.

SECTION 3. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	 NELSON	
GUNTER	 STOKES	
CARIOSCIA	 WILLIAMS	
STOUT	 COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM CITY CLERK

APPROVED AS TO FORM:

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BRIAN R. BARTOS ASSISTANT CITY ATTORNEY ord\Fire Prevention



ORDINANCE 9-18

ACCOMPLISHES

1. ADOPTION OF THE FLORIDA FIRE PREVENTION CODE

2. ADDITION OF A CITY BURN BAN

3. UPDATES TO EMERGENCY MANAGEMENT

1. FLORIDA FIRE PREVENTION CODE

 FLORIDA STATE STATUTE 633.0215 (3)(B):
 "ANY LOCAL AMENDMENT TO THE FLORIDA FIRE PREVENTION CODE ADOPTED BY A LOCAL GOVERNMENT SHALL BE EFFECTIVE ONLY UNTIL THE ADOPTION OF THE NEW EDITION OF THE FLORIDA FIRE PREVENTION CODE, WHICH SHALL BE EVERY THIRD YEAR...."



2. BURN BAN

- 90% OF ALL WILDFIRES ARE MAN-MADE AND PREVENTABLE
- DROUGHT INDEX OF 600
- EMBERS CAN TRAVEL 1 MILE
- ENFORCEABLE



3. EMERGENCY MANAGEMENT

- SURVEYED 60 FLORIDA MUNICIPALITIES FOR BEST PRACTICES
- ALL HAZARDS APPROACH LOCAL EMERGENCIES
- CLEANS UP DEBRIS LANGUAGE
- UPDATES THE TERMINATION OF LOCAL STATES OF EMERGENCY







ALCOHOL PROHIBITION

• LANGUAGE: DURING ANY STATE OF LOCAL EMERGENCY LAWFULLY DECLARED BY EITHER THE CITY COUNCIL OR THE CITY MANAGER, THE CITY COUNCIL AUTHORIZES THE CITY MANAGER TO SUSPEND OR REGULATE THE SALE OF, OR OFFER TO SELL, ALCOHOLIC BEVERAGES, WITH THE EXCEPTION OF BEER, WITHIN THE CITY OF CAPE CORAL."

- AN EMERGENCY DECLARATION DOES NOT AUTOMATICALLY MEAN AN ALCOHOL PROHIBITION.
- THE CONSUMPTION OF ALCOHOL IS NOT PROHIBITED.
- DURING EXTREME EMERGENCIES THE FOCUS IS ON ESSENTIAL COMMODITIES.



RECOMMENDATION

APPROVAL OF ORDINANCE 9-18



Item A.(3) Number: 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Public Hearings





TITLE: Ordinance 34-18 Public Hearing

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment?
- 2. Is this a Strategic Decision?

No Yes

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

ELEMENT D: IMPROVE THE CITY'S IMAGE WITH THE PURPOSE OF BUILDING LASTING RELATIONSHIPS WITH OUR RESIDENTS AND VALUABLE PARTNERSHIPS WITH OTHER ORGANIZATIONS, AND CONTINUALLY PROVIDE A WELL-BALANCED AND POSITIVE WORKPLACE FOR OUR INTERNAL STAKEHOLDERS.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

Recently an ordinance limiting the parking of trailers in public parking lots in the South Cape District was presented to the City Council. In that ordinance the definition of TRAILER was established that was more comprehensive than the definition included in the Code section being amended in this ordinance. Therefore, the definition of TRAILER is being amended to be consistent. Also, the penalty provision is being amended to provide different fines and also to allow cars and cars with trailers to be towed on any streets where signs have been posted.

The Code section being amended currently provides a list of streets where the parking of commercial vehicles and trailers on public streets at any time except for loading and unloading is prohibited. This list is being expanded to cover additional streets in the South Cape District.

LEGAL REVIEW:

EXHIBITS:

Revised Ordinance 34-18 See Revised version - VOID Copy of Ordinance 34-18 from introduction Staff Presentation

PREPARED BY:

Division-	City Department- Attorney
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SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description

	-	
D	Revised Ordinance 34-18	Backup Material
D	Memo from CA's office	Backup Material
D	See Revised Version - Void copy of Ordinance 34- 18 from Introduction	Backup Material
D	Staff Presentation	Backup Material

Туре



ORDINANCE 34 - 18

AN ORDINANCE AMENDING CHAPTER 12, "OFFENSES AND MISCELLANEOUS PROVISIONS", CITY OF CAPE CORAL CODE OF ORDINANCES, BY AMENDING ARTICLE II, "OFFENSES CREATING NUISANCES", SECTION 12-23 TO PROVIDE REGULATIONS FOR PARKING COMMERCIAL VEHICLES AND TRAILERS ON CERTAIN PUBLIC STREETS POSTED WITH SIGNS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 166.021, Florida Statutes, municipalities may exercise their powers for municipal purposes and to preserve the health, safety, and general welfare of its residents, except when expressly prohibited by law; and

WHEREAS, the City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 12, Article II, Section 12-23 is hereby amended to read as follows:

CHAPTER 12: OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE II: OFFENSES CREATING NUISANCES

§ 12-23 Operation of motor-driven vehicles in certain places prohibited, exceptions; overnight-parking regulations on certain public streets, prohibited.

(a) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL VEHICLE. Any self-propelled or towed vehicle used on the public highways to transport passengers or cargo, if the vehicle has a gross vehicle weight rating of greater than 10,000 pounds or more or is designed to transport more than 15 passengers, including the driver.

TRAILER. Any vehicle without motive power designed for carrying persons or property on its own structure and designed to be drawn by a motor vehicle regardless of hitch type and often used for or designed for carrying persons or property on its own structure. For purposes of this section, devices or equipment, such as compressors, or mixers, or smokers, that are not designed for the purpose of carrying persons or property, but instead have wheels that are integrated into the body of the device or equipment shall be deemed to be **TRAILERS** trailers.

. . .

- (g) Parking of commercial vehicles and trailers prohibited. Unless the trailer or commercial vehicle is being parked temporarily for loading or unloading property or goods, it shall be unlawful for any person at any time to park a commercial vehicle or trailer on streets posted with signs reading as follows, "NO PARKING OF COMMERCIAL VEHICLES OR TRAILERS EXCEPT FOR LOADING OR UNLOADING." The following streets shall be posted as noted herein:
 - . . .

. . .

- (6) S.E. 46th Lane from Coronado Parkway S.E. 6th Avenue to S.E. 17th Place;
- (7) S.E. 47th Street from Coronado Parkway S.E. 6th Avenue to S.E 17th Place;
- (27) S.E. 15th Avenue from S.E. 44th Street to S.E. 46th Street Cape Coral Parkway East;
- (29) Orchid Boulevard from S.E. 44th Street to S.E. 46th Street; and
- (30) S.W. 47th Terrace from Santa Barbara Boulevard to S.W. 2nd Avenue-;

- (31) S.E. 4th Place from Country Club Boulevard to S.E. 47th Terrace;
- (32) S.E. 5th Avenue from Country Club Boulevard to S.E. 47th Terrace; and
- (33) S.E. 46th Terrace from S.E. 6th Avenue to Coronado Parkway.
- (h) Penalties. Any person found guilty of a violation of this section shall be subject to a fine of not less than \$100, nor more than \$250. A violation of this section shall result in a civil penalty in an amount of thirty dollars (\$30.00). Any person receiving a citation or ticket pursuant to this section shall, within thirty (30) calendar days, pay said civil penalty or request a hearing before a designated official, as defined by Chapter 318, Florida Statutes.
 - (1) Any person electing to appear before a designated official for a hearing shall be deemed to have waived such persons right to pay the civil penalty set forth herein. The designated official, after a hearing, shall make a determination as to whether a violation of this section has been committed. If a violation is found, the designated official shall impose a civil penalty in the amount of one hundred dollars (\$100.00) plus court costs.
 - (2) Each violation of this section shall constitute a separate and distinct violation for which a citation or ticket may be issued.
 - (3) Law enforcement officers and parking enforcement specialists are hereby authorized to tow or cause to be towed and impounded any trailer or vehicle parked in violation of this section, where signs have been posted indicating that the street is a location from which trailers and vehicles will be removed if they are parked unlawfully. If an unlawfully parked trailer is attached to a vehicle on a posted street, said vehicle may also be removed by the police department. The owner of any trailer or vehicle so towed, in addition to the payment of any fines or penalties for the unlawful parking, shall also be liable for any towing, impounding, and storage charges incurred in removing the trailer and vehicle.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA STOUT

JOE COVIELLO, MAYOR

NELSON ______ STOKES ______ WILLIAMS _____ COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____ 2018.

\bigcirc		\cap
APPRO	DVED A	S TO FORM:
/	M	-

REBECCA VAN DEUTEKOM	
CITY CLERK	

JOHN E. NACLERIO, III ASSISTANT CITY ATTORNEY ord/OnStreetParking Regs SC District 5/14/18



CITY ATTORNEY'S OFFICE MEMORANDUM

TO:	Mayor Coviello and City Councilmembers
FROM:	John E. Naclerio III, Assistant City Attorney
DATE:	May 17, 2018
SUBJECT:	Proposed Ordinance 34-18, On-Street Parking Regulations

Attached hereto is a slightly modified draft Ordinance 34-18 for your review. The revised draft was forwarded to the Clerk's for placement in the City Council agenda packets and also on the City's website. The Ordinance was introduced to the City Council on May 7, 2018, and is scheduled for Public Hearing on June 4, 2018. The only change to the proposed Ordinance from what was introduced on May 7th regards the definition of a commercial vehicle.

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If you have any questions, please do not hesitate to contact the City Attorney or me.

John E. Naclerio III Assistant City Attorney

Attachment

cc: John Szerlag, City Manager Rebecca van Deutekom, City Clerk David M. Newlan, Police Chief

ORDINANCE 34 - 18



AN ORDINANCE AMENDING CHAPTER 12, "OFFENSES AND MISCELLANEOUS PROVISIONS", CITY OF CAPE CORAL CODE OF ORDINANCES, BY AMENDING ARTICLE II, "OFFENSES CREATING NUISANCES", SECTION 12-23 TO PROVIDE REGULATIONS FOR PARKING COMMERCIAL VEHICLES AND TRAILERS ON CERTAIN PUBLIC STREETS POSTED WITH SIGNS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 166.021, Florida Statutes, municipalities may exercise their powers for municipal purposes and to preserve the health, safety, and general welfare of its residents, except when expressly prohibited by law; and

WHEREAS, the City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 12, Article II, Section 12-23 is hereby amended to read as follows:

CHAPTER 12: OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE II: OFFENSES CREATING NUISANCES

§ 12-23 Operation of motor-driven vehicles in certain places prohibited, exceptions; overnight-parking regulations on certain public streets, prohibited.

(a) Definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL VEHICLE. Any self-propelled or towed vehicle used on the public highways to transport passengers or cargo, if the vehicle has a gross vehicle weight rating of greater than 10,000 pounds or more or is designed to transport more than 15 passengers, including the driver.

TRAILER. Any vehicle without motive power designed for carrying persons or property on its own structure and designed to be drawn by a motor vehicle regardless of hitch type and often used for or designed for carrying persons or property on its own structure. For purposes of this section, devices or equipment, such as compressors, or mixers, or smokers, that are not designed for the purpose of carrying persons or property, but instead have wheels that are integrated into the body of the device or equipment shall be deemed to be **TRAILERS** trailers.

- (g) Parking of commercial vehicles and trailers prohibited. Unless the trailer or commercial vehicle is being parked temporarily for loading or unloading property or goods, it shall be unlawful for any person at any time to park a commercial vehicle or trailer on streets posted with signs reading as follows, "NO PARKING OF COMMERCIAL VEHICLES OR TRAILERS EXCEPT FOR LOADING OR UNLOADING." The following streets shall be posted as noted herein:
 - (6) S.E. 46th Lane from Coronado Parkway S.E. 6th Avenue to S.E. 17th Place;
 - (7) S.E. 47th Street from Coronado Parkway S.E. 6th Avenue to S.E 17th Place;
 - . . .

. . .

. . .

- (27) S.E. 15th Avenue from S.E. 44th Street to S.E. 46th Street Cape Coral Parkway East;
 - . . .
 - (29) Orchid Boulevard from S.E. 44th Street to S.E. 46th Street; and
 - (30) S.W. 47th Terrace from Santa Barbara Boulevard to S.W. 2nd Avenue;

- S.E. 4th Place from Country Club Boulevard to S.E. 47th Terrace; (31)
- S.E. 5th Avenue from Country Club Boulevard to S.E. 47th Terrace; and (32)
- S.E. 46th Terrace from S.E. 6th Avenue to Coronado Parkway. (33)
- Penalties. Any person found guilty of a violation of this section shall be subject to a fine of (h) not less than \$100, nor more than \$250. A violation of this section shall result in a civil penalty in an amount of thirty dollars (\$30.00). Any person receiving a citation or ticket pursuant to this section shall, within thirty (30) calendar days, pay said civil penalty or request a hearing before a designated official, as defined by Chapter 318, Florida Statutes.
 - Any person electing to appear before a designated official for a heating shall (1) be deemed to have waived such persons right to pay the civil penalty set forth herein. The designated official after a hearing, shall make a determination as to whether a violation of this section has been committed. If a violation is found, the designated official shall impose a civil penalty in the amount of one hundred dollars (\$100.00) plus court costs.
 - Each violation of this section shall constitute a separate and distinct violation (2) for which a citation or ticket may be issued.
 - Law enforcement officers and parking enforcement specialists are hereby (3) authorized to tow or cause to be towed and impounded any trailer or vehicle parked in violation of this section, where signs have been posted indicating that the street is a location from which trailers and vehicles will be removed if they are parked unlawfully. If an unlawfully parked trailer is attached to a vehicle on a posted street, said vehicle may also be removed by the police department. The owner of any trailer or vehicle so towed, in addition to the payment of any fines or penalties for the unlawful parking, shall also be liable for any towing, impounding, and storage charges incurred in removing the trailer and vehicle.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA	 NELSON STOKES WILLIAMS	
STOUT	 COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF ___ 2018.

APPROVED TO FORM:

JOHNE NACHERIO, III ASSISTANT CITY ATTORNEY ord/OnStreetParking Regs SC District 5/14/18

REBECCA VAN DEUTEKOM CITY CLERK

IOE COVIELLO, MAYOR

VOID - SEE REVISED VERSION

ORDINANCE 34 - 18

AN ORDINANCE AMENDING CHAPTER 12, "OFFENSES AND MISCELLANEOUS PROVISIONS", CITY OF CAPE CORAL CODE OF ORDINANCES, BY AMENDING ARTICLE II, "OFFENSES CREATING NUISANCES", SECTION 12-23 TO PROVIDE REGULATIONS FOR PARKING COMMERCIAL VEHICLES AND TRAILERS ON CERTAIN PUBLIC STREETS POSTED WITH SIGNS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 166.021, Florida Statutes, municipalities may exercise their powers for municipal purposes and to preserve the health, safety, and general welfare of its residents, except when expressly prohibited by law; and

WHEREAS, the City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 12, Article II, Section 12-23 is hereby amended to read as follows:

CHAPTER 12: OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE II: OFFENSES CREATING NUISANCES

Operation of motor-driven vehicles in certain places prohibited, exceptions; \$ 12-23 overnight parking regulations on certain public streets, prohibited.

- Definitions. For the purpose of this chapter, the following definitions shall apply unless the (a) context clearly indicates or requires a different meaning.

. . .

. . .

TRAILER. Any vehicle without motive power designed for earrying persons or property on its own structure and designed to be drawn by a motor vehicle regardless of hitch type and often used for or designed for carrying persons or property on its own structure. For purposes of this section, devices or equipment, such as compressors, or mixers, or smokers, that are not designed for the purpose of carrying persons or property, but instead have wheels that are integrated into the body of the device or equipment shall be deemed to be TRAILERS trailers.

- Parking of commercial vehicles and trailers prohibited. Unless the trailer or commercial vehicle is (g) being parked temporarily for loading or unloading property or goods, it shall be unlawful for any person at any time to park a commercial vehicle or trailer on streets posted with signs reading as follows, "NO PARKING OF COMMERCIAL VEHICLES OR TRAILERS EXCEPT FOR LOADING OR UNLOADING." The following streets shall be posted as noted herein:
 - S.E. 46th Lane from Coronado Parkway S.E. 6th Avenue to S.E. 17th Place; (6)S.E. 47th Street from Coronado Parkway S.E. 6th Avenue to S.E 17th Place; (7). . .
 - (27)S.E. 15th Avenue from S.E. 44th Street to S.E. 46th Street Cape Coral Parkway East; . . .
 - (29)Orchid Boulevard from S.E. 44th Street to S.E. 46th Street; and
 - S.W. 47th Terrace from Santa Barbara Boulevard to S.W. 2nd Avenue-; (30)
 - S.E. 4th Place from Country Club Boulevard to S.E. 47th Terrace; (31)
 - (32) S.E. 5th Avenue from Country Club Boulevard to S.E. 47th Terrace; and
 - S.E. 46th Terrace from S.E. 6th Avenue to Coronado Parkway. (33)

Penalties. Any person fround guilty of a violation of this section shall be subject to a fine of not less than \$100, nor more than \$250. A violation of this section shall result in a civil

(h)

penalty in an amount of thirty dollars (\$30.00). <u>Any person receiving a citation or ticket</u> pursuant to this section shall, within thirty (30) calendar days, pay said civil penalty or request a hearing before a designated official, as defined by Chapter 318, Florida Statutes.

- (1) Any person electing to appear before a designated official for a hearing shall be deemed to have waived such persons right to pay the civil penalty set forth herein. The designated official, after a hearing, shall make a determination as to whether a violation of this section has been committed. If a violation is found, the designated official shall impose a civil penalty in the amount of one hundred dollars (\$100.00) plus court costs.
- (2) Each violation of this section shall constitute a separate and distinct violation for which a citation or ticket may be issued.
- (3) Law enforcement officers and parking enforcement specialists are hereby authorized to tow or cause to be towed and impounded any trailer or vehicle parked in violation of this section, where signs have been posted indicating that the street is a location from which trailers and vehicles will be removed if they are parked unlawfully. If an unlawfully parked trailer is attached to a vehicle on a posted street, said vehicle may also be removed by the police department. The owner of any trailer or vehicle so towed, in addition to the payment of any fines or penalties for the unlawful parking, shall also be liable for any towing, impounding, and storage charges incurred in removing the trailer and vehicle.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE	COVIEI	LO, N	AYOR
JUE	COVIEL	LO, IV	AIUK

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA STOUT

NELSON
STOKES
WILLIAM
COSDEN

N ______ S _____ MS _____ N _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____ 2018.

REBECCA VAN DEUTEKOM CITY CLERK

PROVED AS TO FORM:

JOHN/E. NACLERIO, III ASSISTANT CITY ATTORNEY ord/OnStreetParking Regs SC District 5/1/18

Ordinance 34-18 Regulation of On-Street Trailer Parking

Presented by: David M. Newlan, Chief of Police

EST 1971

What the ordinance accomplishes...

- Amends Chapter 12: Offenses and Miscellaneous Provisions;
- Defines "Trailer;"
- Establishes specific prohibitions;
- Penalties.

On-Street Trailer Parking Prohibition

- Parking of commercial vehicle and trailers prohibited. Unless the trailer or commercial vehicle is being parked temporarily for loading or unloading property or goods, it shall be unlawful for any person at any time to park a commercial vehicle or trailer on streets posted with signs reading as follows, "NO PARK.ING OF COMMERCIAL VEHICLES OR TRAILERS EXCEPT FOR LOADING OR UNLOADING."
- Amended restricted parking locations.

Penalties

- A violation of this section shall result in a civil penalty in an amount of thirty dollars (\$30.00).
- Law enforcement officers and parking enforcement specialists authorized to tow violators.
- The owner of any trailer or vehicle so towed, in addition to the payment of any fines or penalties for the unlawful parking, shall also be liable for any towing, impounding, and storage charges incurred in removing the trailer and vehicle.

Questions?

Item A.(4) Number: 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Public Hearings





TITLE: Ordinance 37-18 Public Hearing

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance authorizing the Mayor to grant to Lee County Electric Cooperative, Inc., a perpetual easement for a right-of-way to be used for the construction, operation and maintenance of one or more overhead and underground electric distribution lines across property owned by the City that is in the area of the Fire Station #11 project, located at 1038 Burnt Store Road North.

LEGAL REVIEW:

John E. Naclerio III, Assistant City Attorney

EXHIBITS:

Ordinance 37-18 LCEC Site Plan

PREPARED BY:

Division- Department-City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Dawn Andrews, Property Broker

ATTACHMENTS: Description

- D Ordinance 37-18
- LCEC Site Plan

Type Ordinance Backup Material

ORDINANCE 37 - 18

AN ORDINANCE AUTHORIZING THE MAYOR TO GRANT TO LEE COUNTY ELECTRIC COOPERATIVE, INC., A PERPETUAL EASEMENT FOR A RIGHT-OF-WAY TO BE USED FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF ONE OR MORE OVERHEAD AND UNDERGROUND ELECTRIC DISTRIBUTION LINES ACROSS PROPERTY OWNED BY THE CITY THAT IS THE AREA OF THE FIRE STATION #11 PROJECT LOCATED AT 1038 BURNT STORE ROAD NORTH, AS MORE PARTICULARLY DESCRIBED HEREIN; A COPY OF THE EASEMENT IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. That the Mayor is hereby authorized and directed to grant to Lee County Electric Cooperative, Inc., a perpetual easement for a right-of-way to be used for the construction, operation and maintenance of one or more overhead and underground electric distribution lines across property owned by the City that is in the area of the Fire Station #11 project located at 1038 Burnt Store Road North, as more particularly described as follows:

A 10' foot wide Public Utility Easement lying within Block 4199-A, as shown on the Plat of Cape Coral Unit 60, recorded in Plat Book 19, at Pages 154 through 169 of the Public Records of Lee County, Florida; being more particularly described as follows;

Commence at the Southeast corner of Block 4199-A as shown on the Plat of Cape Coral Unit 60, recorded in Plat Book 19, at Pages 154 through 169 of the Public Records of Lee County, Florida; Thence N 02°14'37" E, along the East line of said Block 4199-A also being the Westerly Right-of-Way line of Burnt Store Road (State Road 765), a 200 foot wide right-of-way, for a distance of 140.81 feet to the **Point of Beginning;** Thence departing said line N 87°45'23" W for 10.00 feet; Thence N 02°14'37" E, parallel to said right-of-way line, for 144.44 feet; Thence N 87°35'15" W for 61.30 feet; Thence N 02°55'24" E for 13.45 feet; Thence S 89°20'18" E for 10.01 feet; Thence S 02°55'24" W for 3.76 feet; Thence S 87°35'15" E, for 61.18 feet to a point on the Westerly Right-of-Way line of said Burnt Store Road; Thence S 02°14'37" W, along said right-of-way line, for 154.41 feet to the **Point of Beginning**.

Containing 2,193 square feet, more or less.

Bearings refer to the Plat of Cape Coral Unit 60, recorded in Plat Book 19, at Pages 154 through 169 of the Public Records of Lee County, Florida; with the East line of the Southeast quarter of Section 6, Township 44 South, Range 23 East being N 02°14'37" E.

Subject to Easements, Reservations, and Restrictions of record.

A copy of the easement is attached hereto and incorporated herein by reference.

SECTION 2. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall take effect immediately upon its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	 NELSON	
GUNTER	 STOKES	
CARIOSCIA	WILLIAMS	
STOUT	 COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM CITY CLERK

S TO FORM:

JOHN E. NACLERIO III ASSISTANT CITY ATTORNEY ord\LCEC Easement-Fire Station 11

Prepared By: Lee County Electric Cooperative, Inc. Post Office Box 3455 N. Ft. Myers, FL 33918-3455

Strap# 06-44-23-C3-04199.A000 WR # 542040

EASEMENT

KNOW ALL MEN BY THESE PRESENTS that the City of Cape Coral, a Florida municipal corporation, as Grantor, whose post office address is c/o Real Estate Division, P.O. Box 150027, Cape Coral, Florida 33915-0027, in consideration of the sum of one dollar and other valuable considerations, receipt of which is hereby acknowledged, do hereby grant to Lee County Electric Cooperative, Inc., a Florida not for profit corporation, whose post office address is Post Office Box 3455, North Fort Myers, Florida 33918, and to its successors and assigns (the term "assigns" meaning any person, firm, or corporation owning by way of assignment all rights under this Agreement or a portion of such rights, with the Grantee or its other assigns retaining and exercising the other rights), a perpetual easement for a right-of-way to be used for the construction, operation, and maintenance of one or more overhead and underground electric distribution lines, including, but not limited to, wires, poles, cables, conduits, anchors, guys, and roads, trails, and equipment associated therewith, attachments and appurtenant equipment for fiber optic telecommunications and television purposes (all of the foregoing hereinafter referred to as "facilities"), over, under, in, on, upon, and across the lands of the Grantor situated in the County of Lee and State of Florida and being more particularly described as follows,

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF

together with the right and privilege from time to time to reconstruct, inspect, alter, improve, enlarge, add to, change the voltage, as well as the nature or physical characteristics of, replace, remove, or relocate such facilities or any part of them upon, across, over, or under the right-of-way described above with all rights and privileges necessary or convenient for the full enjoyment or the use thereof for the purposes described herein, including, but not limited to, the right to trim, spray, cut, and keep clear all trees and undergrowth and other obstructions within said right-of-way and on lands of Grantor adjoining said right-of-way that may interfere with the proper construction, operation, and maintenance of such facilities or any part of them, the right to mark the location of any underground facilities by above-ground markers and other suitable markers, and the right of ingress and egress for personnel and equipment of Grantee, its contractors, agents, successors or assigns, over the adjoining lands of the Grantor, for the purpose of exercising and enjoying the rights granted by this easement and any or all of the rights granted hereunder.

By the execution and delivery hereof, Grantor so expressly agrees that no portion of the right-ofway described herein shall be excavated, altered, obstructed, improved, surfaced, or paved without the prior written permission of the Grantee, or its successors or assigns, which written permission shall not be unreasonably withheld, delayed, or conditioned by Grantee, and no building, well, irrigation system except for small surface landscape irrigation system having no greater depth than 12 inches at its lowest point within the easement area, drainage system, structure, obstruction, or improvement (including any improvements for recreational activities) shall be located, constructed, maintained, or operated over, under, upon, or across said right-ofway by the Grantor or successors or assigns of Grantor. Notwithstanding the foregoing, the Grantor reserves the right to maintain, repair, or replace any existing paved/concrete surface or other improvements in the easement area and exercise all rights not inconsistent with the purpose of the easement granted.

Grantor, its successors and assigns, shall have the right to use and occupy the surface of the easement area for any purpose consistent with the rights and privileges herein granted and which will not endanger or interfere with the construction, maintenance, and operation or reconstruction of Grantee's utility installations.

By the execution hereof, Grantor covenants that Grantor has the right to convey this easement and that the Grantee and its successors and assigns shall have quiet and peaceful possession, use, and enjoyment of this easement and the rights granted hereby.

IN WITNESS WHEREOF, the Grantor has executed this Agreement this _____ day of _____, 2018.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

CITY OF CAPE CORAL, a Florida municipal corporation

First Witness (Signature)

Printed Name of First Witness

Second Witness (Signature)

Printed Name of Second Witness

Joe Coviello, Mayor

ATTESTED TO:

Rebecca van Deutekom, City Clerk

APPROVED AS TO FORM:

Dolores D. Menendez City Attorney

STATE OF ______ COUNTY OF ______

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Joe Coviello, Mayor of the City of Cape Coral, a Florida municipal corporation, who is personally known to me.

(NOTARIAL SEAL)

Signature of Notary Public

My commission expires: _____

10' Public Utility Easement

(CC-18-0004)

A 10' foot wide Public Utility Easement lying within Block 4199-A, as shown on the Plat of Cape Coral Unit 60, recorded in Plat Book 19, at Pages 154 through 169 of the Public Records of Lee County, Florida; being more particularly described as follows;

Commence at the Southeast corner of Block 4199-A as shown on the Plat of Cape Coral Unit 60, recorded in Plat Book 19, at Pages 154 through 169 of the Public Records of Lee County, Florida; Thence N 02°14'37" E, along the East line of said Block 4199-A also being the Westerly Right-of-Way line of Burnt Store Road (State Road 765), a 200 foot wide right-of-way, for a distance of 140.81 feet to the Point of Beginning; Thence departing said line N 87°45'23" W for 10.00 feet; Thence N 02°14'37" E, parallel to said right-of-way line, for 144.44 feet; Thence N 87°35'15" W for 61.30 feet; Thence N 02°55'24" E for 13.45 feet; Thence S 89°20'18" E for 10.01 feet; Thence S 02°55'24" W for 3.76 feet; Thence S 87°35'15" E, for 61.18 feet to a point on the Westerly Right-of-Way line of said Burnt Store Road; Thence S 02°14'37" W, along said right-of-way line, for 154.41 feet to the Point of Beginning.

Containing 2,193 square feet, more or less.

Bearings refer to the Plat of Cape Coral Unit 60, recorded in Plat Book 19, at Pages 154 through 169 of the Public Records of Lee County, Florida; with the East line of the Southeast quarter of Section 6, Township 44 South, Range 23 East being N 02°14'37" E.

Subject to Easements, Reservations, and Restrictions of record.

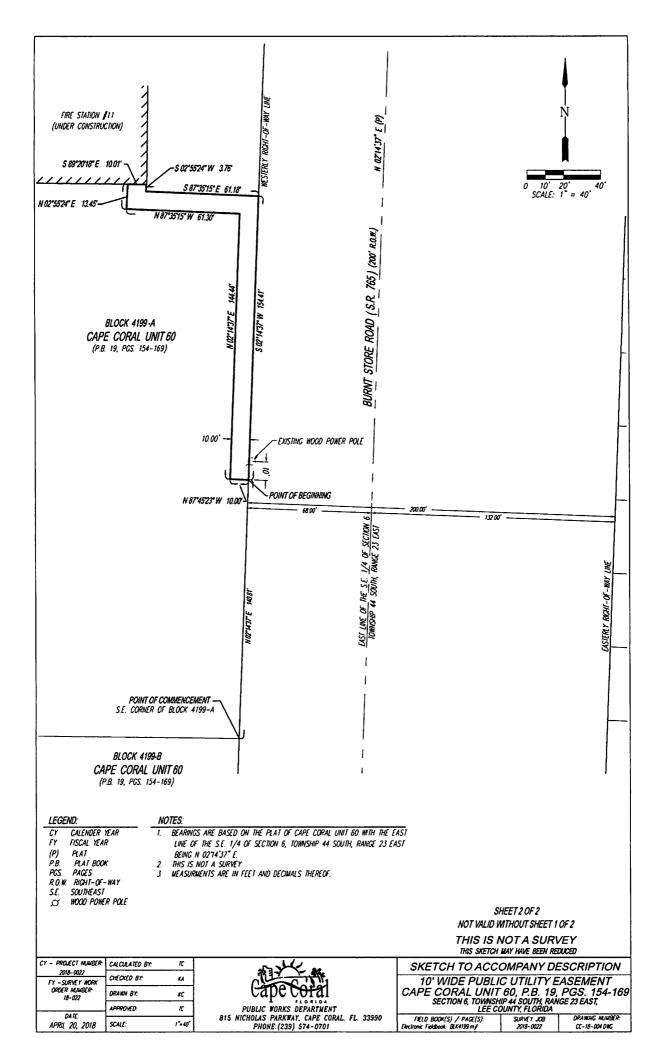
Sheet 1of 2

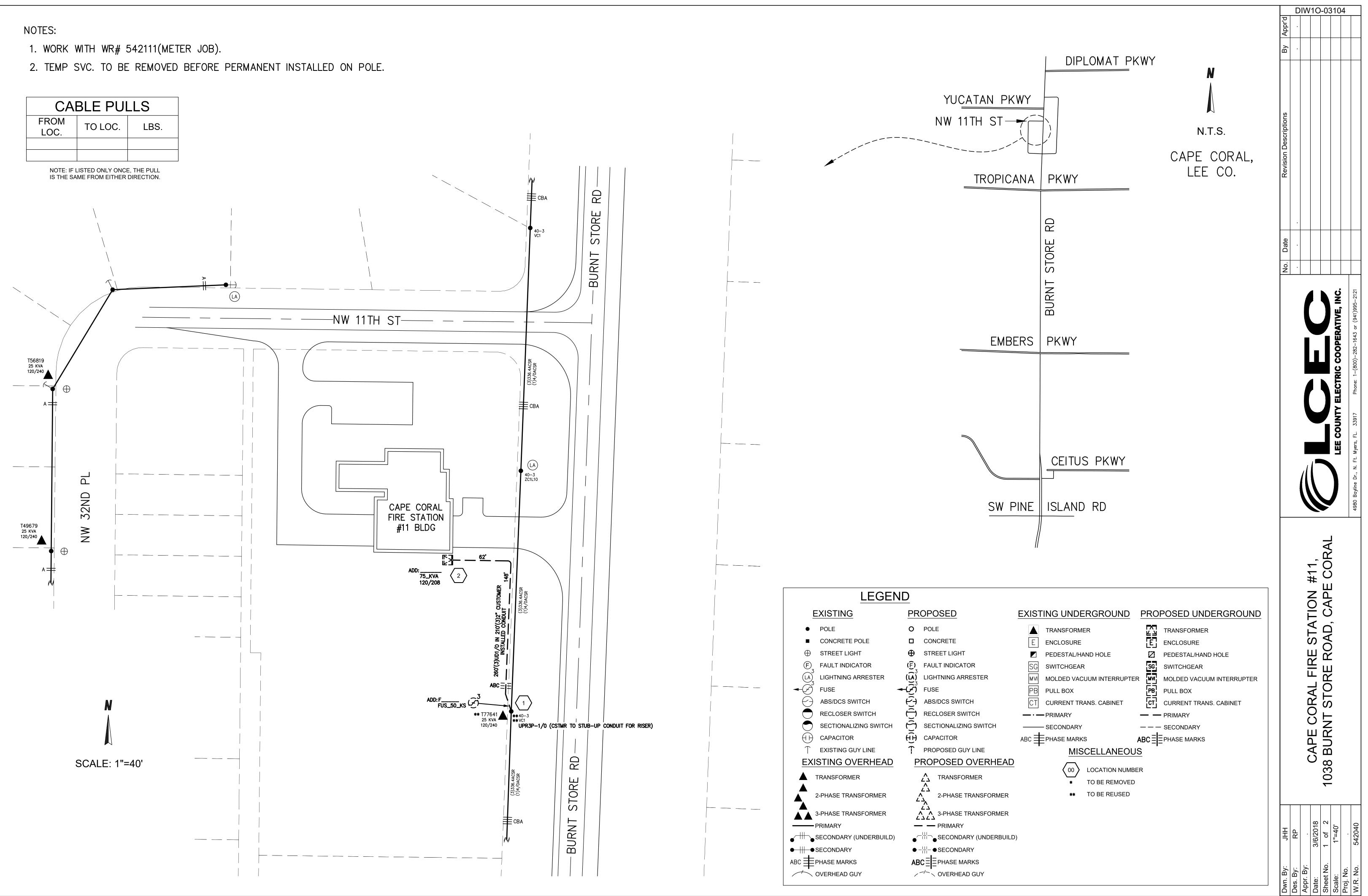
Not Valid without Sheet 2 of 2



Digitally signed by Tom Chernesky, L.S. #5426 DN: cn=Tom Chernesky, L.S.

EXHIBIT "A"





Item A.(5) Number: 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Public Hearings





TITLE:

Resolution 94-18 Public Input Uniform Collection Agreement with Lee County Tax Collector for North 2 Assessment Area

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

The resolution approves entering into a Uniform Collection Agreement between the City of Cape Coral and the Office of the Lee County Tax Collector for use of the statutory uniform methodology of collection for certain non-ad valorem special assessments for North 2 Wastewater, Potable Water, Irrigation, Capital Facility Expansion Charge Water, Capital Facility Expansion Charge Wastewater, and Capital Facility Expansion Charge Irrigation.

LEGAL REVIEW:

EXHIBITS:

Resolution 94-18

PREPARED BY:

Division- Department-City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Holly Goyette, Assessment and Billing Manager

ATTACHMENTS:

Description

Resolution 94-18

Туре

Resolution

RESOLUTION 94 - 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING A UNIFORM COLLECTION AGREEMENT BETWEEN THE CITY OF CAPE CORAL AND THE OFFICE OF THE LEE COUNTY TAX COLLECTOR FOR USE OF THE STATUTORY UNIFORM METHODOLOGY OF COLLECTION FOR CERTAIN NON-AD VALOREM SPECIAL ASSESSMENTS FOR NORTH 2 WASTEWATER, POTABLE WATER, IRRIGATION, CAPITAL FACILITY EXPANSION CHARGE WATER, CAPITAL FACILITY EXPANSION CHARGE WASTEWATER, AND CAPITAL FACILITY CHARGE IRRIGATION; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; A COPY OF THE AGREEMENT IS ATTACHED HERETO AND INCORPORATED BY REFERENCE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City desires to use the statutory uniform methodology of collection for certain non-ad valorem special assessments for North 2 Wastewater, Potable Water, Irrigation, Capital Facility Expansion Charge Water, Capital Facility Expansion Charge Wastewater, and Capital Facility Expansion Charge Irrigation; and

WHEREAS, the City desires to enter into a Uniform Collection Agreement between the City of Cape Coral and the Office of the Lee County Tax Collector establishing the terms and conditions under which the Tax Collector shall collect and enforce the collection of these certain non-ad valorem special assessments.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. The City Council hereby approves the Uniform Collection Agreement between the City of Cape Coral and the Office of the Lee County Tax Collector in order to use the statutory uniform methodology of collection for certain non-ad valorem special assessments for North 2 Wastewater, Potable Water, Irrigation, Capital Facility Expansion Charge Water, Capital Facility Expansion Charge Wastewater, and Capital Facility Expansion Charge Irrigation. A copy of the Agreement is attached hereto and incorporated by reference.

SECTION 2. The City Council hereby authorizes the Mayor to execute the Uniform Collection Agreement between the City of Cape Coral and the Office of the Lee County Tax Collector.

SECTION 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA STOUT

-		
	 	 _

NELSON STOKES WILLIAMS COSDEN

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM CITY CLERK

APPROVED AS TO EQRM: STEVEN D. GRIFFIN ASSISTANT CITY ATTORNEY res/Tax Collector Agreement North 2 Assessment

UNIFORM COLLECTION AGREEMENT

CITY OF CAPE CORAL

THIS AGREEMENT made and entered into this _____ day of _____, 2018, by and between City of Cape Coral ("City"), whose address is 1015 Cultural Park Boulevard, Cape Coral, Florida 33990, and the Office of the Lee County Tax Collector, by and through the Honorable Larry D. Hart, Lee County Tax Collector, whose address is Lee County Tax Collector's Office, 2480 Thompson Street, Fort Myers, Florida 33901 ("Tax Collector").

SECTION 1

Findings and Determinations

The parties find and determine:

- City is authorized to impose and levy, and by appropriate Resolution has expressed its intent to use the statutory uniform methodology of collection for certain non-ad valorem special assessments for North 2 Wastewater, Potable Water, Irrigation, Capital Facility Expansion Charge Water, Capital Facility Expansion Charge Wastewater, and Capital Facility Expansion Charge Irrigation ("Assessments"), as authorized by constitutional and statutory municipal home rule and by Section 197.3632, Florida Statutes, and Rule 12D-18, Florida Administrative Code, as amended; and
- 2. The term "Assessments" means those certain levies by the City which purport to constitute non-ad valorem special assessments for water, wastewater and irrigation improvements and related systems facilities and services pursuant to the North 2 Project. A non-ad valorem special assessment is lienable under Section 4, Article X, Florida Constitution, if it results in a special benefit peculiar to the parcels of property involved, over and above general community benefit, as a result of a logical connection to the property involved from the system, facility and service provided by the City and if it is apportioned to the property fairly and reasonably; and
- 3. The uniform statutory collection methodology is provided in Section 197.3632, Florida Statutes, and Rule 12D-18, Florida Administrative Code ("uniform methodology"), with its enforcement provisions, including the use of tax certificates and tax deeds for enforcing against any delinquencies; and
- 4. The uniform methodology is more fair to the delinquent property owner than traditional lien foreclosure methodology; and

- 5. The uniform methodology provides for more efficiency of collection by virtue of the "Assessment" being on the official tax notice issued by the Tax Collector which will produce positive economic benefits to the City and its citizens and taxpayers; and
- 6. The uniform methodology, through use of the official tax notice, will tend to eliminate confusion and promote local government accountability; and
- 7. The Tax Collector, as the State Constitutional Officer for the Lee County Political Subdivision, is charged by general law in Chapter 197, Florida Statutes, and related rules and regulations, to function as the agent of the Florida Department of Revenue for purposes of the uniform methodology for the "Assessments"; and
- 8. The sole and exclusive responsibility to determine, impose and levy the "Assessments" and to determine that it is a legal, constitutional and lienable non-ad valorem special assessment for North 2 Wastewater, Potable Water, Irrigation, Capital Facility Expansion Charge Water, Capital Facility Expansion Charge Water, Capital Facility Expansion Charge Irrigation and related systems, facilities and services is that of the City and no other person, entity or officer.

SECTION II

Authority

- 1. Section 2, Article VIII, Florida Constitution; Section 166.021, Florida Statutes; Sections 197.3631, 3632 and 3635, Florida Statutes; Rule 12D-18, Florida Administrative Code, and all other applicable provisions of constitutional and statutory law govern the exercise by the City of its local self-government power to render and pay for municipal services.
- 2. Section 1(d), Article VIII, Florida Constitution; Chapter 197, Florida Statutes; Rule 12D-13, Florida Administrative Code; Rule 12D-18, Florida Administrative Code, and other applicable provisions of constitutional and statutory law apply to Tax Collector in the capacity as a state constitutional county officer and agent of the Florida Department of Revenue for the purpose of collecting and enforcing the collection of non-ad valorem special assessments levied by the City of Cape Coral, a government of the Lee County Political Subdivision.
- 3. Section 197.3631, Florida Statutes, constitutes supplemental authority for City to levy non-ad valorem assessments including such non-ad valorem special assessments as the "Assessments" for North 2 Wastewater, Potable Water, Irrigation, Capital Facility Expansion Charge Water, Capital Facility Expansion Charge Wastewater, and Capital Facility Expansion Charge Irrigation and related systems, facilities and services.

4. Section 197.3632, Florida Statutes, and Rule 12D-18, Florida Administrative Code, have provisions that apply both to City and to Tax Collector in and for Lee County, as well as the Department of Revenue.

SECTION III

Purpose

The purpose of this Agreement under Rule 12D-18, Florida Administrative Code, is to establish the terms and conditions under which the Tax Collector shall collect and enforce the collection of those certain non-ad valorem special assessments, the "Assessments", levied by City to include compensation by City to the Tax Collector for actual costs of collection pursuant to Section 197.3632(8)(c), Florida Statutes; payment by City of any costs involved in separate mailings because of non merger of any non-ad valorem special assessment roll as certified by the City of Cape Coral or his or her designee, pursuant to Section 197.3632(7), Florida Statutes, and reimbursement by City for necessary administrative costs, including, but not limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage and programming which attend all of the collection and enforcement duties imposed upon the Tax Collector by the uniform methodology, as provided in Section 197.3632(2), Florida Statutes.

SECTION IV

Term

The term of this Agreement shall commence upon execution, effective for the 20______ tax notice purposes, and shall continue and extend uninterrupted from year to year, automatically renewed for successive periods not to exceed one (1) year each, unless City shall inform the Tax Collector, as well as the Property Appraiser and the Department of Revenue by January 10 of each calendar year, if City intends to discontinue to use the uniform methodology for such "Assessments" pursuant to Section 197.3632(6), Florida Statutes, and Rule 12D-18.006(3), Florida Administrative Code, using Form DR-412 promulgated by the Florida Department of Revenue.

SECTION V

Duties and Responsibilities of City

City agrees covenants and contracts to:

1. Compensate the Tax Collector for actual collection costs incurred pursuant to Section 197.3632(8)(c), Florida Statutes, and 12D-18.004(2), Florida Administrative Code.

- 2. Reimburse Tax Collector for necessary administrative costs for the collection and enforcement of the "Assessments" by the Tax Collector under the uniform methodology, pursuant to Section 197.3632(2), Florida Statutes, and Rule 12D-18.004(2), Florida Administrative Code, to include, but not be limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage and programming.
- 3. To pay for or alternatively to reimburse the Tax Collector for any separate tax notice necessitated by the inability of the Tax Collector to merge the non-ad valorem special assessment roll certified by City pursuant to Section 197.3632(7), Florida Statutes, and Rule 12D-18.004(2), Florida Administrative Code.
- 4. The Tax Collector shall collect from the City all costs associated with the collection of the non-ad valorem special assessments for each year. Current estimated annual collection cost is \$1.45 per parcel and is subject to change based upon actual expenditures.
- 5. City shall be directly responsible for any requirements and costs associated with advertising relating to implementation of the uniform non-ad valorem special assessment law pursuant to Sections 197.3632 and 197.3635, Florida Statutes, and Rule 12D-18.004(2), Florida Administrative Code.
- 6. By September 15 of each calendar year, the Mayor of the City of Cape Coral, or his or her designee, shall certify, using DR Form 408, to the Tax Collector the non-ad valorem special assessment ("Assessment") roll on compatible electronic medium, tied to the property parcel identification number and otherwise in conformance with the ad valorem tax rolls submitted by the Property Appraiser in July to the Department of Revenue. City or its agent on behalf of City shall post the non-ad valorem special assessment for each parcel on the said non-ad valorem special assessment roll and shall exercise its responsibility that such non-ad valorem special assessment roll be free of errors and omissions. Section 197.3632(10), Florida Statutes, and Rule 12D-18.006, Florida Administrative Code.
- 7. City agrees to abide by and implement its duties under the uniform law pursuant to all the provisions of Sections 197.3632 and 197.3635, Florida Statutes, or its successor of statutory provisions and all applicable rules promulgated by the Department of Revenue and their successor rules.
- 8. City acknowledges that the Tax Collector has no duty, authority or responsibility in the imposition and levy of any non-ad valorem special assessments, including the City's "Assessments" and that it is the sole responsibility and duty of City to follow all procedural and substantive requirements for the levy and imposition of constitutionally lienable non-ad valorem special assessments, including the "Assessments".

9. To the extent permitted by law (Section 768.28, Florida Statutes), the City shall indemnify and hold harmless Tax Collector to the extent of any legal action which may be filed in local, state or federal courts against Tax Collector regarding the imposition, levy, roll preparation and certification of the "Assessments"; City shall pay for or reimburse Tax Collector for fees for legal services rendered to Tax Collector with regard to any such legal action.

SECTION VI

Duties of the Tax Collector

- 1. The Tax Collector shall merge timely the legally certified "Assessment" roll of the City with all non-ad valorem special assessment rolls, merge said rolls with the tax roll, prepare a collection roll and prepare a combined notice (the tax notice) for both ad valorem taxes and non-ad valorem special assessments for all levying authorities (all the local governments) within the Lee County Political Subdivision, pursuant to Sections 197.3632 and 197.3635, Florida Statutes, and its successor provisions and any applicable rules, and their successor rules, promulgated by the Department of Revenue, and in accordance with any specific ordinances or resolutions adopted by City, so long as said ordinances and resolutions shall themselves each and every one clearly state intent to use the uniform method for collecting such assessments and so long as they are further not inconsistent with, or contrary to, the provisions of sections 197.3632 and 197.3635, Florida Statutes, and their successor provisions, and any applicable rules.
- 2. The Tax Collector shall collect the "Assessments" of City as certified by the City of Cape Coral, or his or her designee, to the Tax Collector no later than September 15 of each calendar year on compatible electronic medium, tied to the property identification number for each parcel, and in the format used in July by the Property Appraiser for the ad valorem rolls submitted to the Department of Revenue, using DR Form 408, and free of errors and omissions.
- 3. The Tax Collector shall disburse funds due to the City hereunder in accordance with the provisions of F.S. 197.383, as amended from time to time. All costs associated with the collection of the non-ad valorem special assessments shall be deducted from the second and third distributions prior to remittance of the proceeds to the City.
- 4. The Tax Collector agrees to cooperate with City in implementation of the uniform methodology for collecting "Assessments" pursuant to Sections 197.3632 and 197.3635, Florida Statutes, and any successor provisions and applicable rules. The Tax Collector shall not accept any non-ad valorem special assessment roll for the "Assessments" of City that is not officially, timely and legally certified to the Tax Collector pursuant to Chapter 197, Florida Statutes, and Rule 12D-18, Florida Administrative Code.

- 5. If the Tax Collector discovers errors or omissions on such roll, the Tax Collector may request City to file a corrected roll or a correction of the amount of any assessment and City shall bear the cost of any such error or omission.
- 6. If Tax Collector determines that a separate mailing is authorized pursuant to Section 197.3632(7), Florida Statutes, and any applicable rules promulgated by the Department of Revenue, and any successor provision to said law or rules, the Tax Collector shall either mail a separate notice of the particular non-ad valorem special assessment ("Assessment") or shall direct City to mail such a separate notice. In making this decision, the Tax Collector shall consider all costs to City and to the taxpayers of such a separate mailing as well as the adverse effect to the taxpayers of delay in multiple notices. Tax Collector shall have sole discretion in making such decision. If such a separate mailing is affected, City shall bear all costs associated with the separate notice for the non-ad valorem special assessment that could not be merged, and all such costs shall be deducted from the second and third distributions prior to remittance of the proceeds to the City.

SECTION VII

Good Faith, Severability, Governing Law and Notice

- 1. The parties shall perform all their obligations under this Agreement in accordance with good faith and prudent practice.
- 2. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and may not be amended, modified or rescinded unless otherwise provided in this Agreement, except in writing and signed by all the parties hereto. Should any provision of this Agreement be declared to be invalid, the remaining provisions of this Agreement shall remain in full force and effect, unless such provision is found to be invalid, altering substantially the benefits of the Agreement for either of the parties or rendering the statutory and regulatory obligations unperformable.
- 3. This Agreement shall be governed by the laws of the State of Florida.
- 4. Written notice shall be given to the parties at the following addresses or such other place or person as each of the parties shall designate by similar notice:
 - a. As to Tax Collector:

Larry D. Hart Lee County Tax Collector 2480 Thompson Street Fort Myers, FL 33901 b. As to City:

Victoria Bateman, Director **Financial Services Department** City of Cape Coral 1015 Cultural Park Boulevard PO Box 150027 Cape Coral, FL 33915-0027

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and such of them as are corporations have caused these presents to be signed by their duly authorized officers.

ATTEST

LEE COUNTY TAX COLLECTOR

By: ______ Larry D. Hart

Date: _____

ATTEST

Date: _____

Item A.(6) Number: 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Public Hearings





TITLE:

Resolution 123-18 1st Public Hearing Adopting the Program Year 2018-2019 Community Development Block Grant Action Plan

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
	No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS: N/A

SUMMARY EXPLANATION AND BACKGROUND:

This item requires two public hearings. The City anticipates receiving \$\$1,063,955 in Community Development Block Grant funds for the fiscal year 2018-2019 and \$215,000 in carryover funding from previous years. The City must submit an annual Action Plan to the US Department of Housing and Urban Development by August 15, 2018. The Action Plan outlines the City's funding priorities and allocates funds to local not-for-profit agencies and City Departments. The resolution adopts the Action Plan, directs the City Manager to prepare all necessary documents for the submission of the Action Plan, authorizes and directs the City Manager to accept and execute the grant agreement when received from the U.S. Department of Housing and Urban Development, and authorizes the City Manager to execute subrecipient agreements with the agencies and departments listed in the Action Plan. Department of Community Development Planning Staff will provide a brief presentation of the proposed allocation amounts at the first public hearing.

LEGAL REVIEW:

EXHIBITS: Resolution 123-18

PREPARED BY:

Amy Yearsley D

Division- Planning

Department-Community Development

SOURCE OF ADDITIONAL INFORMATION:

Amy Yearsley, AICP Housing Coordinator

ATTACHMENTS:

Description

Туре

- Resolution 123-18
- Presentation

Resolution Backup Material

RESOLUTION 123 – 18

A RESOLUTION ADOPTING THE 2018-2019 ONE YEAR ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ENTITLEMENT PROGRAM, AUTHORIZING AND DIRECTING THE CITY MANAGER TO PREPARE AND SUBMIT THE ONE YEAR ACTION PLAN FOR THE 2018-2019 FISCAL YEAR, TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD); AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ACCEPT AND EXECUTE THE GRANT AGREEMENT FOR THE 2018-2019 CDBG PROGRAM WHEN RECEIVED FROM HUD; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ACCEPT AND EXECUTE GRANT AGREEMENTS WITH SUBRECIPIENTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the United States Department of Housing and Urban Development (HUD), as provided under Title I of the Cranston-Gonzalez National Affordable Housing Act and within 24 CFR Parts 91, and 570 require all entitlement municipalities to prepare a Consolidated Plan for a five-year period, including an annual Action Plan for the Community Development Block Grant (CDBG) Program; and

WHEREAS, the City anticipates an allocation of \$1,063,955 for its 2018-2019 CDBG Entitlement Program for the United States Department of Housing and Urban Development (HUD), to be used for the implementation of the One Year Action Plan strategies; and

WHEREAS, the City has carryover CDBG funds in the amount of \$215,000 from previous years funding, to be used for the implementation of the Once Year Action Plan strategies; and

WHEREAS, a Citizen's Participation Plan is part of the Consolidated Plan which provides for public input and participation in the plan development process; and

WHEREAS, the City has provided for public comment and participation in the Annual Action Plan process by conducting two public hearings and has provided a thirty-day period for public comment on the One Year Action Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA:

Section 1. That the City Council for the City of Cape Coral hereby adopts the 2018-2019 Action Plan. Copies of the plans are attached hereto and incorporated herein by reference.

Section 2. The City Council authorizes and directs the City Manager or his Designee to prepare all required materials necessary for the submission of the 2018-2019 One Year Action Plan and to make application to the U.S. Department of Housing and Urban Development.

Section 3. The City Council authorizes and directs the City Manager or his Designee to accept and execute the grant agreement upon receipt from HUD for the 2018-2019 Program Year on behalf of the City.

Section 4. The City Council authorizes and directs the City Manager or his Designee to accept and authorize all grant agreements with subrecipients, pursuant to execution of the grant agreement with HUD.

Section 5. Effective Date. This Resolution shall take effect immediately upon its adoption by the Cape Coral City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	 NELSON	
GUNTER	 STOKES	
CARIOSCIA	 WILLIAMS	
STOUT	COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM, CITY CLERK

APPROVED AS TO FORM:

-Menende Stores (1 DOLORES D. MENENDEZ

CITY ATTORNEY res/CDBG Action Plan 2018-2019



ANNUAL ACTION PLAN FY 2018-2019 for submittal to US Department of HUD

Public Comment 1.1 DRAFT 5/21/2018

Joe Coviello, Mayor John Gunter, Councilmember, District 1 John Carioscia, Councilmember, District 2 Marilyn Stout, Councilmember, District 3 Jennifer Nelson, Councilmember, District 4 Dave Stokes, Councilmember, District 5 Rick Williams, Councilmember, District 6 Jessica Cosden Councilmember, District 7

John Szerlag, City Manager

Citizen Advisory Board(CAB) for Community Development Block Grant Maria Chevalier Carmen Salome Arnold Small Pati Smith Robert Renshaw

Contact Person: Amy Yearsley, AICP, Housing Coordinator Address: Department of Community Development City of Cape Coral PO Box 150027 Cape Coral, Florida 33915-0027 Telephone: 239-573-3182 Email: <u>ayearsle@capecoral.net</u>

> Annual Action Plan 2018

Executive Summary

AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

1. Introduction

As a recipient of federal grant funds, the City of Cape Coral is required by the US Department of Housing and Urban Development (HUD) to produce a Consolidated Plan and Annual Action Plan. These documents have been prepared by the City's Department of Community Development – Planning Division. These plans serve as the application for funding for the Community Development Block Grant which is a federal entitlement program that serves low-income individuals and/or families.

The City of Cape Coral's Five-Year Consolidated Plan identifies the community's affordable housing, community development and economic development needs and outlines a comprehensive and coordinated strategy for addressing them. This document includes narrative responses to specific questions that grantees must respond to be compliant with the Consolidated Planning Regulations. The One Year Action Plan specifically describes activities that will be funded to meet the affordable housing, community development and economic development needs in the City of Cape Coral.

2. Summarize the objectives and outcomes identified in the Plan

This could be a restatement of items or a table listed elsewhere in the plan or a reference to another location. It may also contain any essential items from the housing and homeless needs assessment, the housing market analysis or the strategic plan.

Increase Access to Affordable Housing

- Fund activities that expand the supply and improve the condition of housing affordable to lower income households.
- Extend the useful life of existing affordable housing through weatherization, repair, and rehabilitation programs.
- Fund activities that leverage other public and private resources such as Low Income Tax Credit Projects.

Increase Access to Public Services

• Fund projects that provide supportive services to low and moderate income household as well as persons with special needs.

Increase Economic Opportunity

• Provide funding to support expanded economic opportunity to low income residents within the City of Cape Coral.

Decrease Homelessness

• Provide funding to increase permanent supportive housing opportunities and work to create a stronger network of providers of supportive and mainstream services to homeless clients in Cape Coral.

Improvements to Public Facility and Infrastructure

• Fund non-housing community development proposals that eliminate a threat to public health and safety to include pedestrian safety (i.e. sidewalks).

3. Evaluation of past performance

This is an evaluation of past performance that helped lead the grantee to choose its goals or projects.

Each year, the City reports its progress in meeting the five-year and annual goals in the Consolidated Annual Performance Evaluation Report (CAPER). The City has consistently satisfied program mandates and expended funds in a timely manner. Further, Cape Coral has successfully targeted funds to benefit low and moderate income persons and communities. Copies of the CAPER and HUD's Annual Assessment (the response to the City's CAPER) are available through the City of Cape Coral's Department of Community Development.

4. Summary of Citizen Participation Process and consultation process

Summary from citizen participation section of plan.

The City of Cape Corals' Action Plan PY 2018 was developed through collaborative effort of public, private and non-profit organizations. The City's Citizens' Advisory Board-Community Development Block Grant (CAB-CDBG) held two meetings to solicit citizen input and comments. All meeting notices were published in the local newspapers and meeting invitations were sent to social service agencies that serve low income people in the City of Cape Coral.

There were total of four public meetings/hearings to solicit public input and comments. Additionally, the draft one year action plan and recommended funding levels were posted on the City of Cape Coral website at www.capecoral.net for a period of thirty-days and a notice of availability for public comment was placed in the Fort Myers News Press.

5. Summary of public comments

This could be a brief narrative summary or reference an attached document from the Citizen Participation section of the Con Plan.

No comments were received at the time of submittal.

6. Summary of comments or views not accepted and the reasons for not accepting them

No comments were received at time of submittal.

PR-05 Lead & Responsible Agencies – 91.200(b)

1. Agency/entity responsible for preparing/administering the Consolidated Plan

Describe the agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

AGENCY ROLE	DEPARTMENT/AGENCY
LEAD ENTITY	DEPARTMENT OF COMMUNITY DEVELOPMENT/PLANNING DIVISION
CDBG ADMINISTRATOR	DEPARTMENT OF COMMUNITY DEVELOPMENT/PLANNING DIVISION

Table 1 – Responsible Agencies

Narrative (optional)

The City of Cape Coral Department of Community Development - Planning Division is responsible for the planning and coordination of the City's Five-Year Consolidated Plan including Annual Action Plans. This office operates and administers the City's Community Development Block Grant (CDBG), Neighborhood Stabilization Program (NSP), and state affordable housing (State Housing Initiatives Partnerships) programs.

Consolidated Plan Public Contact Information

Amy Yearsley Housing Coordinator City of Cape Coral Department of Community Development Planning Division PO Box 150027, Cape Coral, FL 33915-0027 Ayearsle@capecoral.net

AP-10 Consultation - 91.100, 91.200(b), 91.215(l)

1. Introduction

Provide a concise summary of the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(I))

The City of Cape Coral's Department of Community Development/Planning Division has developed and managed strong partnerships and relationships to enhance coordination between service providers. Entities participating in the process include multiple providers of services from various disciplines. These include agencies, organizations, groups with expertise in case management, life skills, alcohol and/or drug abuse, mental health, housing, public housing, employment assistance, transportation, legal, elderly, food/clothing, and domestic violence.

The jurisdiction's consultation with these providers involved scoping sessions, surveys, interviews, and public meetings. These methods of coordination not only imparted information to the various groups but also presented opportunities for criticisms, questions, and feedback. Outside of the Consolidated Planning process, the City annually holds workshops for agencies to discuss needs within the community. Often these workshops lead to agencies collaborating on services, exchanging information, or providing referrals. By continuing to offer these workshops and other opportunities the City anticipates outcomes including, but not limited to, improved lines of communication, increased collaboration, and enriched citizen participation.

Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.

The City of Cape Coral is part of the Lee County Continuum of Care (CoC). The Lee County Human Services Department serves as the lead agency for the County's Continuum of Care (CoC). Through this collaboration, the City ensures that CoC goals and the City's Consolidated Plan priorities are integrated into the plan.

Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS.

While the City of Cape Coral does not receive ESG funds, the City's Housing Coordinator sits as a member of the Lee County Continuum of Care (CoC) Governing Board. The Governing Board is responsible for developing performance standards for and evaluation of outcomes of projects and

activities assisted by ESG funds and developing policies and procedures for the operation and administration of HMIS.

2. Describe Agencies, groups, organizations and others who participated in the process and describe the jurisdiction's consultations with housing, social service agencies and other entities.

Table 2 provides a list of agencies that participated in the Consolidated Planning Process. A complete list of participating organizations will be provided as part of the final document.

1	AGENCY/GROUP/ORGANIZATION	COMMUNITY COOPERATIVE
	AGENCY/GROUP/ORGANIZATION TYPE	EMERGENCY ASSISTANCE/COMMUNITY SUPPORT
	WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONSULTATION?	HOMELESSNESS STRATEGY HOMELESS NEEDS - CHRONICALLY HOMELESS HOMELESS NEEDS - FAMILIES WITH CHILDREN HOMELESSNESS NEEDS - VETERANS HOMELESSNESS NEEDS - UNACCOMPANIED YOUTH
	HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSULTED AND WHAT ARE THE ANTICIPATED OUTCOMES OF THE CONSULTATION OR AREAS FOR IMPROVED COORDINATION?	PUBLIC MEETING DATA COLLECTION/INFORMATION INCORPORATION IN PLAN AND DEVELOPMENT OF PRIORITIES

2	AGENCY/GROUP/ORGANIZATION	UNITED CEREBRAL PALSY OF SOUTHWEST FLORIDA, INC.
	AGENCY/GROUP/ORGANIZATION TYPE	SERVICES-PERSONS WITH DISABILITIES SERVICES-HEALTH
	WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONSULTATION?	NON-HOMELESS SPECIAL NEEDS
	HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSULTED AND	PUBLIC MEETING
	WHAT ARE THE ANTICIPATED OUTCOMES OF THE CONSULTATION OR AREAS FOR IMPROVED COORDINATION?	DATA COLLECTION/INFORMATION INCORPORATION IN PLAN AND
		DEVELOPMENT OF PRIORITIES

3	3	AGENCY/GROUP/ORGANIZATION	ABUSE COUNSELING AND TREATMENT
		AGENCY/GROUP/ORGANIZATION TYPE	SERVICES-VICTIMS OF DOMESTIC VIOLENCE
		WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONSULTATION?	HOUSING NEED ASSESSMENT

HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSULTED AND	PUBLIC MEETING
WHAT ARE THE ANTICIPATED OUTCOMES OF THE CONSULTATION OR AREAS FOR IMPROVED COORDINATION?	DATA COLLECTION/INFORMATION INCORPORATION IN PLAN AND DEVELOPMENT OF PRIORITIES

4	AGENCY/GROUP/ORGANIZATION	CAPE CORAL HOUSING DEVELOPMENT CORPORATION
	AGENCY/GROUP/ORGANIZATION TYPE	HOUSING
	WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONSULTATION?	AFFORDABLE HOUSING
	HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSULTED AND	PUBLIC MEETING
	WHAT ARE THE ANTICIPATED OUTCOMES OF THE CONSULTATION OR AREAS FOR IMPROVED COORDINATION?	DATA COLLECTION/INFORMATION INCORPORATION IN PLAN AND DEVELOPMENT OF PRIORITIES

5	AGENCY/GROUP/ORGANIZATION	DEAF SERVICE CENTER OF SWFL, INC
	AGENCY/GROUP/ORGANIZATION TYPE	SERVICES-PERSONS WITH DISABILITIES
	WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONSULTATION?	NON-HOMELESS SPECIAL NEEDS
	HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSULTED AND	PUBLIC MEETING
	WHAT ARE THE ANTICIPATED OUTCOMES OF THE CONSULTATION OR AREAS FOR IMPROVED COORDINATION?	DATA COLLECTION/INFORMATION
		INCORPORATION IN PLAN AND DEVELOPMENT OF PRIORITIES

6	AGENCY/GROUP/ORGANIZATION	CITY OF CAPE CORAL PARKS AND RECREATION
	AGENCY/GROUP/ORGANIZATION TYPE	SERVICES-ELDERLY PERSONS SERVICES-PERSONS WITH DISABILITIES
		SERVICES – TRANSPORTATION
		SERVICES – YOUTH
		INFRASTRUCTURE/FACILITIES
	WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONSULTATION?	NON-HOMELESS SPECIAL NEEDS
	HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSULTED AND	PUBLIC MEETING
	WHAT ARE THE ANTICIPATED OUTCOMES OF THE CONSULTATION OR AREAS FOR IMPROVED COORDINATION?	DATA COLLECTION/INFORMATION
		INCORPORATION IN PLAN AND
		DEVELOPMENT OF PRIORITIES

7	AGENCY/GROUP/ORGANIZATION	DR. PIPER CENTER FOR SOCIAL SERVICES, INC
	AGENCY/GROUP/ORGANIZATION TYPE	SERVICES-CHILDREN SERVICES-ELDERLY PERSONS SERVICES-PERSONS WITH DISABILITIES SERVICES-EMPLOYMENT
	WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONSULTATION?	NON-HOMELESS SPECIAL NEEDS
	HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSULTED AND WHAT ARE THE ANTICIPATED OUTCOMES OF THE CONSULTATION OR AREAS FOR IMPROVED COORDINATION?	PUBLIC MEETING

8	AGENCY/GROUP/ORGANIZATION	HABITAT FOR HUMANITY OF LEE AND HENDRY COUNTIES
	AGENCY/GROUP/ORGANIZATION TYPE	HOUSING
	WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONSULTATION?	AFFORDABLE HOUSING
	HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSULTED AND	PUBLIC MEETING
	WHAT ARE THE ANTICIPATED OUTCOMES OF THE CONSULTATION OR AREAS FOR IMPROVED COORDINATION?	DATA COLLECTION/INFORMATION INCORPORATION IN PLAN AND
		DEVELOPMENT OF PRIORITIES

9	AGENCY/GROUP/ORGANIZATION	GOODWILL INDUSTRIES OF SW FLORIDA
	AGENCY/GROUP/ORGANIZATION TYPE	HOUSING
		SERVICES-EMPLOYMENT
		ECONOMIC DEVELOPMENT
	WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONSULTATION?	
	HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSULTED AND WHAT	PUBLIC MEETING
	ARE THE ANTICIPATED OUTCOMES OF THE CONSULTATION OR AREAS FOR	DATA/INFORMATION FOR
	IMPROVED COORDINATION?	INCORPORATION IN PLAN AND
		DEVELOPMENT OF PRIORITIES

¹⁰ AGENCY/GROUP/ORGANIZATION	CITY OF CAPE CORAL – PUBLIC WORKS
AGENCY/GROUP/ORGANIZATION TYPE	PUBLIC FACILITIES/INFRASTRUCTURE
WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONS	SULTATION?
HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSUME WHAT ARE THE ANTICIPATED OUTCOMES OF THE CONSU AREAS FOR IMPROVED COORDINATION?	

AGENCY/GROUP/ORGANIZATION	COMMUNITY CARING CENTER
Annual Act	tion Plan 9
201	.8

11	AGENCY/GROUP/ORGANIZATION TYPE	EMERGENCY ASSISTANCE/COMMUNITY SUPPORT		
	WHAT SECTION OF THE PLAN WAS ADDRESSED BY CONSULTATION?	HOMELESSNESS STRATEGY HOMELESS NEEDS - CHRONICALLY HOMELESS HOMELESS NEEDS - FAMILIES WITH CHILDREN HOMELESSNESS NEEDS - VETERANS HOMELESSNESS NEEDS - UNACCOMPANIED YOUTH		
	HOW WAS THE AGENCY/GROUP/ORGANIZATION CONSULTED AND WHAT ARE THE ANTICIPATED OUTCOMES OF THE CONSULTATION OR AREAS FOR IMPROVED COORDINATION?	PUBLIC MEETING DATA/INFORMATION FOR INCORPORATION IN PLAN AND DEVELOPMENT OF PRIORITIES		

Table 2 – Agencies, groups, organizations who participated

Identify any Agency Types not consulted and provide rationale for not consulting

Efforts were made to consult as broadly as possible with community stakeholders. No agency types were excluded from participation.

Other local/regional/state/federal planning efforts considered	ed when preparing the Plan
--	----------------------------

NAME OF PLAN	LEAD ORGANIZATION	HOW DO THE GOALS OF YOUR STRATEGIC PLAN OVERLAP WITH THE GOALS OF EACH PLAN?
CONTINUUM OF CARE	LEE COUNTY DEPARTMENT	NOT APPLICABLE.
	OF HUMAN SERVICES	
LEE COUNTY REGIONAL	CITY OF CAPE CORAL, CITY	GOALS WITHIN THE STRATEGIC PLAN COORDINATE AND
ANALYSIS OF	OF FORT MYERS, LEE	ENHANCE THE GOALS AND OBJECTIVES OUTLINED IN THIS
IMPEDIMENTS	COUNTY	PLAN TO AFFIRMATIVELY FURTHER FAIR HOUSING CHOICE.
CITY OF CAPE CORAL	CITY OF CAPE CORAL	GOALS WITHIN THE STRATEGIC PLAN COORDINATE AND
COMPREHENSIVE PLAN		ENHANCE THE GOALS AND OBJECTIVES OUTLINED IN THIS
		PLAN'S HOUSING ELEMENT.

Table 3 – Other local / regional / federal planning efforts

AP-12 Participation – 91.105, 91.200(c)

1. Summary of citizen participation process/Efforts made to broaden citizen participation Summarize citizen participation process and how it impacted goal-setting

Citizen participation was achieved through several methods during the Action Plan planning process. The following methods were used to garner public and private input:

On March 14th, there was a meeting of the Citizen's Advisory Board for CDBG which included an opportunity for Comment from Public and Board Members.

On May 16th, there was a meeting of the Citizen's Advisory Board for CDBG. At this meeting, recommended funding levels for the 2018-2019 were made.

From June 4th -July 23rd, the draft Action Plan was made available for public comment at the following locations: City Hall, internet.

On June 4th, City Council held the first public meeting regarding the draft Action Plan which included an opportunity for comment by the public and City Council Members.

On July 23rd, City Council held the final public meeting regarding the draft Action Plan which included an opportunity for comment by the public and City Council Members.

Table 4 below is a summary of public participation in the process. This table will be updated throughout the process.

Mode of Outreach	Target of Outreach	Summary of Response Attendance	Summary of Comments Received	Summary of comments not accepted and reasons	URL (If applicable)
Internet Outreach	Minorities, Non English Speaking, Persons with Disabilities, Non- Targeted/Broad Community, Residents of Public Housing	N/A	None Received	N/A	
Two Public Advertisements	Minorities, Non English Speaking, Persons with Disabilities, Non- Targeted/Broad Community, Residents of Public Housing	N/A – No Calls or emails received	None Received	N/A	
Public Meeting	Minorities, Non English Speaking, Persons with Disabilities, Non- Targeted/Broad Community, Residents of Public Housing	Citizen's Advisory Board Members (five).	Participants described public service and housing needs in Cape Coral.	N/A	
Public Meeting	Minorities, Non English Speaking, Persons with Disabilities, Non- Targeted/Broad Community, Residents of Public Housing	Citizen's Advisory Board Members (five).	Participants described public service and housing needs in Cape Coral.	N/A	
Public Hearing	Minorities, Non English Speaking, Persons with Disabilities, Non- Targeted/Broad Community, Residents of Public Housing	City Council			
Public Hearing	Minorities, Non English Speaking, Persons with Disabilities, Non- Targeted/Broad Community, Residents of Public Housing	City Council			

Table 4 – Citizen Participation Outreach

Expected Resources

AP-15 Expected Resources – 91.220(c) (1, 2)

Priority Table

Program	Source	Uses of Funds	Expe	cted Amour	t Available Ye	ear 3	Expected	Narrative
	of		Annual	Program	Prior Year	Total:	Amount	Description
	Funds		Allocation:	Income:	Resources:	\$	Available	
			\$	\$	\$		Reminder	
							of	
							ConPlan \$	
CDBG	public	Acquisition						CDBG FUNDS
	-	Admin and						WILL BE
	federal	Planning						UTILIZED IN
		Economic						ACCORDANCE
		Development						WITH THIS PLAN
		Housing						TO FURTHER
		Public						ADDRESS
		Improvements						COMMUNITY
		Public Services						DEVELOPMENT,
								HOUSING, AND
								PUBLIC SERVICE
								NEEDS IN CAPE
			1,063,955	100,000	215,000	1,378,955	2,127,910	CORAL.
Other	public	Acquisition						REMAINING NSP
	-	Admin and						FUNDS WILL BE
	federal	Planning						UTILIZED TO
		Housing						ADDRESS
								AFFORDABLE
								HOUSING ISSUES
			0	0	250,000	250,000	0	IN CAPE CORAL.
Other	public	Acquisition/New						STATE HOUSING
	- state	Construction						INITIATIVE
		Housing						PARTNERSHIP
								(SHIP) PROGRAM
								FUNDS WILL BE
								UTILIZED TO
								ADDRESS
								AFFORDABLE
								HOUSING ISSUES
			250,505	0	0	704,284	954,789	IN CAPE CORAL.

Table 5 - Expected Resources – Priority Table

Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied

No matching requirements are required for the CDBG program. The City leverages CDBG program funds with the State Housing Initiative Partnership (SHIP) Program for its affordable housing programs including owner-occupied rehabilitation, acquisition/rehabilitation and new construction. Additionally, the City's Neighborhood Stabilization Programs (1 and 3) continue to generate program income. These funds will be used solely and leveraged with the State Housing Initiative Partnership (SHIP) Program for the acquisition/rehabilitation of single family homes and new construction. The City will continue to monitor new and existing funding sources that could be utilized to fulfill the goals and objectives of the Consolidated Plan. This includes supporting applications of other entities for funding under competitive grant programs wherever possible.

If appropriate, describe publicly owned land or property located within the jurisdiction that may be used to address the needs identified in the plan

While the City has a large inventory of publicly owned land/property within the jurisdiction, these properties are generally earmarked for capital projects such as road expansions, stormwater retention, lift stations, etc. However, the City is required by state law to review its inventory triennially to determine if any surplus property should be made available for affordable housing. In the last review conducted in 2016, seven (7) properties were identified and earmarked for affordable housing. Three of these properties were donated to Cape Coral Housing Development Corporation for the development of affordable single family homes. The remaining properties were donated to Habitat for Humanity for the development of affordable single family homes.

Annual Goals and Objectives

AP-20 Annual Goals and Objectives - 91.420, 91.220(c)(3)&(e)

Goals Summary Information

Sort	Goal Name	Start	End	Category	Geographic	Needs Addressed	Funding	Goal Outcome Indicator
Order		Year	Year		Area			
1	Rehabilitation of Existing Owner	2015	2019	Affordable Housing	City of Cape	Increase Access to	CDBG: \$250,000	Homeowner Housing Rehabilitated: 14
	Occupied Units				Coral	Affordable Housing	State Housing Initiative	Household Housing Unit
							Partnership Program	
							(SHIP): \$250,454	
2	Acquisition/Rehabilitation of	2015	2019	Affordable Housing	City of Cape	Increase Access to	CDBG: \$432,750	Direct Financial Assistance to
	Single Family Homes				Coral	Affordable Housing	Neighborhood Stabilization	Homebuyers: 12 Households Assisted
							Program 1 and 3: \$250,000	
							State Housing Initiative	
							Partnership Program	
							(SHIP): \$486,401	
3	Public Services	2015	2019	Homeless	City of Cape	Increase Access to	CDBG: \$159,593	Public service activities other than
				Non-Homeless	Coral	Public Service		Low/Moderate Income Housing Benefit:
				Special Needs		Activities		2000 Persons Assisted
				Non-Housing				
				Community				
				Development				
4	Economic Development	2015	2019	Non-Housing	City of Cape	Increase Economic	CDBG: \$39,321	Other: 15 Other
				Community	Coral	Opportunity		
				Development				
5	Infrastructure Improvement	2018	2018	Public Facilities	City of Cape	Provide for	CDBG: \$184,500	Public facility or infrastructure activities
					Coral	Infrastructure		other than low/moderate income housing
						Improvement(s)		benefit: 1000 persons assisted

Table 6 – Goals Summary

Goal Descriptions

1	GOAL NAME	REHABILITATION OF EXISTING OWNER OCCUPIED UNITS			
	GOAL DESCRIPTION	ASSIST LOW INCOME HOMEOWNERS WITH HEALTH, SAFETY, AND/OR WELFARE RELATED REPAIRS TO THEIR HOMES. THIS MAY INCLUDE MANDATORY CONNECTION TO CITY WATER AND SEWER.			
2	ACQUISITION/REHABILITATION OF SINGLE FAMILY HOMES				
GOAL ACQUISITION/REHABILITATION OF EXISTING SINGLE FAMILY HOMES FOR RESALE TO LOW INCOME HOUSEHOLDS. DESCRIPTION EXAMPLE A COMPARISON OF EXISTING SINGLE FAMILY HOMES FOR RESALE TO LOW INCOME HOUSEHOLDS.					
3	GOAL NAME	PUBLIC SERVICES			
	GOAL DESCRIPTION	FUND A VARIETY OF PUBLIC SERVICE ACTIVITIES THAT AID LOW INCOME RESIDENTS.			
4	GOAL NAME ECONOMIC DEVELOPMENT				
	GOAL DESCRIPTION	PROVIDE MICROENTERPRISE ASSISTANCE TO LOW INCOME PERSONS.			
5	INFRASTRUCTURE IMPROVEMENT				
	GOAL DESCRIPTION	PROVISION OF SIDEWALKS IN A PREDOMINATELY LOW INCOME BLOCK GROUP THAT IS PRIMARILY RESIDENTIAL IN NATURE.			

Table 7 – Goal Descriptions

Estimate the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined by HOME 91.215(b):

It is estimated that 6 income qualified households will purchase affordable housing during the program year. Housing activities have a two year contract period.

AP-35 Projects - 91.220(d)

Introduction

The Strategic Plan outlined five (5) priorities identified during the extensive planning process and the strategies for addressing these priorities. The following is a summary of the priorities identified in the Strategic Plan:

Increase Access to Affordable Housing

- Fund activities that expand the supply and improve the condition of housing affordable to lower income households.
- Extend the useful life of existing affordable housing through weatherization, repair, and rehabilitation programs.
- Fund activities that leverage other public and private resources such as Low Income Tax Credit Projects.

Increase Access to Public Services

• Fund projects that provide supportive services to low and moderate income household as well as persons with special needs.

Increase Economic Opportunity

• Provide funding to support expanded economic opportunity to low income residents within the City of Cape Coral.

Decrease Homelessness

- Provide public service funding to agencies that provide homeless or homeless prevention services.
- Provide funding to increase permanent supportive housing opportunities and work to create a stronger network of providers of supportive and mainstream services to homeless clients in Cape Coral.

Provide for Infrastructure Improvement(s)

• Fund non-housing community development proposals that eliminate a threat to public health and safety to include pedestrian safety (i.e. sidewalks).

During Program Year 2018, the City of Cape Coral will undertake the following projects to implement

these strategies.

#	PROJECT NAME
1	ADMINISTRATION
2	HOUSING REHABILITATION
3	HOMEOWNERSHIP
4	MICROENTERPRISE ASSISTANCE
5	DOMESTIC VIOLENCE SERVICES
6	CAPE CORAL CARING CENTER - PUBLIC SERVICES
7	TRANSPORTATION SERVICES
8	CHILD CARE SERVICES
9	UTILITY ASSISTANCE
10	HANDICAPPED SERVICES
11	SENIOR SERVICES
12	EMPLOYMENT TRAINING (GENERAL)
13	INFRASTRUCTURE IMPROVEMENTS

Table 8 – Project Information

Describe the reasons for allocation priorities and any obstacles to addressing underserved needs

Projects chosen for funding were based on priorities established in the Consolidated Plan.

The main obstacle to meeting under-served needs is primarily that the needs outweigh the available financial resources. The City will continue to explore ways to leverage funding and partnership with other agencies to accomplish its housing and community development goals.

Projects

AP-38 Projects Summary

Project Summary Information

1	PROJECT NAME	ADMINISTRATION		
	TARGET AREA	N/A		
	GOALS SUPPORTED	N/A		
	NEEDS ADDRESSED	N/A		
	FUNDING	CDBG: \$212,791		
	DESCRIPTION	GRANTEE ADMINISTRATION OF THE CDBG PROGRAM.		
	TARGET DATE	9/30/2018		
	ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	NOT APPLICABLE.		
	LOCATION DESCRIPTION	ACTIVITIES WILL TAKE PLACE AT CAPE CORAL CITY HALL LOCATED AT 1015 CULTURAL PARK BLVD. CAPE CORAL, FL 33990		
	PLANNED ACTIVITIES	ADMINISTRATIVE ACTIVITIES REQUIRED TO MANAGE THE CDBG PROGRAM. FUNDS WILL BE UTILIZED FOR SALARY AND OPERATING.		

2	PROJECT NAME	HOUSING REHABILITATION
	TARGET AREA	CITY OF CAPE CORAL
	GOALS SUPPORTED	REHABILITATION OF EXISTING OWNER OCCUPIED UNITS
	NEEDS ADDRESSED	INCREASE ACCESS TO AFFORDABLE HOUSING
	FUNDING	CDBG: \$250,000
	DESCRIPTION	THIS PROJECT HAS ONE ACTIVITY: OWNER OCCUPIED REHABILITATION. HOME REPAIRS RELATED TO HEALTH, SAFETY, WELFARE ARE PROVIDED TO LOW INCOME HOMEOWNERS.
	TARGET DATE	9/30/2020
	ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	IT IS ESTIMATED THAT 14 HOUSEHOLDS WILL BE ASSISTED WITH THIS PROJECT.
	LOCATION DESCRIPTION	THIS IS A SCATTERED SITE PROJECT LOCATED THROUGHOUT THE CITY OF CAPE CORAL.
	PLANNED ACTIVITIES	OWNER OCCUPIED REHABILITATION

3	PROJECT NAME	HOMEOWNERSHIP
	TARGET AREA	CITY OF CAPE CORAL
	GOALS SUPPORTED	ACQUISITION/REHABILITATION OF SINGLE FAMILY HOMES
	NEEDS ADDRESSED	INCREASE ACCESS TO AFFORDABLE HOUSING
	FUNDING	CDBG: \$432,750
	DESCRIPTION	PROJECT WILL COMPRISE OF THE REHABILITATION OF PROPERTIES FOR SALE TO LOW/MODERATE INCOME HOUSEHOLDS. PROJECT WILL ALSO ASSIST WITH DOWNPAYMETN CLOSING COST ASSISTANCE
	TARGET DATE	9/30/2020
	ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	IT IS ESTIMATED THAT 8 HOUSEHOLDS WILL BE ASSISTED
	LOCATION DESCRIPTION	THIS IS A SCATTERED SITE PROJECT. PROPERTIES WILL BE LOCATED THROUGHOUT THE CITY OF CAPE CORAL.
	PLANNED ACTIVITIES	CCHDC HOMEOWNERSHIP
		HABITAT FOR HUMANITY HOMEOWNERSHIP
		CCHDC DOWNPAYMENT/CLOSING COST

4	PROJECT NAME	MICROENTERPRISE ASSISTANCE
	TARGET AREA	CITY OF CAPE CORAL
	GOALS SUPPORTED	ECONOMIC DEVELOPMENT
	NEEDS ADDRESSED	INCREASE ECONOMIC OPPORTUNITY
	FUNDING	CDBG: \$40,000
	DESCRIPTION	GOODWILL INDUSTRIES OF SWFL WILL PROVIDE MICROENTERPRISE TRAINING TO LOW INCOME PERSONS.
	TARGET DATE	9/30/2018
	ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	IT IS ESTIMATED THAT TEN LOW INCOME PERSONS WILL BE ASSISTED WITH THIS PROJECT.
	LOCATION DESCRIPTION	VARIOUS LOCATIONS
	PLANNED ACTIVITIES	GOODWILL MICROENTERPRISE

5	PROJECT NAME	DOMESTIC VIOLENCE SERVICES
	TARGET AREA	CITY OF CAPE CORAL
	GOALS SUPPORTED	PUBLIC SERVICES
	NEEDS ADDRESSED	DECREASE HOMELESSNESS
	FUNDING	CDBG: \$33,885

DESCRIPTION	ABUSE COUNSELING AND TREATMENT WILL PROVIDE SHELTER TO VICTIMS OF DOMESTIC VIOLENCE. ACTIVITIES WILL TAKE PLACE AT THE CAPE CORAL SHELTER
TARGET DATE	9/30/2019
ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	IT IS ESTIMATED THAT 175 PERSONS WILL BE ASSISTED THROUGH THIS ACTIVITY
LOCATION DESCRIPTION	ACTIVITIES WILL TAKE PLACE AT THE AGENCY'S CAPE CORAL SHELTER. THE LOCATION OF THIS FACILITY IS CONFIDENTIAL.
PLANNED ACTIVITIES	ABUSE COUNSELING AND TREATMENT

6	PROJECT NAME	CAPE CORAL CARING CENTER - PUBLIC SERVICES
	TARGET AREA	CITY OF CAPE CORAL
	GOALS SUPPORTED	PUBLIC SERVICES
	NEEDS ADDRESSED	INCREASE ACCESS TO PUBLIC SERVICE ACTIVITIES DECREASE HOMELESSNESS
	FUNDING	CDBG: \$21,654
	DESCRIPTION	CAPE CORAL CARING CENTER PROVIDES A VARIETY OF SERVICES TO THE CITY'S LOW INCOME RESIDENTS. ACTIVITIES INCLUDE A FOOD PANTRY, BUS PASSES, UTILITY AND PRESCRIPTION ASSISTANCE
	TARGET DATE	9/30/2019
	ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	APPROXIMATELY 1000 PERSONS WILL BE ASSISTED THROUGH THIS PROJECT.
	LOCATION DESCRIPTION	ACTIVITIES WILL TAKE PLACE AT THE AGENCIES LOCATION AT 4645 SE 15TH AVE, CAPE CORAL, FL 33904
	PLANNED ACTIVITIES	CAPE CORAL CARING CENTER

7	PROJECT NAME	TRANSPORTATION SERVICES
	TARGET AREA	CAPE CORAL
	GOALS SUPPORTED	PUBLIC SERVICES
	NEEDS ADDRESSED	INCREASE ACCESS TO PUBLIC SERVICE ACTIVITIES
	FUNDING	CDBG: \$18,878
	DESCRIPTION	CITY OF CAPE CORAL PARKS AND RECREATION DEPARTMENT WILL PROVIDE FEE ASSISTANCE TO LOW INCOME AND/OR DISABLED PERSONS TO UTILIZE THE CITY'S MINI-BUS PARATRANSIT PROGRAM
	TARGET DATE	9/30/2019

_	HE NUMBER AND TYPE OF HAT WILL BENEFIT FROM THE ACTIVITIES	APPROXIMATELY 100 PERSONS WILL BE ASSISTED THROUGH FEE ASSISTANCE
LOCATION D	DESCRIPTION	400 SANTA BARBARA BLVD, CAPE CORAL, FL 33990
PLANNED A	CTIVITIES	CAPE CORAL PARKS AND RECREATION MINI-BUS

8	PROJECT NAME	CHILD CARE SERVICES
	TARGET AREA	CITY OF CAPE CORAL
	GOALS SUPPORTED	PUBLIC SERVICES
	NEEDS ADDRESSED	INCREASE ACCESS TO PUBLIC SERVICE ACTIVITIES
	FUNDING	CDBG: \$11,772
	DESCRIPTION	PROVIDES FEE ASSISTANCE FOR LOW INCOME FAMILIES PARTICIPATING THE PARKS AND RECREATION DEPARTMENT DAY CARE.
	TARGET DATE	9/30/2019
	ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	AN ESTIMATED 15 FAMILIES WILL BE ASSISTED.
	LOCATION DESCRIPTION	315 SE 2ND AVE, CAPE CORAL, FL 33990
	PLANNED ACTIVITIES	PARKS AND RECREATION - CHILD CARE

9	PROJECT NAME	UTILITY ASSISTANCE
	TARGET AREA	CITY OF CAPE CORAL
	GOALS SUPPORTED	PUBLIC SERVICES
	NEEDS ADDRESSED	INCREASE ACCESS TO PUBLIC SERVICE ACTIVITIES DECREASE HOMELESSNESS
	FUNDING	CDBG: \$17,767
	DESCRIPTION	EMERGENCY ASSISTANCE TO ASSIST LOW INCOME PERSONS WITH DELINQUENT WATER/ELECTRIC BILLS.
	TARGET DATE	9/30/2019
	ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	IT IS ANTICIPATED THAT 20 LOW INCOME HOUSEHOLDS WILL BE ASSISTED THROUGH THIS PROGRAM
	LOCATION DESCRIPTION	1105 CULTURAL PARK BLVD, CAPE CORAL, FL 33990
	PLANNED ACTIVITIES	CCMI-UTILITY ASSISTANCE

10	PROJECT NAME	HANDICAPPED SERVICES	
	TARGET AREA	CITY OF CAPE CORAL	
		Annual Action Plan	22

GOALS SUPPORTED	PUBLIC SERVICES
NEEDS ADDRESSED	INCREASE ACCESS TO PUBLIC SERVICE ACTIVITIES
FUNDING	CDBG: \$31,206
DESCRIPTION	ASSISTANCE TO HANDICAPPED RESIDENTS OF CAPE CORAL
TARGET DATE	9/30/2019
ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	IT IS ANTICIPATED 1002 CAPE CORAL RESIDENTS WILL BE SERVED.
LOCATION DESCRIPTION	VARIOUS LOCATIONS
PLANNED ACTIVITIES	DEAF SERVICE CENTER
	UNITED CEREBRAL PALSY

11	PROJECT NAME	SENIOR SERVICES
	TARGET AREA	CAPE CORAL
	GOALS SUPPORTED	PUBLIC SERVICES
	NEEDS ADDRESSED	INCREASE ACCESS TO PUBLIC SERVICE ACTIVITIES INCREASE ECONOMIC OPPORTUNITY
	FUNDING	CDBG: \$16,656
	DESCRIPTION	ASSISTANCE TO LOW INCOME SENIOR PARTICIPATING IN THE VOLUNTEER GRANDPARENT AND SENIOR COMPANION PROGRAMS
	TARGET DATE	9/30/2019
	ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	AN ESTIMATED 20 LOW INCOME SENIORS WILL RECEIVE MILE REIMBURSEMENT PARTICIPATING IN THE PROGRAM
	LOCATION DESCRIPTION	VARIOUS LOCATIONS
	PLANNED ACTIVITIES	DR. PIPER CENTER

12	PROJECT NAME	EMPLOYMENT TRAINING (GENERAL)
	TARGET AREA	CITY OF CAPE CORAL
	GOALS SUPPORTED	PUBLIC SERVICES
	NEEDS ADDRESSED	INCREASE ACCESS TO PUBLIC SERVICE ACTIVITIES
	FUNDING	CDBG: \$7,775
	DESCRIPTION	GOODWILL WILL PROVIDE EMPLOYMENT TRAINING TO LOW INCOME RESIDENTS.
	TARGET DATE	9/30/2019

ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	IT IS ESTIMATED 10 PEOPLE WILL BE ASSISTED THROUGH THIS PROGRAM
LOCATION DESCRIPTION	1105 CULTURAL PARK BLVD, CAPE CORAL, FL 33990
PLANNED ACTIVITIES	GOODWILL EMPLOYMENT TRAINING

13	PROJECT NAME	SIDEWALKS
	TARGET AREA	CITY OF CAPE CORAL
	GOALS SUPPORTED	INFRASTRUCTURE
	NEEDS ADDRESSED	IMPROVE INFRASTRUCTURE
	FUNDING	CDBG: \$184,500
	DESCRIPTION	PROVIDE SIDEWALKS IN A PRIMARILY RESIDENTIAL LOW MODERATE INCOME BLOCK GROUP.
	TARGET DATE	9/30/2018
	ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	AN ESTIMATED 1,000 LOW INCOME HOUSEHOLDS WILL BE ASSISTED.
	LOCATION DESCRIPTION	CENSUS TRACT 104.12
	PLANNED ACTIVITIES	SIDEWALKS SW 47 th TER

Table 9 – Project Summary

AP-50 Geographic Distribution – 91.220(f)

Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed

All activities will serve residents throughout the City of Cape Coral. As indicated, the City does not have any areas that meet thresholds for low income and minority concentrations. Housing activities will be located on scattered sites throughout the City. Public facility/infrastructure projects will be in low income block groups that meet the City's threshold percentages.

Geographic Distribution

Target Area	Percentage of Funds
City of Cape Coral	100
Low Mod Exception Area Qualified Block Group	

Table 10 - Geographic Distribution

Rationale for the priorities for allocating investments geographically

Currently, HUD sets the low/moderate income exception threshold for the City of Cape Coral at 46.19%. The City of Cape Coral has 31 census block groups that meet the income threshold. However, the minority/low income populations are dispersed throughout the City in such that no one geographic area can meet HUD's jurisdiction requirements of low income or racial/ethnic minority concentration now. Please refer to the maps below for a geographical distribution of the low income and racial/ethnic minority concentrations within the City.

The priorities in the allocation of the resources the City expects to receive would be located throughout the community (citywide). Only 31 census blocks qualify as meeting the low-moderate income criteria as provided in 24 CFR 570.208 (a), (1), (ii). If projects are funded which must meet area low-moderate income area benefit criteria, they will be in these block groups. These block groups will be amended from time to time as new data is provided from the US Department of HUD. See the Table 56 for a list of current low income block groups with corresponding percentages.

The primary distribution of the population benefiting from the grant assistance program will be citywide and in most cases, extremely low, low, and moderate income limited clientele, elderly, handicapped or homeless persons will be served. The City's housing programs are concentrated on scattered sites throughout the City. The priority community development needs and public service locations will be throughout the City.

The City does have one area that has been defined as meeting the state definition of slum and blight. This area is in Southeast Cape Coral and is known as the South Cape Community Redevelopment Area. Eligible activities may occur in this area on projects that address the blighting conditions.

Affordable Housing

AP-55 Affordable Housing – 91.220(g)

Introduction

Stakeholder input during the consolidated planning process indicated a strong need for affordable housing in Cape Coral. This includes both rental and ownership opportunities for our low income population, as well as, the rehabilitation of properties occupied by low income households.

One Year Goals for the Number of Households to be Supported		
Homeless	0	
Non-Homeless	20	
Special-Needs	0	
Total	0	

Table 11 - One Year Goals for Affordable Housing by Support Requirement

One Year Goals for the Number of Households Supported Through		
Rental Assistance	0	
The Production of New Units	0	
Rehab of Existing Units	14	
Acquisition of Existing Units	6	
Total	20	

Table 12 - One Year Goals for Affordable Housing by Support Type

Discussion

Traditionally, the City's affordable housing programs have been focused on affordable homeownership opportunities. This will continue to be the case over the upcoming year. Additionally, recognizing the need for affordable rental programs, the City will examine the feasibility of programs targeted to the City's renter population. Finally, with the City's housing stock aging and a high cost burden amongst homeowners, the City will continue to fund rehabilitation programs (including utility connection assistance).

AP-60 Public Housing – 91.220(h)

Introduction

As indicated in the Consolidated Plan, public housing in Cape Coral is managed by two entities: Lee County Housing Authority and the Housing Authority of the City of Fort Myers. Except for twelve units that are in process for Project Based Housing Assistance, public housing in Cape Coral is limited to Section 8 Housing Choice Vouchers.

Actions planned during the next year to address the needs to public housing

The City of Cape Coral does not anticipate utilizing Community Development Block Grant funds to address the needs to public housing. Public housing needs in Cape Coral are addressed by the Lee County Housing Authority and the Housing Authority of the City of Fort Myers.

Actions to encourage public housing residents to become more involved in management and participate in homeownership

The Housing Authority of the City of Fort Myers offers an array of family self-sufficiency (FSS) and supportive service programs for clients receiving subsidized housing assistance. The family-self sufficiency program is aimed at families who have a desire to achieve economic independence and self-reliance of government assistance programs. Clients living in public housing or who participate on the housing choice voucher program, qualify for the FSS program. While participating in the FSS program, participants work closely with the FSS Coordinator for a period up to five years. With the guidance of the FSS Coordinator, families identify and set goals that promote self-sufficiency. Self-sufficiency activities include but not limited to: obtaining and maintaining suitable employment, participating in employment related services such as resume writing, seek suitable employment, and attend life skills courses. FSS participants also attend financial literacy classes where they learn and become familiar with key objectives such as establishing credit, budgeting, savings, and loans.

Through the Senior Service Coordinator (SSC), HACFM provides case management and outreach services for elderly and individuals with disabilities who are age 55 or older. The SSC works closely with local non-profits, community and faith based organizations, & health providers (e.g. Family Health Centers, HOPE Healthcare, Medi-Care, Senior Friendship Centers, etc.) to provide in-home healthcare, preventative care, and chronic disease management services, all to assist and aid families desiring to live independently in their homes. The SSC aids with coordinating medical appointments, assisting with Medicaid/Medicare eligibility applications, Food stamp applications & recertification, transportation assistance, monthly shopping trips, and social service activities on and off-site.

As a HUD certified counseling agency, HACFM also offers a wide array of housing counseling services for HACFM clients but also clients in the entire Lee County area. Services include pre-purchase counseling, post-purchase counseling, monthly home buyers' education, foreclosure prevention & loss mitigation. The

benefit to clients is that all housing counseling services are offered free of charge to all clients in need.

Additionally, the City will continue to advise the public housing authorities of the availability of the City's affordable housing programs and provide referrals as necessary.

If the PHA is designated as troubled, describe the way financial assistance will be provided or other assistance

Not Applicable.

AP-65 Homeless and Other Special Needs Activities – 91.220(i)

Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

The City supports the efforts of the Lee County Continuum of Care (CoC) to simplify and broaden outreach and assessment efforts for homeless persons in Lee County. Much of the outreach to homeless persons is conducted at community events such as the Point in Time Count and the Stand Down/Service Day. There are also specific special events held for the homeless, including an annual candlelight vigil in memory of the homeless who have died in that past year, which is held annually in December. Additionally, outreach is conducted by the many caseworkers at community agencies, the Lee County Homeless Coalition, schools, and other entities that encounter the homeless during other service delivery or during their regular course of business. Needs are assessed during these points of contact, and referrals are made as appropriate.

Addressing the emergency shelter and transitional housing needs of homeless persons

While the City is not a direct recipient of Emergency Solution Grant funds, the City will continue to partner with the Lee County Continuum of Care (CoC) to support emergency and transitional housing needs of homeless persons in the County. The CoC's goals of providing homeless housing and services primarily through entitlement funding will help to meet needs for emergency housing at the Bob Janes Triage Center and Low Demand Shelter. As funding is available, Lee County may issue a Request for Proposals for the development of these projects or programs and funding then be used by other community partners. Other than the funds available through this process, emergency shelter and transitional housing needs may be addressed through grant funding opportunities, such as the competitive Continuum of Care process, or through other state or local funding streams.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

The City of Cape Coral will support programs and resources to allow formerly homeless and at-risk-of homelessness residents to access to affordable permanent housing. The City's local resources include the federal CDBG and the state SHIP funds.

Local agencies also provide prevention, outreach, assessment and supportive services for homeless Annual Action Plan 29 persons and for residents at-risk of homelessness. Public and private agencies and programs in Lee County provide services including: Mortgage Assistance, Rental Assistance, Utilities Assistance, Foreclosure Prevention, Counseling/Advocacy, and Legal Assistance. Outreach and Assessment for homeless residents is done through Legal Assistance, Street Outreach, Mobile Clinic, and Law Enforcement. Supportive Services for homeless residents include: Counseling/Advocacy, Case Management, Life Skills, Alcohol & Drug Abuse, Mental Health Counseling, Healthcare, HIV/AIDS, Education, Employment, Child Care, and Transportation.

Other than the funds available through this process, permanent housing needs may be addressed through other resources identified elsewhere in this plan, and through other grant funding opportunities, such as the competitive Continuum of Care process, or through other state or local funding streams.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

The Florida Statutes set out state discharge guidelines and notes that the intent of the Legislature is to ensure that persons leaving care and custody are not discharged into homelessness. The Florida State Department of Corrections requires contracted halfway houses in order to secure full employment for clients and to discharge clients into transitional or permanent housing residence. (The Federal Bureau of Prisons *Halfway House Program* has the same requirements.)

Local Policy

The Lee County Homeless Continuum of Care has Memoranda of Understanding on Discharge Planning with the Lee County Sheriff, The Lee Memorial Health System, Saluscare, and the Children's Network of Southwest Florida, LLC.

Several programs and outreach services work to keep persons at, or nearing, the point of discharge from the local jail and sheriff's stockade from becoming homeless and entering the homeless Continuum. Persons discharged from prison have access to the Lee County Department of Human Services Family Self Sufficiency Program, which provides first month or eviction rental assistance. The hospitals of the Lee Memorial Health System and Southwest Regional Health System conduct discharge planning with patients. Policies of the systems direct that patients are not discharged to the streets. Lee County Foster Care Programs are operated under the state-contracted Children's Network of Southwest Florida, LLC. Discharge assistance is provided through the Independent Living Program in which funding for education and associated rent and basic assistance to youth discharged from the system. While the City is not a direct recipient of Emergency Solution Grant funds, the City will continue to partner with the Lee County CoC to support efforts made to implement the existing local coordinated discharge policies for individuals or families who are being discharged from a publicly funded institution.

AP-75 Barriers to affordable housing – 91.220(j)

Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment

The City has adopted the Local Housing Incentive Plan (LHIP) as required to receive the State of Florida's Affordable Housing Program funding (State Housing Initiatives Partnership (SHIP) Program). This plan led to the following actions to reduce barriers:

- Expedited Permitting affordable housing projects are assigned priority status and reviewed in an expedited manner;
- Ongoing review of policies and procedures;
- Provisions for Transfer of Development Rights;
- Flexible Density for the Provision of Affordable Housing;
- Reduction in Street Width Requirements for affordable single family subdivision;
- Zero-lot Line Configuration; and
- Inventory of locally owned public lands suitable for affordable housing.

In addition, the following strategies will be utilized to remove or ameliorate the barriers to affordable housing:

The City of Cape Coral will research and review alternative methods to financing affordable housing including but not limited to, density incentive programs, linkage fees, and inclusionary housing ordinances.

The City of Cape Coral will continue to utilize CDBG, NSP, and SHIP funds to provide counseling and financial assistance to first time income eligible homebuyers to purchase either existing or newly constructed homes.

The City will continue to utilize CDBG and SHIP funds to provide financial assistance to income eligible city residents to rehabilitate owner-occupied dwellings.

The City will continue to implement the actions including within the Lee County Regional Analysis of Impediments to Fair Housing Choice to remove or ameliorate the barriers to both fair housing choice and affordable housing.

AP-85 Other Actions - 91.220(k)

Introduction

Listed below are the actions planned to address obstacles to meeting underserved needs, foster and maintain affordable housing, reduce lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure, and enhance coordination between public and private housing and social service agencies.

Actions planned to address obstacles to meeting underserved needs

The major obstacle to meeting all the identified needs is the lack of funding resources. Significant funding cuts in previous years and minimal funding increases does not account for the overall budgetary restrictions the City has seen in its CDBG program. Typically, applicant request amounts are much higher than the entitlement amount which further escalates the budgetary constraints in meeting the undeserved needs. However, the City will continue to partner, when feasible, with other nonprofit organizations to leverage the City's CDBG allocation.

Actions planned to foster and maintain affordable housing

The City will continue to operate existing affordable housing programs with the assistance of local not for profit housing developers. The City will also continue to research and potentially develop new programs that meet changing housing needs within our community.

Actions planned to reduce lead-based paint hazards

The City of Cape Coral's Department of Community Development has developed a Lead Based Paint Action Plan/Policy to address lead-based hazards that might be present within the pre-1979 housing stock. This plan was created to assist City staff and grantees in identifying and mitigating lead-based paint hazard within the City's older housing stock. It also serves to inform residents about the potential health hazards related to lead-based paint and how to eradicate these.

The Action Plan is divided into seven (7) sections:

- 1. Dissemination of Information
- 2. Evaluation of Dwellings for Lead-Based Paint Hazards
- 3. Reduction of Lead Hazards
- 4. Implementation of Ongoing Maintenance Procedures
- 5. Responding to Children with Environmental Intervention Blood Lead Levels (EIBLL)
- 6. Personnel Qualifications
- 7. Exemptions

A copy of this policy is in the appendices.

The City of Cape Coral's housing programs has integrated the components of 24 CFR Part 35 into its policies and procedures governing federally assisted housing programs directly administered under the City of Cape Coral and those contracted with subrecipient organizations. Programs will be affected include housing rehabilitations and acquisition as specified within 24 CFR Part 35.

The City of Cape Coral will support any application for lead-based paint hazard abatement grants, especially those that will benefit residents classified as extremely low, low, and moderate-income.

The City's homebuyer assistance program and single-family owner-occupied rehabilitation program that rehabilitates homes constructed prior to 1978 will be provided a complete visual assessment of all painted surfaces to identify deteriorated paint, and will be provided paint stabilization of deteriorated painted surfaces, and a clearance examination, as required. Lead-based paint hazards information will be provided to all homebuyers assisted by these programs. The City will follow its Lead-Based Paint Hazards Policy in the administration of the City's housing program to reduce and eradicate lead-based housing units in the City.

Additionally, lead based paint regulations will be included in all subrecipient agreements and compliance will be included in agency monitoring.

Actions planned to reduce the number of poverty-level families

The City of Cape Coral's goal is to reduce the number of poverty level families through economic development, affordable housing, and service programs coordinated by various entities throughout the City of Cape Coral, the City of Fort Myers, and Lee County. Recognizing the need to overcome poverty is one component of a complex set of issues. Beyond implementing economic development, affordable housing, and service coordinating programs, families in poverty must be provided the opportunity to overcome personal and socioeconomic barriers to gain control of their lives.

Per the 2000 Census, 1,623 families in Cape Coral had a 1999 income below the poverty level. This number represented 5.3% of families that resided in Cape Coral at that time. In comparison, 10.7% of families (approximately 4,381) had incomes below the federal poverty level in 2013. The poverty level families have drastically increased in the last ten years. This number is higher for families with children under 18 (16.8%) and female headed households with children under 5 years of age (39%).

To help individuals, rise above the poverty level and become self-sufficient, the City of Cape Coral in conjunction with Lee County and the State of Florida, including private, non-profit agencies and organizations have designed and implemented various programs.

The City of Cape Coral has established an Economic Development Office. This office promotes and assists businesses in locating and expanding operations and facilities in the City. Additionally, partnerships with

non-profits providing job-training/microenterprise assistance provide economic opportunities for low income individuals.

The affordable housing programs provided by the Cape Coral Housing Development Corporation, Habitat for Humanity of Lee and Hendry Counties, and the Section 8 rental programs administered by the Lee County Housing Authority and the Housing Authority of the City of Fort Myers enable lower income families to reduce their overall housing costs. These programs enable families to utilize a larger part of their income for other necessities. The programs often allow people to live closer to their place of employment, which in turn may reduce their travel costs.

Actions planned to develop institutional structure

The City will utilize its network of public sector and non-profit organizations to implement the consolidated plan. Over the next five years, the City expects to overcome gaps in the institutional structure and delivery system by:

- Training and capacity building for non-profit organizations;
- Collaborating with the Lee County Department of Human Services and Lee County Homeless Coalition regarding availability of homeless services/shelter in Cape Coral;
- Monitoring to identify program inefficiencies, improve program performance, and ensure compliance with applicable regulations;
- Encouraging collaboration among agencies to eliminate duplicative services and better serve residents, especially low- and moderate-income households and special needs populations; and
- Reviewing internal policies, procedures and staffing of the CDBG program for efficiency and effectiveness.

Actions planned to enhance coordination between public and private housing and social service agencies

See above.

Program Specific Requirements

AP-90 Program Specific Requirements – 91.220(I)(1,2,4)

Introduction

The City's program specific requirements for the CDBG program are listed below.

Community Development Block Grant Program (CDBG) Reference 24 CFR 91.220(I)(1)

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next	
program year and that has not yet been reprogrammed	0
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to	
address the priority needs and specific objectives identified in the grantee's strategic plan.	0
3. The amount of surplus funds from urban renewal settlements	0
4. The amount of any grant funds returned to the line of credit for which the planned use has not	
been included in a prior statement or plan	0
5. The amount of income from float-funded activities	0
Total Program Income:	0

Other CDBG Requirements

1. The amount of urgent need activities	0
2. The estimated percentage of CDBG funds that will be used for activities that	
benefit persons of low and moderate income. Overall Benefit - A consecutive	
period of one, two or three years may be used to determine that a minimum	
overall benefit of 70% of CDBG funds is used to benefit persons of low and	
moderate income. Specify the years covered that include this Annual Action Plan.	100.00%

RESOLUTION 123-18

City Council June 4, 2018 July 23, 2018

RESOLUTION 77-17

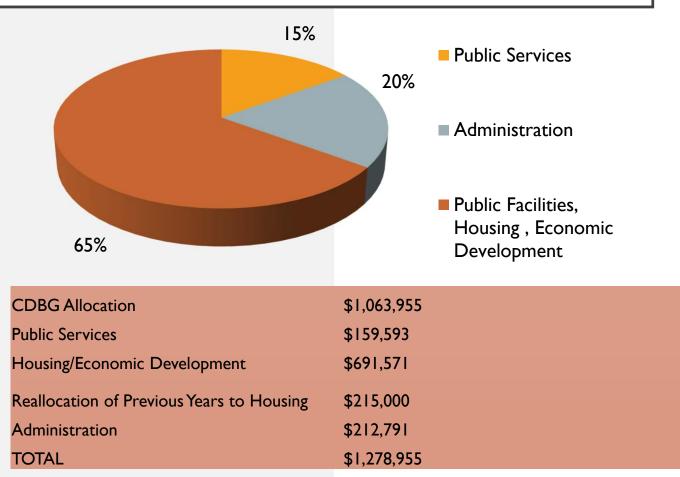
- Adopts the 2018-2019 One Year CDBG Action Plan
- Under statute the Action Plan requires two public hearings – June 4th and July 23rd
- Authorizes and directs the City Manager to submit the Action Plan to the US Department of HUD and sign the grant agreement when received from HUD
- The Action Plan delineates how CDBG funds will be expended and includes the recommendations from the Citizen's Advisory Board for CDBG.

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ENTITLEMENT PROGRAM

- Allocation of \$1,063,955
- Also \$215,000 in reallocated program funds
 - Reallocation of Prior Years Funds for Housing
 - Total estimated allocation of \$1,278,955
- Anticipating 100% of the total allocation will be used to benefit low and moderate income persons as defined by CDBG regulations
- The following slides show proposed projects and funding levels recommended by the Citizens Advisory Board

3

ALLOCATION FUNDING REQUIREMENTS



4

PUBLIC FACILITIES/HOUSING CATEGORIES CAB RECOMMENDATIONS POST ALLOCATION

Agency	Project	Recommendation Post Allocation
Cape Coral Housing Development Corp	CCHDC Purchase Rehab	\$175,000
Cape Coral Housing Development Corp	Owner Occupied Rehab - Single Family	\$250,000
Habitat for Humanity	Habitat's Cape Coral Purchase Rehab	\$257,750
City of Cape Coral	Sidewalks SW 47 th Terrace	\$184,500

ECONOMIC DEVELOPMENT CATEGORY REQUEST AND CAB RECOMMENDATIONS POST ALLOCATION

Agency	Project	Recommendation Post Allocation
Goodwill Industries of SWFL	Microenterprise	\$39,321

6

PUBLIC SERVICES REQUEST AND CAB RECOMMENDATIONS POST ALLOCATION

Agency	Project	Recommendation Post Allocation
	Shelter and Services for	
Abuse Counseling and Treatment	Domestic Violence Victims	\$33,885
Cape Coral Caring Center	Public Services	\$21,654
Cape Coral Parks and Recreation	Paratransit (Minibus)	\$18,878
Cape Coral Parks and Recreation	Child Care Services	\$11,772
Community Cooperative	Utility Assistance	\$17,767
Deaf and Hard of Hearing Center	Handicapped Services (Deaf)	\$19,434
Dr. Piper Center for Social Services	Senior Services	\$16,656
Goodwill Industries of SWFL	Employment Training (Job Link)	\$7,775
United Cerebral Palsy/Sunrise	Handicapped Services	\$11,772

7

ADMINISTRATIVE AND PLANNING ALLOCATIONS

City of Cape Coral Administration	\$212,791

CITIZEN'S ADVISORY BOARD FOR CDBG

 At the May 16, 2018 meeting of the CAB-CDBG, the Board recommended approval of the proposed funding levels

ACTION PLAN TIMELINE

10

- June 4- July 23 Mandatory Public Comment Period
- June 4 First public hearing
- July 13 Second public hearing
- August 8 Submit Final Action Plan to HUD
- October I Beginning of program year

Item B.(1) Number: 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Introductions





TITLE:

Ordinance 25-18 (LU 17-0010) Set Public Hearing Date for July 23, 2018

REQUESTED ACTION:

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment?
- 2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

Planning and Zoning recommendation: At their May 16, 2018 Special Meeting, the Planning & Zoning Commission voted unanimously to recommend approval. Staff Recommendation: Staff recommends approval.

SUMMARY EXPLANATION AND BACKGROUND:

WHAT THE ORDINANCE ACCOMPLISHES: An ordinance amending the Future Land Use Map from Commercial/Professional (CP) to Multi-Family Residential (MF) Land Use for property located at 236 NE 16th Place. (Applicant: Francesca Nappi, Trustee)

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 25-18 (LU 17-0010) Staff Presentation - Intro

PREPARED BY:

Division- Department- City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Chad Boyko, Principal Planner

ATTACHMENTS:

Description

- D Ordinance 25-18 (LU 17-0010)
- Staff Presentation Intro
- LU 17-0010 packet
- Revised Application docs
- LU 17-0010 WEB
- Signed affidavit

Туре

Ordinance Backup Material Backup Material Backup Material Backup Material

ORDINANCE 25 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM COMMERCIAL/PROFESSIONAL (CP) TO MULTI-FAMILY RESIDENTIAL (MF) LAND USE FOR PROPERTY DESCRIBED AS LOTS 28 AND 29, BLOCK 1543, UNIT 17, CAPE CORAL SUBDIVISION, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED AT 236 NE 16TH PLACE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral on February 13, 1989, adopted a Comprehensive Plan pursuant to the Comprehensive Planning Act; and

WHEREAS, as part of the Comprehensive Plan the City of Cape Coral adopted therewith a future land use map designating land uses and proposed land uses throughout the City of Cape Coral consistent with the Comprehensive Plan and Comprehensive Planning Act; and

WHEREAS, the City of Cape Coral City Council has considered the testimony, evidence, and documentation for the Land Use Amendment initiated by FRANCESCA NAPPI, TRUSTEE OF THE NAPPI FAMILY TRUST, regarding the below described property, and considered the recommendation of the Planning & Zoning Commission/Local Planning Agency and City staff.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. That the below described real property located within the City of Cape Coral, Florida, is hereby amended consistent with the City of Cape Coral Comprehensive Plan as follows:

FROM COMMERCIAL/PROFESSIONAL (CP) TO MULTI-FAMILY RESIDENTIAL (MF)

LOTS 28 AND 29, TOGETHER WITH THE EAST 10 FT. OF A VACATED ALLEY ABUTTING THE WEST BOUNDARY LINE OF LOTS 28 AND 29, BLOCK 1543, UNIT 17, CAPE CORAL SUBDIVISION, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15 AT PAGES 23 THROUGH 38, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

PROPERTY LOCATED AT: 236 NE 16TH PLACE

SECTION 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this small scale development amendment to the Comprehensive Plan shall be thirty-one (31) days after the adoption of this ordinance. Alternatively, if the small scale development amendment adopted by this ordinance is challenged by an "affected person" within thirty (30) days after adoption, then the effective date of this amendment shall be the date upon which either the state land planning agency or the Administration Commission issues a "final order" determining that this small scale development amendment is "in compliance" as provided in Section 163.3187(5), Florida Statutes.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	 NELSON	
GUNTER	 STOKES	
CARIOSCIA	 WILLIAMS	
STOUT	COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____ 2018.

REBECCA VAN DEUTEKOM CITY CLERK

APPROVED AS TO FORM:

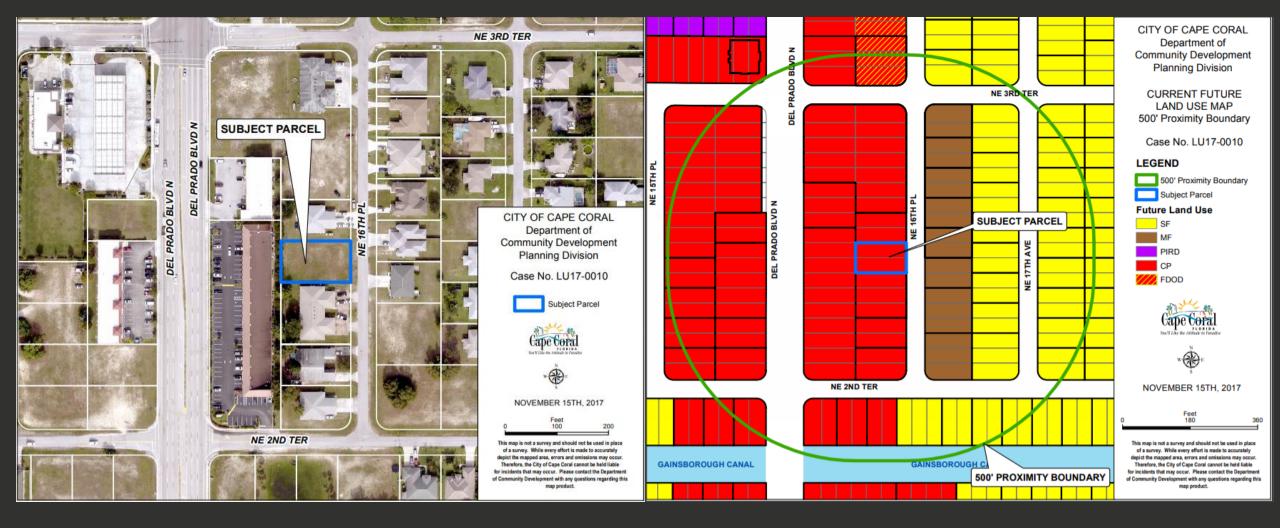
> BRIAN R. BARTOS

ASSISTANT CITY ATTORNEY ord/lu17-0010

Ordinance 25-18 LU17-0010

Cape Coral City Council

Ordinance 25-18



Summary and Recommendation

- Site just over 10,000 sq. ft. and undeveloped.
- Desire land use change to allow duplex dwelling unit.
- Block is developed with commercial and multi-family uses.
- Site does not have access along arterial or collector and does not have full block depth.
- Minor reduction in commercial land but land is not ideal for commercial development.
- Site may be difficult to develop with commercial and is not prime candidate for assemblage
- Planning staff recommends <u>approval.</u>

DEPARTMENT OF COMMUNITY DEVELOPMENT REQUEST TO PLANNING & ZONING COMMISSION/LOCAL PLANNING AGENCY AND COUNCIL FOR A LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT

FEE \$1,225.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

CASE # LUI7-0010

OWNER OF PROPERTY Gabriele - Francesea NAPPi	Address: 505 S.W. 33rd AVE.
Email: Nome -	City: <u>CapeCorol</u> State: <u>Flor</u> .Zip <u>3399</u> 1 Phone: <u>239</u> ·283-2063.
AUTHORIZED REPRESENTATIVE	
Email:	Address: City: Phone:
Unit 17 Block 1543 Lot(s) $28-2$ Legal Description $57ap$ # 08442	9 Subdivision <u>Cape Corol Lee County Floride</u> 464015430280
Address of Property 236 N.E. 16 th F	Plat Book 14 Page 23 To 38
Current Zoning $\frac{R3-D}{C-1 P_{refcssioned}}$ Strap N Current Land Use $\frac{C-1 P_{refcssioned}}{C-1 P_{refcssioned}}$ Strap N	umber 084424C4015430280
Parcel Size: Width <u>80</u> Depth <u>]3</u> Soil Type: <u>Clearn</u>	5 Sq. Ft. 1 <u>0799</u> Acreage
Urban Services Area: (check one)	☐ Transition ☐ Reserve ds, wetlands, upland forest, oak hammocks, etc.):
Animal Species: (list any endangered, threatened, c	or species of special concern on-site)
Estimated Development:	
	loor area sq. ft. development and percentages (e.g. business offices,

Estimated peak hour trip ends:

If 300 or less peak hour trip ends are projected, the applicant must provide the source of the traffic projection. If more than 300 peak hour trip ends are projected, a traffic impact study must be completed and submitted as part of the application (see attachments).

City Sewer:	Yes 🗹 Yes 🗹	No 🗌
City Water:	Yes 🛛	No 🗌

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

RANCESCA NAPPI Authorized SIGNATURE (SIGNATURE MUST BE NOTARIZED) STATE OF Sworn to (or affirmed) and subscribed before me this 25 day of ____ , 20/7, by Francesca Nappic who is personally known or produced as identification. 12/5/20 Commission Number: 9904832 of Notary Public: Exp. Date: Signature of Notary Public: Printed name of Notary Public: anded through I

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT
(Name of person giving presentation)
IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & ZONING COMMISSION/LOCAL PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS AND/OR CITY COUNCIL FOR <u>Under The "Flexible Development Overlay District"</u> (Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)
UNIT 17 BLOCK 1543 LOT(S) 28-29 SUBDIVISION Cape Corol FI.
OR LEGAL DESCRIPTION STRAPP # 084424C4015430280,
LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.
Gabriele NAPPI FRANCESCA NAPPI PROPERTY OWNER (Please Print) PROPERTY OWNER (Please Print)
PROPERTY OWNER (Signature & Title)
STATE OF FL, COUNTY OF Lee
Subscribed and sworn to (or affirmed) before me this 25 day of Oct , 2017, by Francesca Nappi who is personally known or produced FLAN
Exp. Date: 125/20 Commission Number: 99048323
PRISCILLA ROOMICUE2 Dignature of Notary Public: Notary Public - State of Florida Commission # GG 048323 Dignature of Notary Public: My Comm. Expires Dec 5, 2020 Bondert through National Notary Assn. Printed name of Notary Public:

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.

ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals, and Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

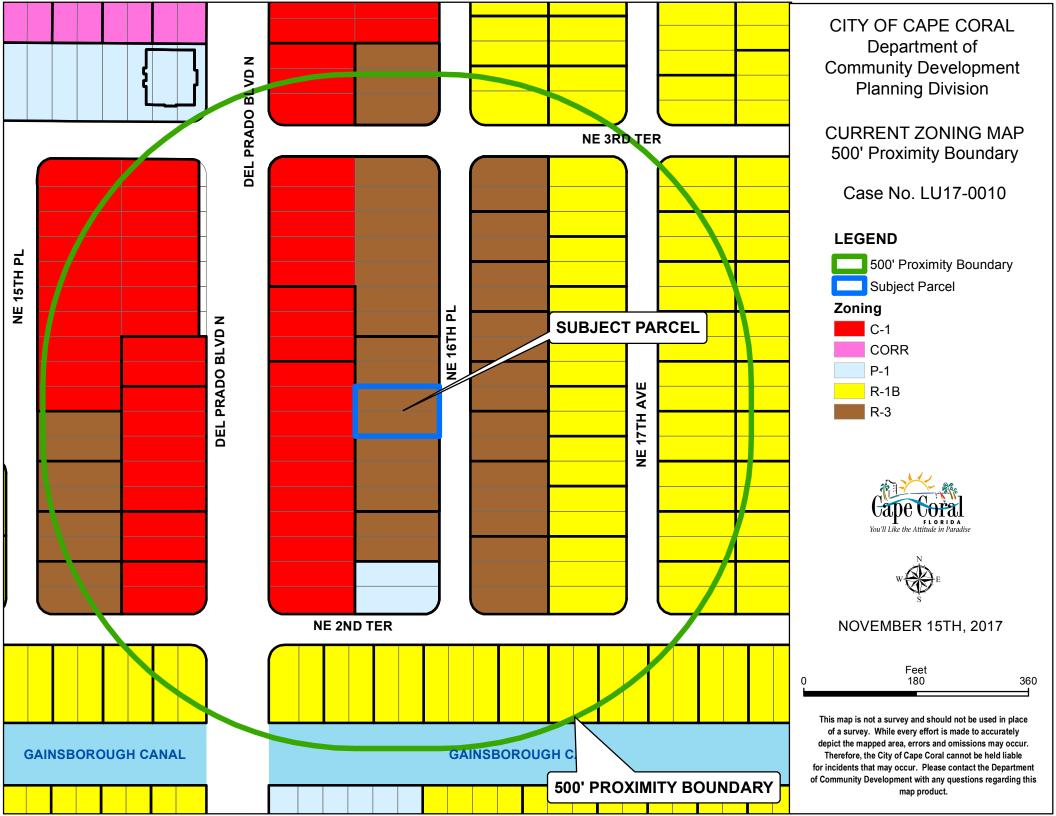
I hereby acknowledge that I have read and understood the above affidavit on the ,202017 October 25th. day of FRANCESCA NAPPi NAME (PLEASE TYPE OR PRINT) APPLICANT'S SIGNATURE STATE OF FL, COUNTY OF Subscribed and sworn to (or affirmed) before me this 25, 207, by day of rancesca Name who is personally known or produced as identification. 12/5/20 Commission/Number: Exp. Date: 15alla Rodriguez Signature of Notary Public: PRISCILLA RODRIGUEZ otary Public . Stat el Florida Printed name of Notary Public: PRISCILLA RODRIGUEZ Notary Public - State of Florida Commission # GG 048323 ly Comm. Expires Dec 5, 2020 anded through

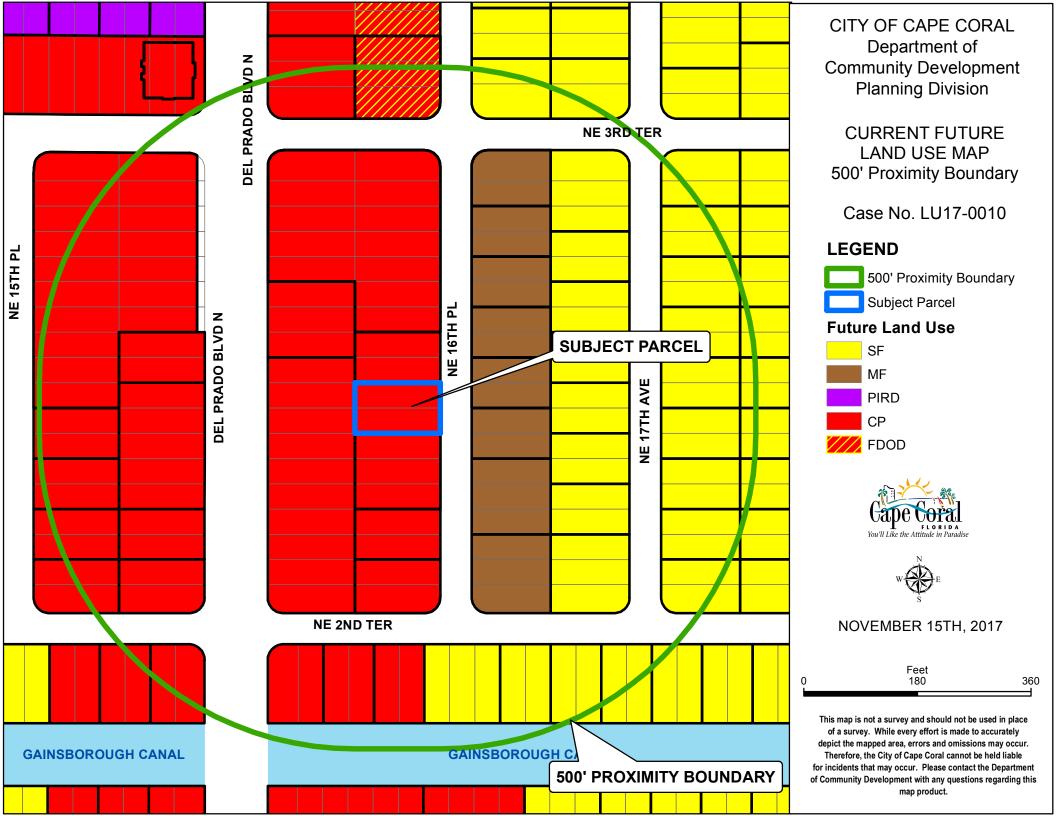
To: The "Departmenter Community Development - Planning and zoning" of the City of Cape Corol in See Countr lorida. Please, we Gabriele and Francesca Mappi own a Barcelof Vacomt land in Unit 17, Block 1543, 1sts 28-29 with its address as, 236 NE. 16th Place Cape Corel Fl. 33909, request an amend,ment To the "Landuse", thus, To comply with the "Flexible Development overlay district", To give us the opportunity To build on "Duplex " Our lots are adjacent To, on each side, a duplex and a fourplex stovetures. They are part of the 25% of the remaning Vacant land of East side block on the N.E 15th place We appeal to your consideration to our situation. We are old and with a fixed i meome, in meed of a supplement. Simeerely, hoping for a positive conclusion, We Thank gov, Francesca Mappi Capecorol, Florida. 10-23-2017. 505 SW. 33rd ave, Cape Cotal, Fl. 33991

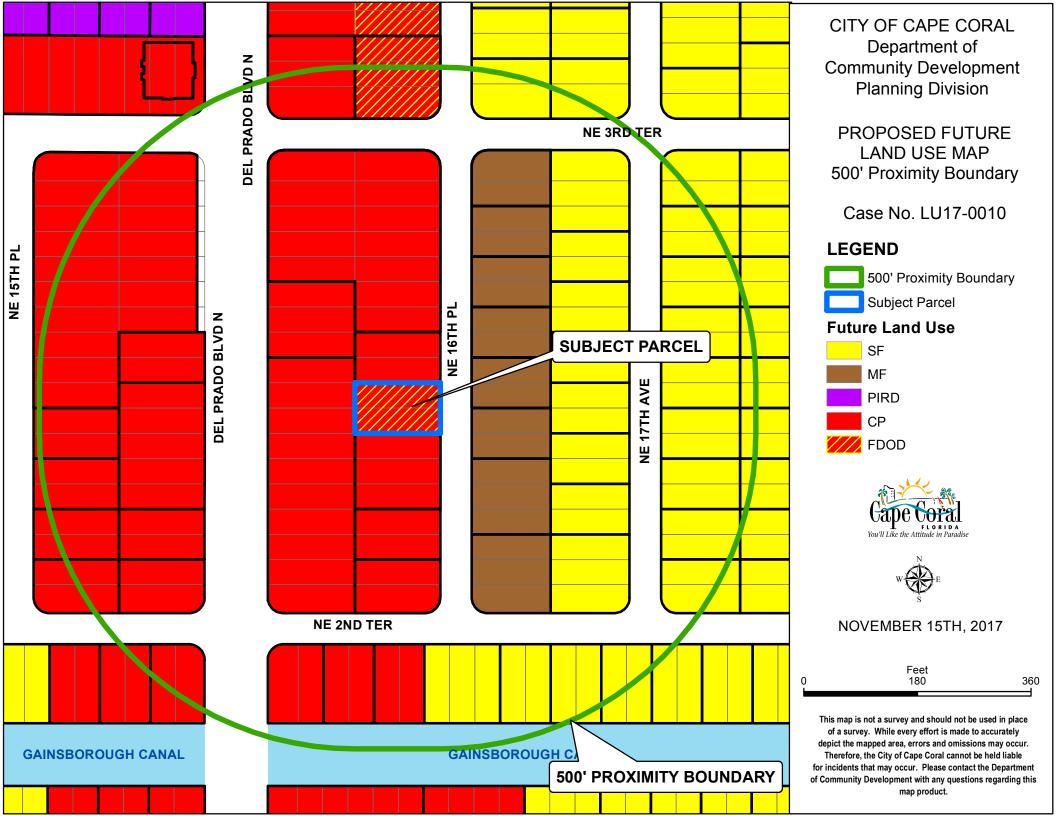
Planning Division Staff Report LU 17-0010

Review Date:	January 18, 2018
Prepared By:	Chad Boyko, AICP, Planner IV
Review Approval:	Bob Pederson, AICP, Planning Manager
Applicant	Gabriel and Francesca Nappi 505 S.W. 33 rd Avenue Cape Coral, FL 33991
Property Owner:	Same as owner.
Request:	The applicant is requesting a future land use map amendment from the Commercial/Professional (CP) future land use designation to the Multi-Family Residential (MF) future land use designation for one parcel totaling 10,000 sq. ft.
Recommendation:	Analysis of Policy 1.14 of the Future Land Use element, beginning on page 4, indicates the current classification of CP is not warranted for the subject area. The proposed amendment to MF is consistent with State policies regarding and the City's Comprehensive Plan, Planning Division staff recommends approval of the proposed small-scale Future Land Use Map Amendment request.









Owner_Name	Mailing_Ad	Mailing Ci	Maili	n Mailing_Zi
PAPISH NESTOR Z	423 HAWKVIEW MANOR CIR NW	CALGARY	AB	T3G 2Z2 CA
2016 MANAPOURI TRUST + GOELZ JUERGON ET AL	THEODOR-HEUSS STR A	56288 KASTELLAUN	AD	GERMANY
ALTOPIEDI JOHN H + DORIS M	305 NE 17TH AVE	CAPE CORAL	FL	33909
ARAUJO PEDRO LUIS AVILES + OJEDA YENISBEL LOZADA	505 NE 1711 AVE		ΓL	55909
H/W	228 NE 17TH AVE	CAPE CORAL	FL	33909
BANGTHAMAI CHARINEE	222 NE 17TH AVE 222 NE 14TH PL	CAPE CORAL		33909
			FL	
BAYSWATER LLC BHR RENTAL-CC234 LLC	1222 SE 47TH ST # 213 20340 BUCK CREST LANE	CAPE CORAL	FL	33904
		ALVA	FL	33920
BLANCHETTE GREGG A + JOAN M	398 SALMON FALLS RD	ROCHESTER	NH	03868
CAPE TRUST INVESTMENTS LLC	13335 SW 124 ST STE 107		FL	33186
CEDENO SARA P TR FOR SARA P CEDENO TRUST	825 NW 38TH PL	CAPE CORAL	FL	33993
CESARONI WILLIAM C + JESSICA C	649 GLENAYRE DR	GLENVIEW	IL	60025
CONNOLLY HYLTON + RAZLYN	1112 FOAM PL	FAR ROCKAWAY	NY	11691
CRAIG CHARLES E	192 WAITS RD	MILLEDGEVILLE	GA	31061
FLOYD WILLIAM H JR	12021 FLINTLOCK LN	FORT MYERS	FL	33912
FORT CAPE LLC	18110 TRAVERSE DR	ALVA	FL	33920
FORT MYERS LAND COMPANY LLC	14091 CERRITO ST	FORT MYERS	FL	33905
GARCIA MILTON	225 NE 17TH AVE	CAPE CORAL	FL	33909
GONZALEZ FELIX + MARTHA	317 NE 16TH PL	CAPE CORAL	FL	33909
GRANUS GENE M + CARPINELLI CYNTHIA M H/W	233 NE 17TH AVE	CAPE CORAL	FL	33909
GREENE GAIL IRA 1/2 + WORMSER ERIC IRA 1/2 T/C				
MIDLAND IRA INC	528 SW 8TH TER	CAPE CORAL	FL	33993
HALEK ANDREW B JR	1728 SE 8TH TER	CAPE CORAL	FL	33990
HANSEN WILLIAM F + CYNTHIA L	1624 NE 2ND TER	CAPE CORAL	FL	33909
JOMAR INVESTMENTS LLC	PO BOX 60021	FORT MYERS	FL	33906
KSF-II LLLP	31 HIGHLAND HILLS LN STE 101	STUARTS DRAFT	VA	24477
LAMONICA JOSEPH	301 NE 17TH AVE	CAPE CORAL	FL	33909
LANE HOLLY J	230 NE 17TH PLACE	CAPE CORAL	FL	33909
LAYTON HARRY J + MONIKA J	408 SE 24TH ST	CAPE CORAL	FL	33990
LEADER ESMERLYN JOEL	317 NE 17TH AVE	CAPE CORAL	FL	33909
LEE COUNTY	PO BOX 398	FORT MYERS	FL	33902
LOPEZ ROLANDO	323 NE 16TH PL	CAPE CORAL	FL	33909
MAR-Y-SOL INVESTMENTS LLC	1514 SW 58TH LN	CAPE CORAL	FL	33914
	8609 WESTWOOD CENTER DR STE			
MCF FLORIDA I LLC	450	VIENNA	VA	22182
MCKEOWN PETER J JR & MCKEOWN GLORIA J	234 NE 17TH PL	CAPE CORAL	FL	33909
MENDOZA BLANCA + RAUL	1620 NE 2ND TER	CAPE CORAL	FL	33909
MERCER INVESTMENT 326 LAND TRUST	18011 S TAMIAMI TRL STE 16-99F	FORT MYERS	FL	33908
MEYER VON BREMEN LLC 123 CAPE - FLORIDA HOMES				
PROP	4226 DEL PRADO BLVD S	CAPE CORAL	FL	33904
NAPPI GABRIEL + FRANCESCA TR FOR NAPPI FAMILY				
TRUST	505 SW 33RD AV	CAPE CORAL	FL	33991
NORTON JUANITA F	306 NE 17TH PL	CAPE CORAL	FL	33909
ONE PRICE OPTICAL INC	325 DEL PRADO BLVD N	CAPE CORAL	FL	33909
RACETRAC PETROLEUM INC	PO BOX 2437	SMYRNA	GA	30081
RECCA VINCENT + DORRIE	5310 SW 11TH CT	CAPE CORAL	FL	33914
RICCARDI RAOUL A + RICCARDI ROGER J/T	301 NE 16TH PL	CAPE CORAL	FL	33909
RODRIGUEZ JOSE A + MARINIEVES	312 NE 17TH AVE	CAPE CORAL	FL	33909
ROMAN GUSTAVO + ANA CRISTINA	4391 LAZIO WAY # 302	FORT MYERS	FL	33901
RUIZ MERCEDES + JOSE M	232 NE 17TH AVE	CAPE CORAL	FL	33909
SAULSBY LORENZO F & ROSE M	310 NE 17TH PL	CAPE CORAL	FL	33909
SCHULTZ KEITH + JULIA	525 SE 16TH PL	CAPE CORAL	FL	33990
SHREFFLER TODD + SHARON J	309 NE 17TH AVE	CAPE CORAL	FL	33909
SODERHOLM MICHELE A	313 NE 17TH AVE	CAPE CORAL	FL	33909
SPYKER DOLORES L + ISENBERG DEBORAH L	229 NE 17TH AVE	CAPE CORAL	FL	33909
TORRES GLICELLE + PEREZ JEREMY A T/C	309 NE 16TH PL	CAPE CORAL	FL	33909
				20000

TUSCAN PLACE MEDICAL & PROFESSIONAL CONDO ASSN				
INC H CHARARA	1120 WALES DR	FORT MYERS	FL	33901
VALLONE JAMES J + VALLONE STACIE E BONITO H/W	8516 SOUTHWIND BAY CIR	FORT MYERS	FL	33908
WAGNER JOHN R + CAROL L TR FOR JOHN R WAGNER +				
CAROL L WAGNER TRUST	320 PRATHER DR	FORT MYERS	FL	33919
WIESE SCOTT + ALYCIA	1702 NE 2ND TER	CAPE CORAL	FL	33909
WRIGHT NATALIE	236 NE 17TH AVE	CAPE CORAL	FL	33909

Site Information

Location:236 NE 16th PlaceUnit 17. Block 1543 – Lots 28 and 29.East of Del Prado Boulevard, North of Hancock Bridge Parkway.

STRAP Number: 08-44-24-C4-01543.0280

Site Area: 10,000 sq. ft.

Subject	Future Land Use	Zoning	
Property:			
Current:	Commercial/Professional	Multi-Family Residential (R-3)	
Proposed:	Multi-Family Residential (MF)	N/A	
	Surrounding Zoning	Surrounding Future Land Use	
North:	СР	R-3	
South:	СР	R-3	
East:	MF	R-3	
West:	СР	Pedestrian Commercial (C-1)	

Urban Service Area:	Infill
City Water:	Yes
City Sewer:	Yes
Type of Access Road:	NE 16 th Place – local street

Soil Types and Limitations for Development:

		Limitations	
Мар		Dwellings without	Small commercial
Unit		basements	buildings
	Matlacha Gravelly Fine Sand,		
18	Limestone Substratum	Moderate (wetness)	Moderate (wetness)

The soil in the area presents moderate limitations for dwellings and small commercial buildings. These limitations are typically overcome by using various engineering solutions, such as importing fill. The soil type, therefore, may not present an obstacle to any proposed amendment. However, special feasibility studies may be required at the development stage of the property.

Drainage:Must comply with South Florida Water Management District and the City of
Cape Coral Engineering Design Standards.

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Natural Resources:	The site consists of undeveloped land. The hydrology of the site due to soil types is considered non-hydric.
Flora & Fauna Habitat:	Prior to any permit for development being issued, an environmental survey must be undertaken, and mitigation performed to minimize the impacts of development, if any, on the protected species habitat.

Background

The site is one parcel in southeastern Cape Coral within Block 1543. The parcel has frontage on NE 16th Place¹, however, the western half of Block 1543 has frontage on Del Prado Boulevard². The site is undeveloped, but is surrounded by a commercial development to the west, duplexes to the north, south, and east. The Future Land Use of the site has retained the Commercial/Professional (CP) future land use designation since the initial adoption of the Comprehensive Plan in 1989. The site has also retained the Multi-Family Residential (R-3) since prior to the adoption of the Comprehensive Plan.

The applicant is seeking the future land use amendment request to construct a residential home on the site. The future land use amendment would allow the applicant to construct a single-family home or a duplex on the site.

¹ A local street

² A Principal Arterial

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ANALYSIS

The Comprehensive Plan recognizes that the original platting of the City was prepared with the primary purpose of creating a multitude of platted lots for eventual residential development. This resulted in an imbalance between residential and commercial lands, leading to insufficient and financially unsustainable amounts of commercial lands. In 1989, the Comprehensive Plan designated the majority of blocks with frontage along Del Prado Boulevard, the City's main commercial corridor, with the CP future land use designation. The designation was to encourage commercial development with full block depth as recommended by several Comprehensive Plan policies. While many parcels along this corridor have developed with commercial uses, other parcels have remained undeveloped or have continued residential uses that were established prior to 1989. The applicant's parcel has remained undeveloped along with several other parcels in the block. Staff also notes that the sites zoning was never changed from Multi-Family Residential (R-3) pursuant to the 1989 Comprehensive Plan adoption.

To provide a recommendation of the applicant's future land use map amendment, Planning staff has analyzed the sites current CP future land use designation to determine if this designation is still appropriate for this site. This analysis can be found herein:

Appropriateness of Commercial/Professional future land use designation

Policy 1.12 of the Future Land Use Element requires the City to conduct commercial land needs studies to identify areas of the City, which could accommodate commercially designated land, consistent with the studies' findings and recommendations, and other provisions of the Comprehensive Plan. In March 2007, the City of Cape Coral requested Paul Van Buskirk, PhD., AICP, PE, and Mike Jackson, the City's former Economic Development Director, to prepare a report entitled: "Future Land Use Analysis: Commercial & Industrial Land Required for The City of Cape Coral At Build-Out." This report updated earlier analyses. The report suggests several strategies to increase the inventory of developable commercial properties within the City. Two of the suggested strategies involve 1) converting parcels with residential future land use to commercial future land use and, 2) increasing the size of existing commercial areas. The FLUMA in 2006 converted approximately 7.97 acres of land that was designation as SM to CP. Thus, staff finds that the 1989 amendment is consistent with Policy 1.12. Staff notes that Policy 1.12 was adopted several years after the sites Future Land Use designation was adopted.

<u>Policy 1.14</u>: The City of Cape Coral's commercial siting guidelines are based upon comparison of the locational characteristics of a property proposed for conversion to a commercial future land use classification with the ideal commercial node concept, as described in Policy 1.13, above. The guidelines are also based upon the need to maintain compatibility between commercial development and adjacent or nearby residential future land use classifications. Additional guidance for consideration of such properties is contained in Future Land Use Objectives 2 and 3 and Policy 1.12 of this comprehensive plan. Within this broad, general context, consideration of properties proposed for conversion to a commercial future land use shall be based upon the following commercial siting guidelines:

Commercial Siting Guidelines

Major Intersection

Preferred locations for commercial properties are in the vicinity of major intersections (i.e., intersections of two or more arterial and/or collector roadways). Development of a commercial node at such an intersection may involve multiple parcels and, sometimes, multiple quadrants of the intersection. The benefits derived by having commercial properties located in the vicinity of the intersection diminish with distance, but the distance at which a property ceases to derive benefit from proximity to the intersection varies, based upon whether the subject property would represent a "new" commercial property (a commercial property not abutting any existing commercial properties) or an expansion of an existing commercial area. New commercial properties should preferably be located adjacent to the intersection, while commercial properties that clearly represent an expansion of an existing commercial area can be any distance from the intersection, provided that such properties are integrated with existing properties (see below: Integration).

The parcel is in block that has frontage along Del Prado Boulevard, however, the parcel is not near a major intersection. The closest intersection of two arterial or collector streets is approximately 1,800 to the south at the intersection of Del Prado Boulevard and Hancock Bridge Parkway. Planning staff finds that the site is not at a major intersection and <u>is not consistent</u> with this commercial siting guideline.

Adequate Depth

Ideally, a commercial property should extend not only along the adjacent collector or arterial roadway, but also should extend inward with adequate depth to accommodate the necessary parking, buffering, retention, and open area for the future commercial development. In Cape Coral, most City blocks are rows of back-to-back lots approximately 250 feet deep. Ideally, then, adequate depth is achieved if any number of contiguous properties, owned by the same landowner (see Ownership Pattern, below) occupy the entire 250 feet of depth. Adequate depth would not be achieved if the subject properties have different owners or if the contiguous properties are not reasonably compact (see below).

The site has a depth of 125 and is on the rear side of Block 1543. This block does have adequate depth however, the parcel that is east side of the site is developed with a commercial building. This development would make full block depth a challenge for the site unless redevelopment is pursued in the future. Planning staff finds that because the site has only 125 feet of depth and is in a block with fragmented ownership, the sites future land <u>is not consistent</u> with this commercial siting guideline.

Compactness

Compactness measures the ability of a property proposed for a commercial future land use to take advantage of economies of scale. The shape of an ideal compact commercial property approaches that of a square or rectangle. This quality allows for an orderly arrangement of development on the subject property and acts to reduce adverse visual, noise or aesthetic impacts to neighboring properties.

The site is rectangular in shape and is compact. The other parcels in Block 1543 have similar shapes, even though other parcels have been assembled into larger parcels. Planning staff finds that the sites future land use <u>is consistent</u> with this commercial siting guideline.

Integration

Integration, for the purposes of these guidelines, refers to the interrelatedness of development within a commercial node or area. The presence of features, such as internal access roads, shared parking, courtyards, walkways, or other features, binds the various commercial properties within the node together. This pattern of development reduces the traffic impacts associated with commercial development and often promotes a pedestrian-friendly environment. Integration of neighboring commercial properties should always be encouraged. Therefore, properties proposed for conversion to a commercial future land use should be evaluated for the likelihood that such properties would or could be integrated with adjacent existing commercial properties.

Block 1543 has been developed with commercial sites as well as residential units that were constructed prior to the adoption of the future land use designation. The lack of existing commercial development does not provide an opportunity for integration within the site, therefore, Planning Staff finds the future land use of the subject property is <u>not consistent</u> with this commercial siting guideline.

Assembly

For commercial areas to provide the most benefit to the surrounding community, they must be of relatively large size. The majority of buildable lots within the City of Cape Coral are approximately 10,000 square feet (0.23 acre) in size. These lots were designed primarily for single family residential development and do not typically have adequate width or depth for larger commercial developments that might serve the City as shopping and/or employment centers. Therefore, it is important for the City to encourage commercial applicants to assemble relatively large parcels (properties comprising 3 acres or more). Assembly of pre-platted parcels into tracts of 3 acres or more will promote the development of commercial properties that do not express the indicators of strip commercial development. Assembly of larger parcels also allows the developer to provide a greater variety of commercial land uses, and to provide architectural and landscape features that result in a more attractive end-product. Properties proposed for conversion to a commercial future land use, where such properties would represent an expansion of an existing commercial area may be considered "assembled," for the purposes of these guidelines if the proposed expansion properties are either owned by the landowner of one or more adjacent commercial properties, or if the expansion property is likely to be integrated with (see above) adjacent commercial properties.

Several properties in Block 1543 have been assembled into parcels larger than one acre, however, the site is one parcel. The site could assemble with the surrounding parcels, however, the majority of Block 1543 is already developed, therefore significant redevelopment would need to occur. Planning staff also finds that the Block 1543 is just over four acres and achieving the desired three-acre development would be difficult. Planning staff finds that the site has not been assembled and is not likely to be assembled in the near future, therefore, the future land use designation <u>is not consistent</u> with this commercial siting guideline.

Intrusion

"Intrusion," as defined for the purpose of these guidelines, is a measure of the objectionable qualities of the proposed commercial development. This guideline applies primarily to new commercial property (a property proposed for conversion to a commercial future land use in an area where it would not abut existing commercial properties). Intrusion evaluates the potential adverse impacts on surrounding properties that could be caused by converting a property from its existing future land use to a commercial use. There are no hard and fast guidelines for determining when a proposed commercial use would be intrusive to surrounding development. However, expansions of existing commercial areas are generally considered less intrusive than the establishment of new commercial areas. Commercial areas may be considered less intrusive to adjacent multi-family development than to adjacent single family development. Commercial development that is separated from a residential area by a street, canal, a vegetative buffer, or other geographic features, may be considered less intrusive than commercial development that directly abuts a residential area. The degree of compactness (see above) of a commercial property can also reduce or increase its intrusion upon adjacent or nearby properties.

Typically, new commercial properties (properties proposed for conversion to a commercial future land use classification, which do not abut existing commercial properties) are less likely to be considered intrusive if the surrounding or adjacent residential areas are sparsely developed. While intrusion is subjective and depends on many factors, a rule of thumb is that the proposed commercial property would not likely be intrusive if adjacent residential areas are 25% or less developed. The area analyzed to determine the percentage of adjacent residential development may vary from 300 feet to 1,000 feet from the subject property, depending upon the degree to which streets, canals, landscaping or other geographic features separate the subject property from nearby residential areas.

There are several commercial establishments in Block 1543 that have developed around pre-existing dwelling units, however, the residential units comprise more than 25% of the block. The block to east across a local street is more than 25% developed with residential uses, however, blocks to the north and south are either undeveloped or fall below the 25% threshold. Planning staff finds that enough commercial development is near the site that any new commercial development would not be considered intrusive, therefore the sites future land use designation <u>is consistent</u> with this commercial siting guideline.

Access

In the City of Cape Coral there are two ideal access provisions for a commercial property. If a subject property would meet the requirements for one or more of these provisions, the creation of a commercial future land use at the proposed location should be encouraged. These provisions are as follows:

a) Access via a platted City parking area. The City of Cape Coral contains a number of dedicated commercial parking areas; some created by plat, and some deeded to the City by landowners. The Comprehensive Plan and City Land Use and Development Regulations refer to these as "dedicated City parking areas." These parking areas are often surrounded by smaller platted lots originally intended for commercial development with access to these lots only, or primarily, from the dedicated City parking area. In implementing this provision, it may sometimes be in the City's interest to promote conversion of a dedicated City parking area to a fully functional commercial development (i.e., a portion of the dedicated parking area would become a commercial building site) in return for the applicant's agreement to own and manage the site.

b) Direct access onto an arterial or collector roadway having an adopted City access management plan. The City has adopted access management plans for certain arterial and collector roadways. Access management plans serve to facilitate mobility of the traveling public; therefore, such roadways more readily accommodate the impacts of commercial development than roadways without such access management plans.

The site is not near a City-owned parking lot and does not have frontage on a roadway with an access management plan. Block 1543 has frontage on Del Prado Boulevard which is an arterial roadway with an access management plan. Planning staff finds that the site lacks ideal access from an arterial or collector street, however, the site is in a block with frontage on Del Prado Boulevard, therefore, the sites future land use designation is partially consistent with this commercial siting guideline.

Ownership Pattern

An ideal commercial node is a cohesive, compact, interrelated network of commercial properties. Properties proposed for conversion to a commercial future land use, which properties consist of multiple parcels, or groups of parcels, under multiple ownership are unlikely to develop as a true "commercial node." Instead, these properties are more likely to develop as separate, small commercial developments with multiple access points, leading to adverse, unsafe traffic conditions. Each small development may also have its own stormwater management pond, dumpster, and an appearance and/or landscaping design that is inconsistent with surrounding development. This pattern is a characteristic of strip commercial development (see Policy 1.13, above). Therefore, the City of Cape Coral encourages land owners and developers to assemble the properties involved in a commercial future land use request under common ownership. Multiple, small properties under separate ownership, even if such properties are included in a single future land use amendment request, may not be appropriate for the full array of commercial uses.

There are several properties in Block 1543 that have common ownership with sites over an acre in size. The applicants site, however, does not have any common ownership with other parcels in the block. Planning staff finds that the sites future land use designation is <u>partially consistent</u> with this commercial siting guideline.

Summary

Policy 1.14 contains eight commercial siting guidelines. Overall, the existing commercial area is consistent with two guidelines (compactness, intrusion); partially consistent with two guidelines (access, ownership pattern). The subject area is not consistent with five of the guidelines (integration, adequate depth, assembly, access, ownership pattern). Policy 1.14 does not require a proposed amendment to meet a certain threshold of guidelines for approval or denial, rather the guidelines are meant to provide a compatibility analysis. Staffs analysis of these guidelines indicates the site may be appropriate for commercial or multi-family development.

Appropriateness of Multi-Family Residential

The applicant has requested a future land use amendment to MF to build a residential home. If the amendment is approved, the site would be the only parcel in Block 1543 with a residential future land use designation. Generally, an amendment of this nature would be considered an example of "spot land use" or "spot zoning", however, these areas are only detrimental if the land use designation or zoning is not compatible with the surrounding area. Staff finds that there is a mix of commercial and residential in Block 1543 along with the nearby blocks and the site would be compatible with both of these areas as either a

commercial or residential development. Staff also finds that the future land use amendment would be a loss of commercial land for the City that already faces a commercial land deficit, however, the site is small and the loss would be de minimis. The site is 10,000 sq. ft. and would be difficult to develop unless the site was assembled with surrounding properties. Assembling the site could be challenging because all adjacent properties are developed with commercial or multi-family developments.

Impact Assessment Summary

The following calculations summarize approximate conditions for each municipal service analyzed. A more complete analysis of each service is included in the text that follows the calculations. To determine the impact assessment, staff utilized the adopted future land use and zoning designations to determine the existing impacts. Therefore, the impacts discussed in this assessment do not necessarily reflect the actual number of dwelling units, population, etc.

The adopted land use classification for these parcels is CP and the zoning designation governing the subject parcels is Multi-Family Residential (R-3). The maximum intensity permitted under the CP future land use classification is a floor-to-area ratio (FAR) of 1.0, but based on historical development in the City it is assumed that development would occur at a FAR of 0.25. This FAR would result in the site developing with approximately 2,500 sq. ft. of commercial space. For purposes of the land use amendment, the impact assessment summary of the proposed land use is based upon the existing zoning of R-3 that would allow a single-family home or a duplex. This impact assessment summary will analyze the impacts of the site developing with a duplex.

Commercial Square Footage

Existing:	2,500 sq. ft.
Proposed:	0 sq. ft.
Net Change:	-2,500 sq. ft.

Dwelling Units

Existing:	0
Proposed:	2
Net Change:	+2

Population*

Existing:	0
Proposed:	5
Net Change:	+5

* 2.54 persons/household = avg. household size; 2010 Census

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Water Use

Existing:	750 gal/day at 0.3 gal/sq. ft./day
Proposed:	400 gal/day at 200 gal/dwelling unit/day
Net Change:	-350 gal/day
Facility Capacity:	30.1 MGD
Permitted Usage:	16.9 MGD
Avg. Daily Usage:	9.4 MGD

<u>Sewage</u>

Existing:	750 gal/day at 0.3 gal/sq. ft./day
Proposed:	400 gal/day at 200 gal/dwelling unit/day
Net Change:	-350 gal/day
Facility Capacity:	28.4 MGD
Avg. Daily Usage:	12.8 MGD

Solid Waste

Existing Generation:	340 lbs./day at 0.136 lbs/sq ft./day
Proposed:	24 lbs./day at 4.74 lbs/person/day
Net Change:	-316 lbs./day
Facility Capacity:	1,836 tons/day
Existing Demand:	1,384 tons/day
Capacity Available:	Yes

Traffic/Daily Trips

Existing Generation:	4 AM trips/hour and 4 PM trips/hour ³
Proposed:	2 AM trips/hour and 2 PM trips/hour
Net Change:	-2 AM hour trips and -2 PM hour trips
Facility Capacity:	Access from one local street that has secondary access from Del Prado Boulevard,
	a major arterial
Capacity Available:	Yes

Hurricane Evacuation

The site is in the Storm Surge B/Evacuation Zone A, however, the subject property is not in the Coastal High Hazard Area. This amendment would increase residential dwelling units in this and could cause a small impact on hurricane evacuation times.

³ General Office classification according to ITE Trip Generation, 8th Edition.

Park Lands

The levels of service standard (LOS) for parkland and facilities are based on permanent population. Based on the proposed dwelling units, the increase in park facilities is marginal.

Protected Species

The City requires an environmental survey prior to the issuance of any land clearing/site clearing or development permits. Any future land alteration activities will be preceded by the completion of an environmental survey identifying the presence of protected flora and fauna. Based on the results of the environmental survey, City, State or Federal protective or mitigation may be required.

School Impacts

There will be an increase in the number of dwelling units because of the proposed future land use map amendment request and an increase in the projected number of students. The increase in dwelling units will result in an increase upon the demand on school facilities. Due to the current designation of Commercial/Professional, there are no existing residential units for this analysis.

Existing dwelling units: 0 dwelling units Existing students: 0 Proposed dwelling units: 2 dwelling units Proposed students: 2 (2 x .091 students per single-family dwelling unit) Change: +2 students

Public Notification

This case will be publicly noticed as required by LUDR, Section 8.3.2.A and 8.3.4 as further described below.

<u>Publication:</u> A display ad will be prepared and sent to the *News-Press* announcing the intent of the petitioners to amend the land use of the property described within this report. The ad will appear in the *News-Press* a minimum of 10 days prior to the public hearing scheduled before the Planning and Zoning Commission. Following the public hearing before the Commission, the display ad announcing the final public hearing before the City Council will appear once in the *News-Press*. The ad will appear in the newspaper not less than 10 days prior to the date of the final public hearing before the City Council. The display ads will not be published in the legal section of the *News-Press*.

<u>Written notice</u>: Property owners located within 500 feet from the property line of the land which the petitioners request to vacate will receive written notification of the scheduled public hearing. These letters will be mailed to the aforementioned parties a minimum of 10 days prior to the public hearing scheduled before the Planning and Zoning Commission.

<u>Posting of a Sign</u>: A large sign identifying the case and providing salient information will be posted on the property, as another means of providing notice of the land use amendment request.

Recommendation:

Through the analysis of the Cape Coral Comprehensive Plan and specifically the Future Land Use Element, the proposed amendment to Multi-Family Residential is consistent with the Comprehensive Plan and compatible with the surrounding area, therefore, Planning Division staff recommends <u>approval</u> of the proposed small-scale Future Land Use Map amendment request.

DEPARTMENT OF COMMUNITY DEVELOPMENT REQUEST TO PLANNING & ZONING COMMISSION/LOCAL PLANNING AGENCY AND COUNCIL FOR A LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT

FEE \$1,225.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

	(CASE #	LU17-0010	
OWNER OF PROPERTY NAPpi family Trust dote afril 6-04 Email:	Address: City: <u>Co</u> Phone:	505 SW Je Core(239 28	-33, 2 ale 	_ Zip <u>3 3 9 9/</u>
AUTHORIZED REPRESENTATIVE				
	Address: City:		State:	Zip
Email:	Phone:			
Unit 17 Block 1543 Lot(s) $28-29$ Legal Description $911ap$ $#084424$	Subdivision $C 4 0 15$	$\frac{Cofe}{430284}$	ovol, doe Ca	Varty Flexide
Address of Property 236 N.E. 164/pl	Plat R	ope CONS	(F1, 33909 Page 227	528
Current Zoning <u>RD-3</u> Strap Nur Current Land Use <u>C-1 professional</u> Proposed	mber g	28442	4C40154	30280
Parcel Size: Width <u>80</u> Depth 135 Soil Type: <u>Clean</u>	\$	Sq. Ft. 1 <u>07</u>	Acreage	
Urban Services Area: (check one) [] Infill Natural Resources: (state habitat type, e.g. high lands		nsition upland fores		s, etc.):
Animal Species: (list any endangered, threatened, or	species of s	special conce	ern on-site)	
Estimated Development:				
Estimate total lot coverag		%		
Estimate total building floo Estimate type of future de commercial retail, automo	evelopment			ss offices,
			х	

Estimated peak hour trip ends:

If 300 or less peak hour trip ends are projected, the applicant must provide the source of the traffic projection. If more than 300 peak hour trip ends are projected, a traffic impact study must be completed and submitted as part of the application (see attachments).

City Sewer:	Yes Yes	D.	No 🗌
City Water:	Yes	V	No 🗌

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

NAME (PLEASE TYPE OR PRINT AUTHORIZED SIGNATURE (SIGNATURE MUST BE NOTARIZED) , COUNTY OF STATE OF lle Sworn to (or affirmed) and subscribed before me this 10 day of Marcesca WOWho is personally known or produced as identification. Commission Number: Exp. Date: Signature of Notary Public: Printed name of Notary Public: Notary Public State of Florida



ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals, and Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

hereby acknowledge that I have read and understood the above affidavit on the ____ day of ,2018 NAME (PLEASE TYPE OR PRINT APPLIC H-, COUNTY OF STATE OF Subscribed and sward to (or affirmed) before me this day of 11lor / who is personally known or produced as identification. 21 Commission Number Exp. Date: Signature of Notary Public: Ponted name of Notary Public: Notary Public State of Florida Maricel Hernandez My Commission GG 167838 Expires 07/25/2021

To: The "Department of Community Development - Planning and zoning" of the City of Cape Corol in See Countr lorida. Please, we Gabriele and Francesca Mappi own a Barcelof Vacomt land in Unit 17, Block 1543, 1sts 28-29 with its address as, 236 NE. 16th Place Cape Corel Fl. 33909, request an amend,ment To the "Landuse", thus, To comply with the "Flexible Development overlay district", To give us the opportunity To build on "Duplex " Our lots are adjacent To, on each side, a duplex and a fourplex stovetures. They are part of the 25% of the remaning Vacant land of East side block on the N.E 15th place We appeal to your consideration to our situation. We are old and with a fixed i meome, in meed of a supplement. Simeerely, hoping for a positive conclusion, We Thank gov, Francesca Mappi Capecorol, Florida. 10-23-2017. 505 SW. 33rd ave, Cape Cotal, Fl. 33991

PLANNING DIVISION STAFF REPORT LU17-0010

PROPERTY ADDRESSES	APPLICANTS/PROPERTY OWNERS
236 NE 16 th Place	Gabriel and Francesca Nappi

SUMMARY OF REQUEST

The applicant requests a future land use map amendment from the Commercial/Professional (CP) future land use designation to the Multi-Family Residential (MF) future land use designation for one 10,000 sq. ft. parcel



STAFF RECOMMENDATION: APPROVAL

Positive Aspects of Application:	There is mix of multi-family and commercial development in the block and the surrounding area. The site is adjacent to residential homes to the north and south. The site does not have direct frontage on Del Prado Boulevard. Would provide a conforming land use and coning for this site.
Negative Aspects of Application:	The amendment would be a small loss of commercial land. The amendment would create an isolated location of MF future land use.
Mitigating Factors:	Loss of commercial land is minor. Potential for commercial development or assemblage is low. The site faces another block with primarily duplex development.

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SITE INFORMATION

Location:	236 NE 16 th Place
	Unit 17. Block 1543 – Lots 28 and 29.
	East of Del Prado Boulevard, North of Hancock Bridge Parkway.

STRAP Number: 08-44-24-C4-01543.0280

Site Area: 10,000 sq. ft.

Site:	Future Land Use	Zoning
Current:	Commercial/Professional	Multi-Family Residential (R-3)
Proposed:	Multi-Family Residential (MF)	N/A
	Surrounding Zoning	Surrounding Future Land Use
North:	СР	R-3
South:	СР	R-3
East:	MF	R-3
West:	СР	Pedestrian Commercial (C-1)

Urban Service	
Area:	Infill
City Water/Sewer:	Yes

Type ofAccess Road:NE 16th Place – local street

Soil Types and Limitations for Development:

		Limita	Limitations		
Мар		Dwellings without	Small commercial		
Unit		basements	buildings		
	Matlacha Gravelly Fine Sand,				
18	Limestone Substratum	Moderate (wetness)	Moderate (wetness)		

The soil in the area presents moderate limitations for dwellings and small commercial buildings. These limitations are typically overcome by using various engineering solutions, such as importing fill. The soil type, therefore, may not present an obstacle to any proposed amendment. However, special feasibility studies may be required at the development stage of the property.

Drainage: Must comply with South Florida Water Management District and the City of Cape Coral Engineering Design Standards.

Natural Resources: The site consists of undeveloped land. The hydrology is considered non-hydric.

Flora & Fauna Habitat: Prior to any permit for development being issued, an environmental survey must be undertaken, and mitigation performed to minimize the impacts of development, if any, on the protected species habitat.

FINDINGS OF FACT

The site is one parcel in southeastern Cape Coral in Block 1543. The parcel has frontage on NE 16th Place¹, however, the western half of Block 1543 has frontage on Del Prado Boulevard². The site is undeveloped and is surrounded by commercial development to the west and duplexes to the north, south, and east on the other side of NE 16th Place. The Future Land Use of the site has been Commercial/Professional (CP) since the initial adoption of the Comprehensive Plan in 1989. The site has Multi-Family Residential (R-3) zoning since prior to adoption of the Comprehensive Plan.

The applicant is seeking the future land use amendment request to construct a residence. The future land use amendment would allow the applicant to construct a single-family home or a duplex.

ANALYSIS

The Comprehensive Plan recognizes that the original platting of the City was prepared with the primary purpose of creating a multitude of platted lots for eventual residential development. This resulted in an imbalance between residential and commercial lands, leading to insufficient and financially unsustainable amounts of commercial lands. In 1989, the Comprehensive Plan designated the majority of blocks with frontage along Del Prado Boulevard, the City's main commercial corridor, with the CP future land use designation. The designation was to encourage commercial development with full block depth as recommended by several Comprehensive Plan policies. While many parcels along this corridor have developed with commercial uses, other parcels have remained undeveloped or have continued residential uses that were established prior to 1989. The applicant's parcel has remained undeveloped along with several other parcels in the block. Staff also notes that the site's zoning was never changed from Multi-Family Residential (R-3) pursuant to the 1989 Comprehensive Plan adoption.

To provide a recommendation of the applicant's future land use map amendment, Planning staff has analyzed the sites current CP future land use designation to determine if this designation is still appropriate for this site. This analysis can be found hereinbelow:

Appropriateness of Commercial/Professional future land use designation

<u>Policy 1.14</u>: The City of Cape Coral's commercial siting guidelines are based upon comparison of the locational characteristics of a property proposed for conversion to a commercial future land use classification with the ideal commercial node concept, as described in Policy 1.13, above. The guidelines are also based upon the need to maintain compatibility between commercial development and adjacent or nearby residential future land use classifications. Additional guidance for consideration of such properties is contained in Future Land Use Objectives 2 and 3 and Policy 1.12 of this comprehensive plan. Within this broad, general context, consideration of properties proposed for conversion to a commercial future land use shall be based upon the following commercial siting guidelines:

¹ A local street

² A Principal Arterial

Major Intersection

Preferred locations for commercial properties are in the vicinity of major intersections (i.e., intersections of two or more arterial and/or collector roadways). Development of a commercial node at such an intersection may involve multiple parcels and, sometimes, multiple quadrants of the intersection. The benefits derived by having commercial properties located in the vicinity of the intersection diminish with distance, but the distance at which a property ceases to derive benefit from proximity to the intersection varies, based upon whether the subject property would represent a "new" commercial property (a commercial property not abutting any existing commercial properties) or an expansion of an existing commercial area. New commercial properties should preferably be located adjacent to the intersection, while commercial properties that clearly represent an expansion of an existing commercial area can be any distance from the intersection, provided that such properties are integrated with existing properties (see below: Integration).

The parcel is in a block that has frontage along Del Prado Boulevard, however, the parcel is not near a major intersection. The closest intersection of two arterial or collector streets is approximately 1,800 to the south at the intersection of Del Prado Boulevard and Hancock Bridge Parkway. Planning staff finds that the site is not at a major intersection and <u>is not consistent</u> with this commercial siting guideline.

Adequate Depth

Ideally, a commercial property should extend not only along the adjacent collector or arterial roadway, but also should extend inward with adequate depth to accommodate the necessary parking, buffering, retention, and open area for the future commercial development. In Cape Coral, most City blocks are rows of back-to-back lots approximately 250 feet deep. Ideally, then, adequate depth is achieved if any number of contiguous properties, owned by the same landowner (see Ownership Pattern, below) occupy the entire 250 feet of depth. Adequate depth would not be achieved if the subject properties have different owners or if the contiguous properties are not reasonably compact (see below).

The site has a depth of 125 and is on the rear side of Block 1543. This block does have adequate depth however, the parcel that is east side of the site is developed with a commercial building. This development would make full block depth a challenge for the site unless redevelopment is pursued in the future. Planning staff finds that because the site has only 125 feet of depth and is in a block with fragmented ownership, the sites future land <u>is not consistent</u> with this commercial siting guideline.

Compactness

Compactness measures the ability of a property proposed for a commercial future land use to take advantage of economies of scale. The shape of an ideal compact commercial property approaches that of a square or rectangle. This quality allows for an orderly arrangement of development on the subject property and acts to reduce adverse visual, noise or aesthetic impacts to neighboring properties.

The site is rectangular in shape and is compact. The other parcels in Block 1543 have similar shapes, even though other parcels have been assembled into larger parcels. Planning staff finds that the sites future land use <u>is consistent</u> with this commercial siting guideline.

Integration

Integration, for the purposes of these guidelines, refers to the interrelatedness of development within a commercial node or area. The presence of features, such as internal access roads, shared parking, courtyards, walkways, or other features, binds the various commercial properties within the node together. This pattern of development reduces the traffic impacts associated with commercial development and often promotes a pedestrian-friendly environment. Integration of neighboring commercial properties should always be encouraged. Therefore, properties proposed for conversion to a commercial future land use should be evaluated for the likelihood that such properties would or could be integrated with adjacent existing commercial properties.

Block 1543 has been developed with commercial sites as well as residential units that were constructed prior to the adoption of the future land use designation. The lack of existing commercial development does not provide an opportunity for integration within the site, therefore, Planning Staff finds the future land use of the subject property is <u>not consistent</u> with this commercial siting guideline.

Assembly

For commercial areas to provide the most benefit to the surrounding community, they must be of relatively large size. The majority of buildable lots within the City of Cape Coral are approximately 10,000 square feet (0.23 acre) in size. These lots were designed primarily for single family residential development and do not typically have adequate width or depth for larger commercial developments that might serve the City as shopping and/or employment centers. Therefore, it is important for the City to encourage commercial applicants to assemble relatively large parcels (properties comprising 3 acres or more). Assembly of pre-platted parcels into tracts of 3 acres or more will promote the development of commercial properties that do not express the indicators of strip commercial development. Assembly of larger parcels also allows the developer to provide a greater variety of commercial land uses, and to provide architectural and landscape features that result in a more attractive end-product. Properties proposed for conversion to a commercial future land use, where such properties would represent an expansion of an existing commercial area may be considered "assembled," for the purposes of these guidelines if the proposed expansion properties are either owned by the landowner of one or more adjacent commercial properties, or if the expansion property is likely to be integrated with (see above) adjacent commercial properties.

Several properties in Block 1543 have been assembled into parcels larger than one acre, however, the site is one parcel. The site could assemble with the surrounding parcels, however, the majority of Block 1543 is already developed, therefore significant redevelopment would need to occur. Planning staff also finds that the Block 1543 is just over four acres and achieving the desired three-acre development would be difficult. Planning staff finds that the site has not been assembled and is not likely to be assembled in the near future, therefore, the future land use designation <u>is not consistent</u> with this commercial siting guideline.

Intrusion

"Intrusion," as defined for the purpose of these guidelines, is a measure of the objectionable qualities of the proposed commercial development. This guideline applies primarily to new commercial property (a property proposed for conversion to a commercial future land use in an area where it would not abut existing commercial properties). Intrusion evaluates the potential adverse impacts on surrounding properties that could be caused by converting a property from its existing future land use to a commercial use. There are no hard and fast guidelines for determining when a proposed commercial use would be intrusive to surrounding development. However, expansions of existing commercial areas are generally considered less intrusive than the establishment of new commercial areas. Commercial areas may be considered less intrusive to adjacent multi-family development than to adjacent single family development. Commercial development that is separated from a residential area by a street, canal, a vegetative buffer, or other geographic features, may be considered less intrusive than commercial development that directly abuts a residential area. The degree of compactness (see above) of a commercial property can also reduce or increase its intrusion upon adjacent or nearby properties.

Typically, new commercial properties (properties proposed for conversion to a commercial future land use classification, which do not abut existing commercial properties) are less likely to be considered intrusive if the surrounding or adjacent residential areas are sparsely developed. While intrusion is subjective and depends on many factors, a rule of thumb is that the proposed commercial property would not likely be intrusive if adjacent residential areas are 25% or less developed. The area analyzed to determine the percentage of adjacent residential development may vary from 300 feet to 1,000 feet from the subject property, depending upon the degree to which streets, canals, landscaping or other geographic features separate the subject property from nearby residential areas.

There are several commercial establishments in Block 1543 that have developed around pre-existing dwelling units, however, the residential units comprise more than 25% of the block. The block to east across a local street is more than 25% developed with residential uses, however, blocks to the north and south are either undeveloped or fall below the 25% threshold. Planning staff finds that enough commercial development is near the site that any new commercial development would not be considered intrusive, therefore the sites future land use designation <u>is consistent</u> with this commercial siting guideline.

Access

In the City of Cape Coral there are two ideal access provisions for a commercial property. If a subject property would meet the requirements for one or more of these provisions, the creation of a commercial future land use at the proposed location should be encouraged. These provisions are as follows:

a) Access via a platted City parking area. The City of Cape Coral contains a number of dedicated commercial parking areas; some created by plat, and some deeded to the City by landowners. The Comprehensive Plan and City Land Use and Development Regulations refer to these as "dedicated City parking areas." These parking areas are often surrounded by smaller platted lots originally intended for commercial development with access to these lots only, or primarily, from the dedicated City parking area. In implementing this provision, it may sometimes be in the City's interest to promote conversion of a dedicated City parking area to a fully functional commercial development (i.e., a portion of the dedicated parking area would become a commercial building site) in return for the applicant's agreement to own and manage the site.

b) Direct access onto an arterial or collector roadway having an adopted City access management plan. The City has adopted access management plans for certain arterial and collector roadways. Access management plans serve to facilitate mobility of the traveling public; therefore, such roadways more readily accommodate the impacts of commercial development than roadways without such access management plans.

The site is not near a City-owned parking lot and does not have frontage on a roadway with an access management plan. Block 1543 has frontage on Del Prado Boulevard which is an arterial roadway with an access management plan. Planning staff finds that the site lacks ideal access from an arterial or collector street, however, the site is in a block with frontage on Del Prado Boulevard, therefore, the sites future land use designation <u>is partially consistent</u> with this commercial siting guideline.

Ownership Pattern

An ideal commercial node is a cohesive, compact, interrelated network of commercial properties. Properties proposed for conversion to a commercial future land use, which properties consist of multiple parcels, or groups of parcels, under multiple ownership are unlikely to develop as a true "commercial node." Instead, these properties are more likely to develop as separate, small commercial developments with multiple access points, leading to adverse, unsafe traffic conditions. Each small development may also have its own stormwater management pond, dumpster, and an appearance and/or landscaping design that is inconsistent with surrounding development. This pattern is a characteristic of strip commercial development (see Policy 1.13, above). Therefore, the City of Cape Coral encourages land owners and developers to assemble the properties involved in a commercial future land use request under common ownership. Multiple, small properties under separate ownership, even if such properties are included in a single future land use amendment request, may not be appropriate for the full array of commercial uses.

There are several properties in Block 1543 that have common ownership with sites over an acre in size. The applicants site, however, does not have any common ownership with other parcels in the block. Planning staff finds that the sites future land use designation is <u>partially consistent</u> with this commercial siting guideline.

Summary

Policy 1.14 contains eight commercial siting guidelines. Overall, the existing commercial area is consistent with two guidelines (compactness, intrusion); partially consistent with two guidelines (access, ownership pattern). The subject area is not consistent with four of the guidelines (integration, adequate depth, assembly, access). Policy 1.14 does not require a proposed amendment to meet a certain threshold of guidelines for approval or denial, rather the guidelines are meant to provide a compatibility analysis. Staff's analysis of these guidelines indicates the site may not be appropriate for commercial development.

Appropriateness of Multi-Family Residential

The applicant has requested a future land use amendment to MF to build a residential home. If the amendment is approved, the site would be the only parcel in Block 1543 with a residential future land use designation. Generally, an amendment of this nature would be considered an example of "spot land use" or "spot zoning", however, these areas are only detrimental if the land use designation or zoning is not compatible with the surrounding area. Staff finds that there is a mix of commercial and residential in Block 1543 along with the nearby blocks and the site would be compatible with both of these areas as either a commercial or residential development. Staff also finds that the future land use amendment would be a loss of commercial land for the City that already faces a commercial land deficit, however, the site is small and the loss would be de minimis. The site is 10,000 sq. ft. and would be difficult to develop unless the site was assembled with surrounding properties. Assembling the site could be challenging because all adjacent properties are developed with commercial or multi-family developments. Policy 8.5 also encourages duplex or multi-family development as a buffer or separation from low-density residential development such as single-family homes. While the block to the east across NE is already developed with some duplexes or multi-family units, this amendment could further enlarge that buffer.

ECONOMIC DEVELOPMENT MASTER PLAN ANALYSIS

The amendment is not directly supported or in conflict with the City Economic Development Master Plan. The site is not within an Economic Opportunity Area. The amendment is not likely to result in a large-scale multi-family development.

REGIONAL PLAN ANALYSIS

Southwest Florida Regional Planning Council's (SWFRPC) Strategic Regional Policy Plan (SRPP):

This existing CP Future Land Use designation is partially consistent with the SRPP Strategy that prioritizes locating commercial development along transportation corridors. The site has secondary access to Del Prado Boulevard which is a transportation corridor.

Lee County Metropolitan Planning Organization's (MPO) 2040 Long Range Transportation Plan:

Del Prado Boulevard has not been identified for improvements or widening in the MPO's 2040 Long Range Transportation Plan.

IMPACT ASSESSMENT SUMMARY

The following calculations summarize approximate conditions for each municipal service analyzed. A more complete analysis of each service is included in the text that follows the calculations. To determine the impact assessment, staff utilized the adopted future land use and zoning designations to determine the existing impacts. Therefore, the impacts discussed in this assessment do not necessarily reflect the actual number of dwelling units, population, etc.

The adopted land use classification for these parcels is CP and the zoning designation governing the subject parcels is Multi-Family Residential (R-3). The maximum intensity permitted under the CP future land use classification is a floor-toarea ratio (FAR) of 1.0, but based on historical development in the City it is assumed that development would occur at a FAR of 0.25. This FAR would result in the site developing with approximately 2,500 sq. ft. of commercial space. For purposes of the land use amendment, the impact assessment summary of the proposed land use is based upon the existing zoning of R-3 that would allow a single-family home or a duplex. This impact assessment summary will analyze the impacts of the site developing with a duplex.

Commercial Square Footage

Existing:	2,500 sq. ft.
Proposed:	0 sq. ft.
Net Change:	-2,500 sq. ft.

Dwelling Units

Existing:	0
Proposed:	2
Net Change:	+2

Population*

Existing:	0
Proposed:	5
Net Change:	+5

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* 2.54 persons/household = avg. household size; 2010 Census

Water Use

Existing:	750 gal/day at 0.3 gal/sq. ft./day
Proposed:	400 gal/day at 200 gal/dwelling unit/day
Net Change:	-350 gal/day
Facility Capacity:	30.1 MGD
Permitted Usage:	16.9 MGD
Avg. Daily Usage:	9.4 MGD

<u>Sewage</u>

Existing:	750 gal/day at 0.3 gal/sq. ft./day
Proposed:	400 gal/day at 200 gal/dwelling unit/day
Net Change:	-350 gal/day
Facility Capacity:	28.4 MGD
Avg. Daily Usage:	12.8 MGD

Solid Waste

340 lbs./day at 0.136 lbs/sq ft./day
24 lbs./day at 4.74 lbs/person/day
-316 lbs./day
1,836 tons/day
1,384 tons/day
Yes

Traffic/Daily Trips

Existing Generation:	4 AM trips/hour and 4 PM trips/hour ³
Proposed:	2 AM trips/hour and 2 PM trips/hour
Net Change:	-2 AM hour trips and -2 PM hour trips
Facility Capacity:	Access from one local street that has secondary access from Del Prado Boulevard, a major arterial
Capacity Available:	Yes

Hurricane Evacuation

The site is in the Storm Surge B/Evacuation Zone A, however, the subject property is not in the Coastal High Hazard Area. This amendment would increase residential dwelling units in this and could cause a small impact on hurricane evacuation times.

³ General Office classification according to ITE Trip Generation, 8th Edition.

Park Lands

The levels of service standard (LOS) for parkland and facilities are based on permanent population. Based on the proposed dwelling units, the increase in park facilities is marginal.

Protected Species

The City requires an environmental survey prior to the issuance of any land clearing/site clearing or development permits. Any future land alteration activities will be preceded by the completion of an environmental survey identifying the presence of protected flora and fauna. Based on the results of the environmental survey, City, State or Federal protective or mitigation may be required.

School Impacts

There will be an increase in the number of dwelling units because of the proposed future land use map amendment request and an increase in the projected number of students. The increase in dwelling units will result in an increase upon the demand on school facilities. Due to the current designation of Commercial/Professional, there are no existing residential units for this analysis.

Existing dwelling units: 0 dwelling units Existing students: 0 Proposed dwelling units: 2 dwelling units Proposed students: 0 (2 x .091 students per multi-family dwelling unit) Change: +0 students

PUBLIC NOTIFICATION

This case will be publicly noticed as required by LUDR, Section 8.3.2.A and 8.3.4 as further described below.

<u>Publication</u>: A display ad will be prepared and sent to the *News-Press* announcing the intent of the petitioners to amend the land use of the property described within this report. The ad will appear in the *News-Press* a minimum of 10 days prior to the public hearing scheduled before the Planning and Zoning Commission. Following the public hearing before the Commission, the display ad announcing the final public hearing before the City Council will appear once in the *News-Press*. The ad will appear in the newspaper not less than 10 days prior to the date of the final public hearing before the City Council. The display ads will not be published in the legal section of the *News-Press*.

<u>Written notice</u>: Property owners located within 500 feet from the property line of the land which the petitioners request to vacate will receive written notification of the scheduled public hearing. These letters will be mailed to the aforementioned parties a minimum of 10 days prior to the public hearing scheduled before the Planning and Zoning Commission.

<u>Posting of a Sign</u>: A large sign identifying the case and providing salient information will be posted on the property, as another means of providing notice of the land use amendment request.

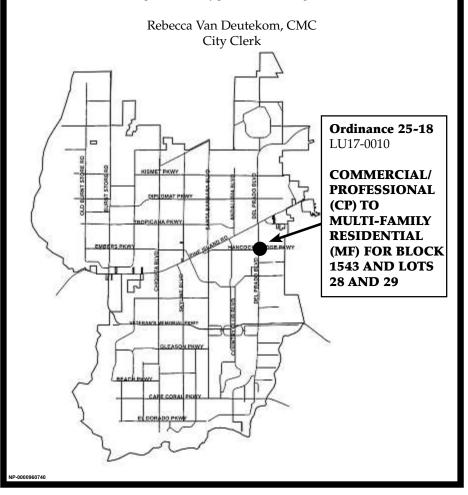
RECOMMENATION

Through the analysis of the Cape Coral Comprehensive Plan and specifically the Future Land Use Element, the proposed amendment to Multi-Family Residential is consistent with the Comprehensive Plan and compatible with the surrounding area, therefore, Planning Division staff recommends **approval** of the proposed small-scale Future Land Use Map amendment request.

NOTICE OF CHANGE OF LAND USE

The City of Cape Coral proposes to adopt ORDINANCE 25-18, AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM COMMERCIAL/PROFESSIONAL (CP) TO MULTI-FAMILY RESIDENTIAL (MF) LAND USE FOR PROPERTY DESCRIBED AS LOTS 28 AND 29, BLOCK 1543, UNIT 17, CAPE CORAL SUBDIVISION, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED AT 236 NE 16TH PLACE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

A public hearing on the ordinance will be held Wednesday, May 16, 2018 at 9:00 a.m. at the City of Cape Coral, City Hall Chambers, 1015 Cultural Park Blvd., Cape Coral, Florida 33990. At this public hearing, the Planning and Zoning Commission will consider a recommendation to change the City's future land use map amendment request. Accordingly, members of the general public and real property owners in the community are invited to appear and speak at the public hearing. Written comments filed with the Director will also be entered into the record. A copy of the map and the proposed amendment under consideration will be available for inspection and will be provided to the public at cost at the City Clerk's office between 7:30 a.m. and 4:30 p.m., Monday through Friday excluding holidays. Any person who decides to appeal any decision made by the City Council at that meeting will need a record of proceedings, and that subject person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. In accordance with Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this meeting should contact the City Clerk no later than 4:00 p.m. on the day prior to the meeting.



□ PROOF O.K. BY: ____

□ O.K. WITH CORRECTIONS BY:__

PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE

ADVERTISER: CITY OF CAPE CORAL_DEPT SALES PERSON: Legal Display PUBLICATION: NP-CAPE SUN PRESS SIZE: 3 col X 9.25 in PROOF CREATED AT: 5/1/2018 2:50 PM PROOF DUE: -NEXT RUN DATE: 05/06/18

NP-0000960740.INDD

Lots 28 and 29, together with the east 10 ft. of a vacated alley abutting the west boundary line of lots 28 and 29, Block 1543, Unit 17, CAPE CORAL SUBDIVISION, a subdivision according to the plat thereof, as recorded in Plat Book 15 at pages 23 through 38, in the Public Records of Lee County, Florida.





NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: LU17-0010

<u>REQUEST</u>: The applicant requests a future land use map amendment from the Commercial/Professional (CP) future land use designation to the Multi-Family Residential (MF) future land use designation for one 10,000 sq. ft. parcel.

LOCATION: 236 NE 16th Place

CAPE CORAL STAFF CONTACT: Chad Boyko, Principal Planner, 239-573-3162, cboyko@capecoral.net

PROPERTY OWNER(S): Gabriel and Francesca Nappi

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Local Planning Agency will hold a public hearing at 9:00 A.M. on Wednesday, May 16, 2018, on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Local Planning Agency will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

After the Local Planning Agency has made a written recommendation, the case will be scheduled for a public hearing before the City Council who will review the recommendation and make a final decision. You will receive another public hearing notice when this case is scheduled for a City Council hearing.

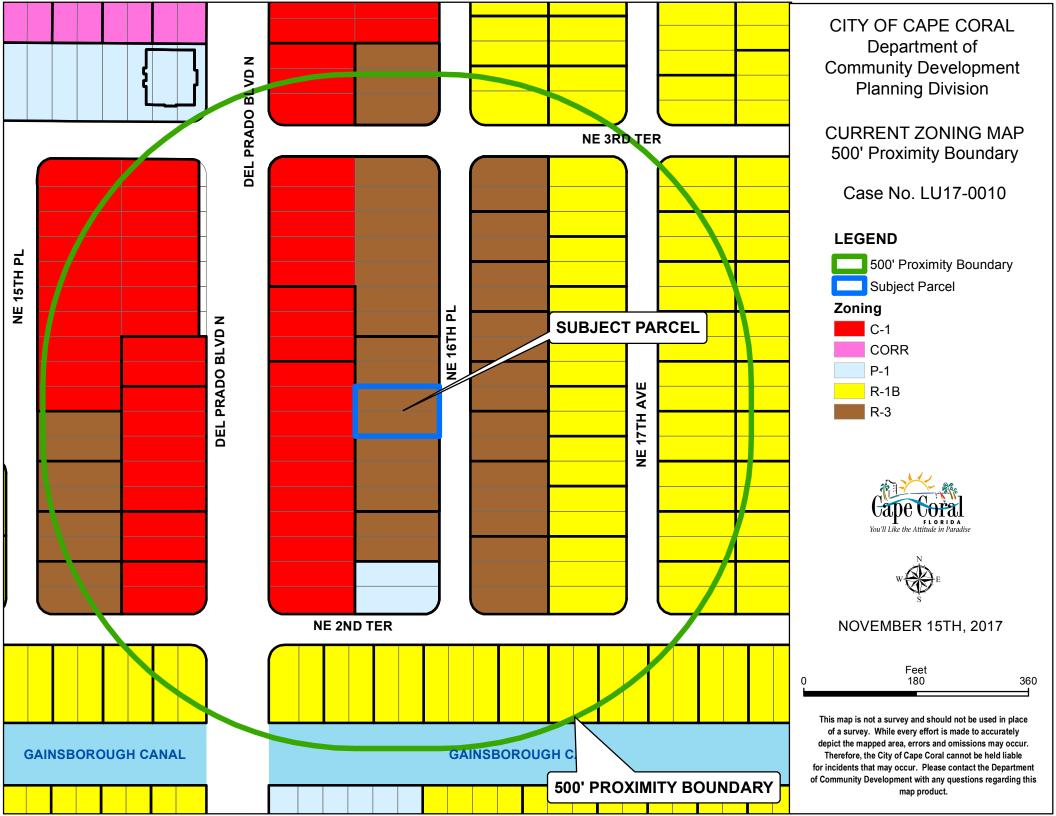
DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, <u>www.capecoral.net/publichearing</u> (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

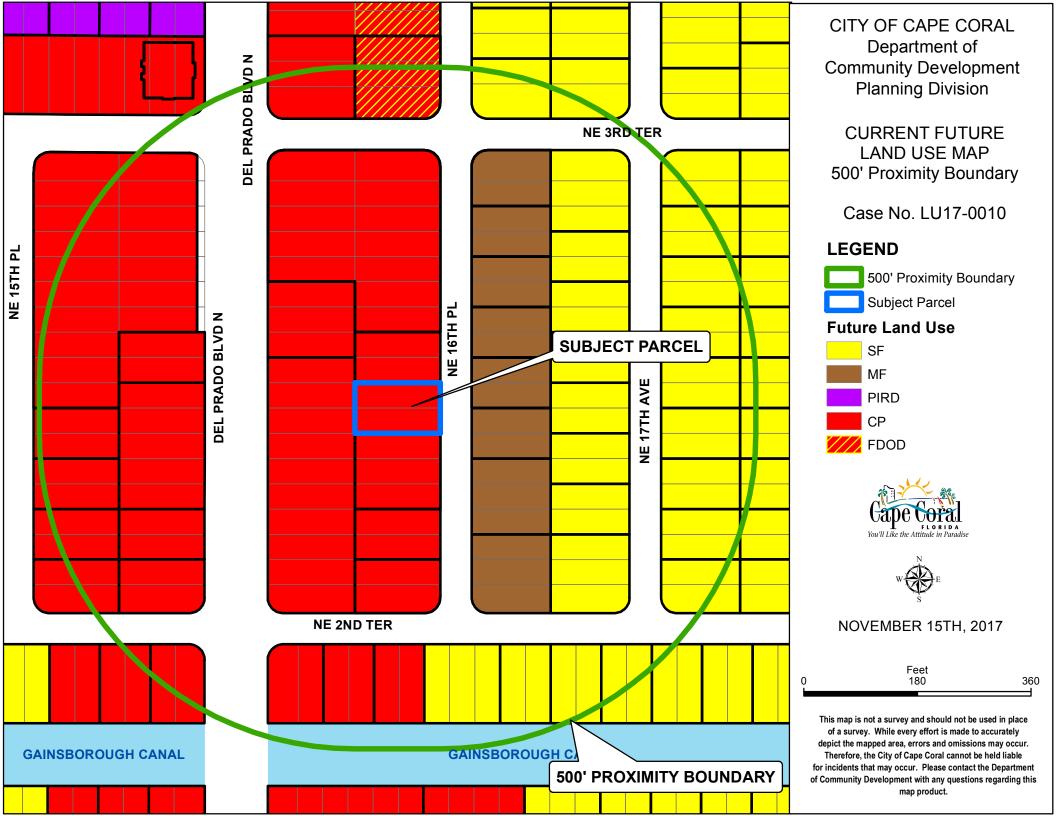
HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

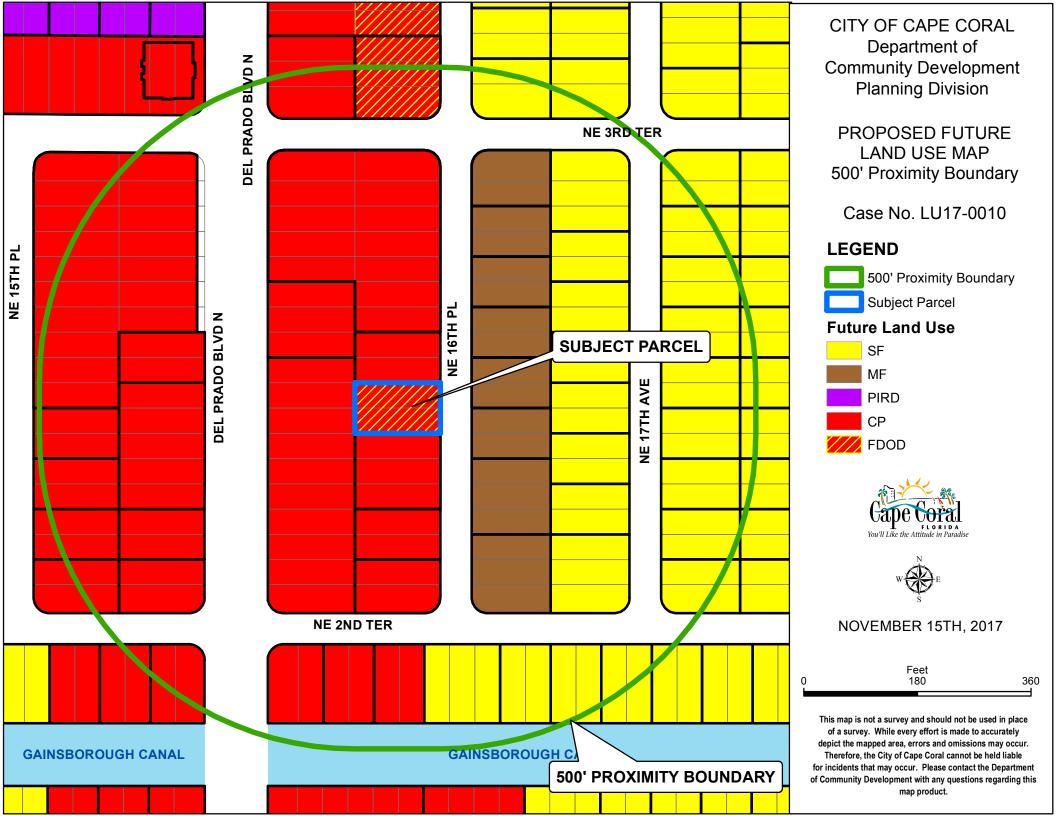
<u>ADA PROVISIONS</u>: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

<u>APPEALS</u>: If a person decides to appeal any decision made by the Local Planning Agency with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.









Owner_Name	Mailing_Ad	Mailing Ci	Maili	n Mailing_Zi
PAPISH NESTOR Z	423 HAWKVIEW MANOR CIR NW	CALGARY	AB	T3G 2Z2 CA
2016 MANAPOURI TRUST + GOELZ JUERGON ET AL	THEODOR-HEUSS STR A	56288 KASTELLAUN	AD	GERMANY
ALTOPIEDI JOHN H + DORIS M	305 NE 17TH AVE	CAPE CORAL	FL	33909
ARAUJO PEDRO LUIS AVILES + OJEDA YENISBEL LOZADA		CAPE CORAL	ΓL	55909
H/W	228 NE 17TH AVE	CAPE CORAL	FL	33909
BANGTHAMAI CHARINEE	222 NE 14TH PL	CAPE CORAL	FL	33909
BAYSWATER LLC	1222 NE 1411 PE	CAPE CORAL	FL	33909
BHR RENTAL-CC234 LLC	20340 BUCK CREST LANE	ALVA		33920
BLANCHETTE GREGG A + JOAN M	398 SALMON FALLS RD	ROCHESTER	FL	
CAPE TRUST INVESTMENTS LLC	13335 SW 124 ST STE 107		NH	03868
CEDENO SARA P TR FOR SARA P CEDENO TRUST	825 NW 38TH PL	MIAMI CAPE CORAL	FL	33186 33993
CEDENO SARA P TR FOR SARA P CEDENO TROST CESARONI WILLIAM C + JESSICA C			FL	
	649 GLENAYRE DR	GLENVIEW	IL	60025
CONNOLLY HYLTON + RAZLYN	1112 FOAM PL		NY	11691
	192 WAITS RD	MILLEDGEVILLE	GA	31061
FLOYD WILLIAM H JR	12021 FLINTLOCK LN	FORT MYERS	FL	33912
	18110 TRAVERSE DR	ALVA	FL	33920
FORT MYERS LAND COMPANY LLC	14091 CERRITO ST	FORT MYERS	FL	33905
GARCIA MILTON	225 NE 17TH AVE	CAPE CORAL	FL	33909
GONZALEZ FELIX + MARTHA	317 NE 16TH PL	CAPE CORAL	FL	33909
GRANUS GENE M + CARPINELLI CYNTHIA M H/W	233 NE 17TH AVE	CAPE CORAL	FL	33909
GREENE GAIL IRA 1/2 + WORMSER ERIC IRA 1/2 T/C				
MIDLAND IRA INC	528 SW 8TH TER	CAPE CORAL	FL	33993
HALEK ANDREW B JR	1728 SE 8TH TER	CAPE CORAL	FL	33990
HANSEN WILLIAM F + CYNTHIA L	1624 NE 2ND TER	CAPE CORAL	FL	33909
JOMAR INVESTMENTS LLC	PO BOX 60021	FORT MYERS	FL	33906
KSF-II LLLP	31 HIGHLAND HILLS LN STE 101	STUARTS DRAFT	VA	24477
LAMONICA JOSEPH	301 NE 17TH AVE	CAPE CORAL	FL	33909
LANE HOLLY J	230 NE 17TH PLACE	CAPE CORAL	FL	33909
LAYTON HARRY J + MONIKA J	408 SE 24TH ST	CAPE CORAL	FL	33990
LEADER ESMERLYN JOEL	317 NE 17TH AVE	CAPE CORAL	FL	33909
LEE COUNTY	PO BOX 398	FORT MYERS	FL	33902
LOPEZ ROLANDO	323 NE 16TH PL	CAPE CORAL	FL	33909
MAR-Y-SOL INVESTMENTS LLC	1514 SW 58TH LN	CAPE CORAL	FL	33914
	8609 WESTWOOD CENTER DR STE			
MCF FLORIDA I LLC	450	VIENNA	VA	22182
MCKEOWN PETER J JR & MCKEOWN GLORIA J	234 NE 17TH PL	CAPE CORAL	FL	33909
MENDOZA BLANCA + RAUL	1620 NE 2ND TER	CAPE CORAL	FL	33909
MERCER INVESTMENT 326 LAND TRUST	18011 S TAMIAMI TRL STE 16-99F	FORT MYERS	FL	33908
MEYER VON BREMEN LLC 123 CAPE - FLORIDA HOMES				
PROP	4226 DEL PRADO BLVD S	CAPE CORAL	FL	33904
NAPPI GABRIEL + FRANCESCA TR FOR NAPPI FAMILY				
TRUST	505 SW 33RD AV	CAPE CORAL	FL	33991
NORTON JUANITA F	306 NE 17TH PL	CAPE CORAL	FL	33909
ONE PRICE OPTICAL INC	325 DEL PRADO BLVD N	CAPE CORAL	FL	33909
RACETRAC PETROLEUM INC	PO BOX 2437	SMYRNA	GA	30081
RECCA VINCENT + DORRIE	5310 SW 11TH CT	CAPE CORAL	FL	33914
RICCARDI RAOUL A + RICCARDI ROGER J/T	301 NE 16TH PL	CAPE CORAL	FL	33909
RODRIGUEZ JOSE A + MARINIEVES	312 NE 17TH AVE	CAPE CORAL	FL	33909
ROMAN GUSTAVO + ANA CRISTINA	4391 LAZIO WAY # 302	FORT MYERS	FL	33901
RUIZ MERCEDES + JOSE M	232 NE 17TH AVE	CAPE CORAL	FL	33909
SAULSBY LORENZO F & ROSE M	310 NE 17TH PL	CAPE CORAL	FL	33909
SCHULTZ KEITH + JULIA	525 SE 16TH PL	CAPE CORAL	FL	33990
SHREFFLER TODD + SHARON J	309 NE 17TH AVE	CAPE CORAL	FL	33909
SODERHOLM MICHELE A	313 NE 17TH AVE	CAPE CORAL	FL	33909
SPYKER DOLORES L + ISENBERG DEBORAH L	229 NE 17TH AVE	CAPE CORAL	FL	33909
TORRES GLICELLE + PEREZ JEREMY A T/C	309 NE 16TH PL	CAPE CORAL	FL	33909

TUSCAN PLACE MEDICAL & PROFESSIONAL CONDO ASSN				
INC H CHARARA	1120 WALES DR	FORT MYERS	FL	33901
VALLONE JAMES J + VALLONE STACIE E BONITO H/W	8516 SOUTHWIND BAY CIR	FORT MYERS	FL	33908
WAGNER JOHN R + CAROL L TR FOR JOHN R WAGNER +				
CAROL L WAGNER TRUST	320 PRATHER DR	FORT MYERS	FL	33919
WIESE SCOTT + ALYCIA	1702 NE 2ND TER	CAPE CORAL	FL	33909
WRIGHT NATALIE	236 NE 17TH AVE	CAPE CORAL	FL	33909

Site Information

Location:236 NE 16th PlaceUnit 17. Block 1543 – Lots 28 and 29.East of Del Prado Boulevard, North of Hancock Bridge Parkway.

STRAP Number: 08-44-24-C4-01543.0280

Site Area: 10,000 sq. ft.

Subject	Future Land Use	Zoning
Property:		
Current:	Commercial/Professional	Multi-Family Residential (R-3)
Proposed:	Multi-Family Residential (MF)	N/A
	Surrounding Zoning	Surrounding Future Land Use
North:	СР	R-3
South:	СР	R-3
East:	MF	R-3
West:	СР	Pedestrian Commercial (C-1)

Urban Service Area:	Infill
City Water:	Yes
City Sewer:	Yes
Type of Access Road:	NE 16 th Place – local street

Soil Types and Limitations for Development:

		Limitations	
Мар		Dwellings without	Small commercial
Unit		basements	buildings
	Matlacha Gravelly Fine Sand,		
18	Limestone Substratum	Moderate (wetness)	Moderate (wetness)

The soil in the area presents moderate limitations for dwellings and small commercial buildings. These limitations are typically overcome by using various engineering solutions, such as importing fill. The soil type, therefore, may not present an obstacle to any proposed amendment. However, special feasibility studies may be required at the development stage of the property.

Drainage:Must comply with South Florida Water Management District and the City of
Cape Coral Engineering Design Standards.

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Natural Resources:	The site consists of undeveloped land. The hydrology of the site due to soil types is considered non-hydric.
Flora & Fauna Habitat:	Prior to any permit for development being issued, an environmental survey must be undertaken, and mitigation performed to minimize the impacts of development, if any, on the protected species habitat.

Background

The site is one parcel in southeastern Cape Coral within Block 1543. The parcel has frontage on NE 16th Place¹, however, the western half of Block 1543 has frontage on Del Prado Boulevard². The site is undeveloped, but is surrounded by a commercial development to the west, duplexes to the north, south, and east. The Future Land Use of the site has retained the Commercial/Professional (CP) future land use designation since the initial adoption of the Comprehensive Plan in 1989. The site has also retained the Multi-Family Residential (R-3) since prior to the adoption of the Comprehensive Plan.

The applicant is seeking the future land use amendment request to construct a residential home on the site. The future land use amendment would allow the applicant to construct a single-family home or a duplex on the site.

¹ A local street

² A Principal Arterial

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ANALYSIS

The Comprehensive Plan recognizes that the original platting of the City was prepared with the primary purpose of creating a multitude of platted lots for eventual residential development. This resulted in an imbalance between residential and commercial lands, leading to insufficient and financially unsustainable amounts of commercial lands. In 1989, the Comprehensive Plan designated the majority of blocks with frontage along Del Prado Boulevard, the City's main commercial corridor, with the CP future land use designation. The designation was to encourage commercial development with full block depth as recommended by several Comprehensive Plan policies. While many parcels along this corridor have developed with commercial uses, other parcels have remained undeveloped or have continued residential uses that were established prior to 1989. The applicant's parcel has remained undeveloped along with several other parcels in the block. Staff also notes that the sites zoning was never changed from Multi-Family Residential (R-3) pursuant to the 1989 Comprehensive Plan adoption.

To provide a recommendation of the applicant's future land use map amendment, Planning staff has analyzed the sites current CP future land use designation to determine if this designation is still appropriate for this site. This analysis can be found herein:

Appropriateness of Commercial/Professional future land use designation

Policy 1.12 of the Future Land Use Element requires the City to conduct commercial land needs studies to identify areas of the City, which could accommodate commercially designated land, consistent with the studies' findings and recommendations, and other provisions of the Comprehensive Plan. In March 2007, the City of Cape Coral requested Paul Van Buskirk, PhD., AICP, PE, and Mike Jackson, the City's former Economic Development Director, to prepare a report entitled: "Future Land Use Analysis: Commercial & Industrial Land Required for The City of Cape Coral At Build-Out." This report updated earlier analyses. The report suggests several strategies to increase the inventory of developable commercial properties within the City. Two of the suggested strategies involve 1) converting parcels with residential future land use to commercial future land use and, 2) increasing the size of existing commercial areas. The FLUMA in 2006 converted approximately 7.97 acres of land that was designation as SM to CP. Thus, staff finds that the 1989 amendment is consistent with Policy 1.12. Staff notes that Policy 1.12 was adopted several years after the sites Future Land Use designation was adopted.

<u>Policy 1.14</u>: The City of Cape Coral's commercial siting guidelines are based upon comparison of the locational characteristics of a property proposed for conversion to a commercial future land use classification with the ideal commercial node concept, as described in Policy 1.13, above. The guidelines are also based upon the need to maintain compatibility between commercial development and adjacent or nearby residential future land use classifications. Additional guidance for consideration of such properties is contained in Future Land Use Objectives 2 and 3 and Policy 1.12 of this comprehensive plan. Within this broad, general context, consideration of properties proposed for conversion to a commercial future land use shall be based upon the following commercial siting guidelines:

Commercial Siting Guidelines

Major Intersection

Preferred locations for commercial properties are in the vicinity of major intersections (i.e., intersections of two or more arterial and/or collector roadways). Development of a commercial node at such an intersection may involve multiple parcels and, sometimes, multiple quadrants of the intersection. The benefits derived by having commercial properties located in the vicinity of the intersection diminish with distance, but the distance at which a property ceases to derive benefit from proximity to the intersection varies, based upon whether the subject property would represent a "new" commercial property (a commercial property not abutting any existing commercial properties) or an expansion of an existing commercial area. New commercial properties should preferably be located adjacent to the intersection, while commercial properties that clearly represent an expansion of an existing commercial area can be any distance from the intersection, provided that such properties are integrated with existing properties (see below: Integration).

The parcel is in block that has frontage along Del Prado Boulevard, however, the parcel is not near a major intersection. The closest intersection of two arterial or collector streets is approximately 1,800 to the south at the intersection of Del Prado Boulevard and Hancock Bridge Parkway. Planning staff finds that the site is not at a major intersection and <u>is not consistent</u> with this commercial siting guideline.

Adequate Depth

Ideally, a commercial property should extend not only along the adjacent collector or arterial roadway, but also should extend inward with adequate depth to accommodate the necessary parking, buffering, retention, and open area for the future commercial development. In Cape Coral, most City blocks are rows of back-to-back lots approximately 250 feet deep. Ideally, then, adequate depth is achieved if any number of contiguous properties, owned by the same landowner (see Ownership Pattern, below) occupy the entire 250 feet of depth. Adequate depth would not be achieved if the subject properties have different owners or if the contiguous properties are not reasonably compact (see below).

The site has a depth of 125 and is on the rear side of Block 1543. This block does have adequate depth however, the parcel that is east side of the site is developed with a commercial building. This development would make full block depth a challenge for the site unless redevelopment is pursued in the future. Planning staff finds that because the site has only 125 feet of depth and is in a block with fragmented ownership, the sites future land <u>is not consistent</u> with this commercial siting guideline.

Compactness

Compactness measures the ability of a property proposed for a commercial future land use to take advantage of economies of scale. The shape of an ideal compact commercial property approaches that of a square or rectangle. This quality allows for an orderly arrangement of development on the subject property and acts to reduce adverse visual, noise or aesthetic impacts to neighboring properties.

The site is rectangular in shape and is compact. The other parcels in Block 1543 have similar shapes, even though other parcels have been assembled into larger parcels. Planning staff finds that the sites future land use <u>is consistent</u> with this commercial siting guideline.

Integration

Integration, for the purposes of these guidelines, refers to the interrelatedness of development within a commercial node or area. The presence of features, such as internal access roads, shared parking, courtyards, walkways, or other features, binds the various commercial properties within the node together. This pattern of development reduces the traffic impacts associated with commercial development and often promotes a pedestrian-friendly environment. Integration of neighboring commercial properties should always be encouraged. Therefore, properties proposed for conversion to a commercial future land use should be evaluated for the likelihood that such properties would or could be integrated with adjacent existing commercial properties.

Block 1543 has been developed with commercial sites as well as residential units that were constructed prior to the adoption of the future land use designation. The lack of existing commercial development does not provide an opportunity for integration within the site, therefore, Planning Staff finds the future land use of the subject property is <u>not consistent</u> with this commercial siting guideline.

Assembly

For commercial areas to provide the most benefit to the surrounding community, they must be of relatively large size. The majority of buildable lots within the City of Cape Coral are approximately 10,000 square feet (0.23 acre) in size. These lots were designed primarily for single family residential development and do not typically have adequate width or depth for larger commercial developments that might serve the City as shopping and/or employment centers. Therefore, it is important for the City to encourage commercial applicants to assemble relatively large parcels (properties comprising 3 acres or more). Assembly of pre-platted parcels into tracts of 3 acres or more will promote the development of commercial properties that do not express the indicators of strip commercial development. Assembly of larger parcels also allows the developer to provide a greater variety of commercial land uses, and to provide architectural and landscape features that result in a more attractive end-product. Properties proposed for conversion to a commercial future land use, where such properties would represent an expansion of an existing commercial area may be considered "assembled," for the purposes of these guidelines if the proposed expansion properties are either owned by the landowner of one or more adjacent commercial properties, or if the expansion property is likely to be integrated with (see above) adjacent commercial properties.

Several properties in Block 1543 have been assembled into parcels larger than one acre, however, the site is one parcel. The site could assemble with the surrounding parcels, however, the majority of Block 1543 is already developed, therefore significant redevelopment would need to occur. Planning staff also finds that the Block 1543 is just over four acres and achieving the desired three-acre development would be difficult. Planning staff finds that the site has not been assembled and is not likely to be assembled in the near future, therefore, the future land use designation <u>is not consistent</u> with this commercial siting guideline.

Intrusion

"Intrusion," as defined for the purpose of these guidelines, is a measure of the objectionable qualities of the proposed commercial development. This guideline applies primarily to new commercial property (a property proposed for conversion to a commercial future land use in an area where it would not abut existing commercial properties). Intrusion evaluates the potential adverse impacts on surrounding properties that could be caused by converting a property from its existing future land use to a commercial use. There are no hard and fast guidelines for determining when a proposed commercial use would be intrusive to surrounding development. However, expansions of existing commercial areas are generally considered less intrusive than the establishment of new commercial areas. Commercial areas may be considered less intrusive to adjacent multi-family development than to adjacent single family development. Commercial development that is separated from a residential area by a street, canal, a vegetative buffer, or other geographic features, may be considered less intrusive than commercial development that directly abuts a residential area. The degree of compactness (see above) of a commercial property can also reduce or increase its intrusion upon adjacent or nearby properties.

Typically, new commercial properties (properties proposed for conversion to a commercial future land use classification, which do not abut existing commercial properties) are less likely to be considered intrusive if the surrounding or adjacent residential areas are sparsely developed. While intrusion is subjective and depends on many factors, a rule of thumb is that the proposed commercial property would not likely be intrusive if adjacent residential areas are 25% or less developed. The area analyzed to determine the percentage of adjacent residential development may vary from 300 feet to 1,000 feet from the subject property, depending upon the degree to which streets, canals, landscaping or other geographic features separate the subject property from nearby residential areas.

There are several commercial establishments in Block 1543 that have developed around pre-existing dwelling units, however, the residential units comprise more than 25% of the block. The block to east across a local street is more than 25% developed with residential uses, however, blocks to the north and south are either undeveloped or fall below the 25% threshold. Planning staff finds that enough commercial development is near the site that any new commercial development would not be considered intrusive, therefore the sites future land use designation <u>is consistent</u> with this commercial siting guideline.

Access

In the City of Cape Coral there are two ideal access provisions for a commercial property. If a subject property would meet the requirements for one or more of these provisions, the creation of a commercial future land use at the proposed location should be encouraged. These provisions are as follows:

a) Access via a platted City parking area. The City of Cape Coral contains a number of dedicated commercial parking areas; some created by plat, and some deeded to the City by landowners. The Comprehensive Plan and City Land Use and Development Regulations refer to these as "dedicated City parking areas." These parking areas are often surrounded by smaller platted lots originally intended for commercial development with access to these lots only, or primarily, from the dedicated City parking area. In implementing this provision, it may sometimes be in the City's interest to promote conversion of a dedicated City parking area to a fully functional commercial development (i.e., a portion of the dedicated parking area would become a commercial building site) in return for the applicant's agreement to own and manage the site.

b) Direct access onto an arterial or collector roadway having an adopted City access management plan. The City has adopted access management plans for certain arterial and collector roadways. Access management plans serve to facilitate mobility of the traveling public; therefore, such roadways more readily accommodate the impacts of commercial development than roadways without such access management plans.

The site is not near a City-owned parking lot and does not have frontage on a roadway with an access management plan. Block 1543 has frontage on Del Prado Boulevard which is an arterial roadway with an access management plan. Planning staff finds that the site lacks ideal access from an arterial or collector street, however, the site is in a block with frontage on Del Prado Boulevard, therefore, the sites future land use designation is partially consistent with this commercial siting guideline.

Ownership Pattern

An ideal commercial node is a cohesive, compact, interrelated network of commercial properties. Properties proposed for conversion to a commercial future land use, which properties consist of multiple parcels, or groups of parcels, under multiple ownership are unlikely to develop as a true "commercial node." Instead, these properties are more likely to develop as separate, small commercial developments with multiple access points, leading to adverse, unsafe traffic conditions. Each small development may also have its own stormwater management pond, dumpster, and an appearance and/or landscaping design that is inconsistent with surrounding development. This pattern is a characteristic of strip commercial development (see Policy 1.13, above). Therefore, the City of Cape Coral encourages land owners and developers to assemble the properties involved in a commercial future land use request under common ownership. Multiple, small properties under separate ownership, even if such properties are included in a single future land use amendment request, may not be appropriate for the full array of commercial uses.

There are several properties in Block 1543 that have common ownership with sites over an acre in size. The applicants site, however, does not have any common ownership with other parcels in the block. Planning staff finds that the sites future land use designation is <u>partially consistent</u> with this commercial siting guideline.

Summary

Policy 1.14 contains eight commercial siting guidelines. Overall, the existing commercial area is consistent with two guidelines (compactness, intrusion); partially consistent with two guidelines (access, ownership pattern). The subject area is not consistent with five of the guidelines (integration, adequate depth, assembly, access, ownership pattern). Policy 1.14 does not require a proposed amendment to meet a certain threshold of guidelines for approval or denial, rather the guidelines are meant to provide a compatibility analysis. Staffs analysis of these guidelines indicates the site may be appropriate for commercial or multi-family development.

Appropriateness of Multi-Family Residential

The applicant has requested a future land use amendment to MF to build a residential home. If the amendment is approved, the site would be the only parcel in Block 1543 with a residential future land use designation. Generally, an amendment of this nature would be considered an example of "spot land use" or "spot zoning", however, these areas are only detrimental if the land use designation or zoning is not compatible with the surrounding area. Staff finds that there is a mix of commercial and residential in Block 1543 along with the nearby blocks and the site would be compatible with both of these areas as either a

commercial or residential development. Staff also finds that the future land use amendment would be a loss of commercial land for the City that already faces a commercial land deficit, however, the site is small and the loss would be de minimis. The site is 10,000 sq. ft. and would be difficult to develop unless the site was assembled with surrounding properties. Assembling the site could be challenging because all adjacent properties are developed with commercial or multi-family developments.

Impact Assessment Summary

The following calculations summarize approximate conditions for each municipal service analyzed. A more complete analysis of each service is included in the text that follows the calculations. To determine the impact assessment, staff utilized the adopted future land use and zoning designations to determine the existing impacts. Therefore, the impacts discussed in this assessment do not necessarily reflect the actual number of dwelling units, population, etc.

The adopted land use classification for these parcels is CP and the zoning designation governing the subject parcels is Multi-Family Residential (R-3). The maximum intensity permitted under the CP future land use classification is a floor-to-area ratio (FAR) of 1.0, but based on historical development in the City it is assumed that development would occur at a FAR of 0.25. This FAR would result in the site developing with approximately 2,500 sq. ft. of commercial space. For purposes of the land use amendment, the impact assessment summary of the proposed land use is based upon the existing zoning of R-3 that would allow a single-family home or a duplex. This impact assessment summary will analyze the impacts of the site developing with a duplex.

Commercial Square Footage

Existing:	2,500 sq. ft.
Proposed:	0 sq. ft.
Net Change:	-2,500 sq. ft.

Dwelling Units

Existing:	0
Proposed:	2
Net Change:	+2

Population*

Existing:	0
Proposed:	5
Net Change:	+5

* 2.54 persons/household = avg. household size; 2010 Census

February 13, 2017 LU17-0010 Page 10

Water Use

Existing:	750 gal/day at 0.3 gal/sq. ft./day
Proposed:	400 gal/day at 200 gal/dwelling unit/day
Net Change:	-350 gal/day
Facility Capacity:	30.1 MGD
Permitted Usage:	16.9 MGD
Avg. Daily Usage:	9.4 MGD

<u>Sewage</u>

Existing:	750 gal/day at 0.3 gal/sq. ft./day
Proposed:	400 gal/day at 200 gal/dwelling unit/day
Net Change:	-350 gal/day
Facility Capacity:	28.4 MGD
Avg. Daily Usage:	12.8 MGD

Solid Waste

Existing Generation:	340 lbs./day at 0.136 lbs/sq ft./day
Proposed:	24 lbs./day at 4.74 lbs/person/day
Net Change:	-316 lbs./day
Facility Capacity:	1,836 tons/day
Existing Demand:	1,384 tons/day
Capacity Available:	Yes

Traffic/Daily Trips

Existing Generation:	4 AM trips/hour and 4 PM trips/hour ³
Proposed:	2 AM trips/hour and 2 PM trips/hour
Net Change:	-2 AM hour trips and -2 PM hour trips
Facility Capacity:	Access from one local street that has secondary access from Del Prado Boulevard,
	a major arterial
Capacity Available:	Yes

Hurricane Evacuation

The site is in the Storm Surge B/Evacuation Zone A, however, the subject property is not in the Coastal High Hazard Area. This amendment would increase residential dwelling units in this and could cause a small impact on hurricane evacuation times.

³ General Office classification according to ITE Trip Generation, 8th Edition.

Park Lands

The levels of service standard (LOS) for parkland and facilities are based on permanent population. Based on the proposed dwelling units, the increase in park facilities is marginal.

Protected Species

The City requires an environmental survey prior to the issuance of any land clearing/site clearing or development permits. Any future land alteration activities will be preceded by the completion of an environmental survey identifying the presence of protected flora and fauna. Based on the results of the environmental survey, City, State or Federal protective or mitigation may be required.

School Impacts

There will be an increase in the number of dwelling units because of the proposed future land use map amendment request and an increase in the projected number of students. The increase in dwelling units will result in an increase upon the demand on school facilities. Due to the current designation of Commercial/Professional, there are no existing residential units for this analysis.

Existing dwelling units: 0 dwelling units Existing students: 0 Proposed dwelling units: 2 dwelling units Proposed students: 2 (2 x .091 students per single-family dwelling unit) Change: +2 students

Public Notification

This case will be publicly noticed as required by LUDR, Section 8.3.2.A and 8.3.4 as further described below.

<u>Publication:</u> A display ad will be prepared and sent to the *News-Press* announcing the intent of the petitioners to amend the land use of the property described within this report. The ad will appear in the *News-Press* a minimum of 10 days prior to the public hearing scheduled before the Planning and Zoning Commission. Following the public hearing before the Commission, the display ad announcing the final public hearing before the City Council will appear once in the *News-Press*. The ad will appear in the newspaper not less than 10 days prior to the date of the final public hearing before the City Council. The display ads will not be published in the legal section of the *News-Press*.

<u>Written notice</u>: Property owners located within 500 feet from the property line of the land which the petitioners request to vacate will receive written notification of the scheduled public hearing. These letters will be mailed to the aforementioned parties a minimum of 10 days prior to the public hearing scheduled before the Planning and Zoning Commission.

<u>Posting of a Sign</u>: A large sign identifying the case and providing salient information will be posted on the property, as another means of providing notice of the land use amendment request.

Recommendation:

Through the analysis of the Cape Coral Comprehensive Plan and specifically the Future Land Use Element, the proposed amendment to Multi-Family Residential is consistent with the Comprehensive Plan and compatible with the surrounding area, therefore, Planning Division staff recommends <u>approval</u> of the proposed small-scale Future Land Use Map amendment request.

Department of Community Development **Planning Division**

AFFIDAVIT

IN RE: APPLICATION OF: Nappi

APPLICATION NO: LU17-0010

§

STATE OF FLORIDA COUNTY OF LEE

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this

day of

2018

Vincent A. Cautero. AICP

STATE OF FLORIDA COUNTY OF LEE

The foregoing instrument was acknowledged before me this $\frac{2018}{2018}$ day of $\frac{2018}{2018}$, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

ELISABETH A DELGADO MY COMMISSION # GG030474 EXPIRES December 06, 2020

Exp. Date 12/0120 Commission # 66.030474

Elisabeth A. Delgado Print Name of Notary Public

Item B.(2) Number: B.(2) Meeting 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Introductions





TITLE:

Ordinance 38-18 Set Public Hearing Date for June 18, 2018

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1.	Will this	action result	in a	Budget Amendment?	No
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2. Is this a Strategic Decision?

Yes

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

ELEMENT F: ENHANCE THE QUALITY OF LIFE THROUGH ARTS AND CULTURE TO CREATE AND PROMOTE A VIBRANT, CULTURALLY DIVERSE COMMUNITY.

ELEMENT G: WORK TOWARD EFFICIENT AND COST-EFFECTIVE SOLUTIONS TO PROTECT AND CONSERVE NATURAL RESOURCES, WHILE PROMOTING ENVIRONMENTAL AWARENESS AND SUSTAINABILITY IN THE COMMUNITY.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An Ordinance ordering and calling for a Bond Referendum Election to be held on November 6, 2018 in the City of Cape Coral, Florida to determine if the qualified electors residing in the City approve the issuance by the City of General Obligation Bonds which shall mature not later than Fifteen (15) Years from their date of issuance in an aggregate principal amount not exceeding \$60,000,000 payable from Ad Valorem Taxes levied in amounts sufficient to pay Debt Service on such Bonds on all taxable property within the City to finance costs relating to the acquisition, construction and equipping of Various Parks, Natural Areas, Recreational and Athletic Facilities; Trails, Boating, Fishing and Swimming Facilities, and Wildlife Habitat and Shoreline Protection Improvements; providing severability and an effective date.

LEGAL REVIEW:

EXHIBITS:

Memo REVISED - Ordinance 38-18

PREPARED BY:

Division- Department- City Attorney

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description

- Memo
- REVISED Ordinance 38-18

Type Backup Material Backup Material

MEMORANDUM

CITY OF CAPE CORAL CITY MANAGER'S OFFICE

TO: John Szerlag, City Managè FROM: Jay Murphy, Business Manager Victoria Bateman, Finance Director Kerry Runyon, Parks and Recreation É

DATE: May 31, 2018

SUBJECT: Consideration of General Obligation Bond Referendum Question for the November 2018 General Election

RECOMMENDATION

The City Council adopted the Parks Master Plan in December 2016. The master plan identified various parks and recreation deficiencies and developed a strategic course to address these deficiencies. The plan includes parks and recreational improvements, athletic facilities, trails, boat ramps, protection of wildlife habitat and natural areas.

The cost to address the parks and recreation needs identified in the Parks Master Plan is about \$57 million. Trying to fix these deficiencies on a "pay as you go" plan is not a feasible option and could take decades to complete. Because of the need to move forward and begin implementing the Master Plan, City staff is recommending City Council ask the voters to approve a General Obligation (GO) bond not to exceed \$60 million. The term of the bond will be 15 years. Please know that bond proceeds will not be used for recurring "Operation and Maintenance" costs or future personnel costs (see Financial Considerations).

GO bonds cannot be issued without the approval of the voters. By placing this referendum on the November ballot, our residents will have the opportunity to decide if they want these parks and recreation projects to be completed. If they vote in the affirmative, the \$60 million bond will be repaid with ad valorem taxes via a debt service millage rate, which is estimated in the range of 0.4 mils.

PARKS MASTER PLAN OVERVIEW

City staff first met in August 2015 to begin the process of developing a master plan for the City's parks and recreation needs. In January 2016, a group of residents were assembled to assist in the development of the plan. The stakeholders provided

valuable input, which was instrumental in the final product presented to City Council in December 2016.

The final Parks Master Plan contains 46 recommendations within the seven following categories:

Neighborhood, Community, and Nature Parks Special Venues Beach and Water Access Trails and Bikeways Signage and Wayfinding Programs and Special Events Maintenance and Operations*

*This category references only the development of a comprehensive maintenance plan and establishing maintenance facilities. This is not related to the ongoing annual operating and maintenance costs and future personnel costs.

The Parks Master Plan did not consider the 175 acres of property formerly known as the Golf Club, which the City now is negotiating to purchase. A recent request also was advanced to build athletic fields by the Oasis Charter Schools. Due to these two, new variables, we have reassembled the Parks Master Plan stakeholders. They have been tasked to determine if there is a need or desire to amend the plan taking these variables into consideration as to how they might impact Yacht Club venue facilities, Four Freedoms Park and Festival Park.

The stakeholders have been challenged to complete this task by mid-August. Any suggested changes to the Master Plan will be presented to City Council for adoption.

FINANCIAL CONSIDERATIONS

Recurring Costs Associated with Operations and Maintenance

The Master Plan estimates construction costs amounting to \$42 million, while planning and design costs are about \$14.7 million. The total is \$56.7 million. The plan estimates recurring operating and maintenance costs of \$3 million upon completion of all projects. Future personnel costs will be determined based on the venue. These costs are not included in the \$60 million GO bond.

Grant Fund Revenues

If voter approval is received and the GO bond issued, the City will move forward with the projects immediately. The City also will identify and seek numerous grant opportunities that may be available. Most of these grants are limited to specific uses and require matching funds. They also are released on a specific schedule. While we are optimistic that grant funds can be acquired, because of the specific guidelines, we cannot include grants as a known source of funding.

Other Revenues

Many of these future venues will generate revenues via concessions, admission fees, rentals and contracts. While not expected to be substantial, these revenues will offset some of the future costs.

Bond Market

The City's financial markets advisor, Julie Santamaria, Director, RBC Capital Markets, has prepared a proforma for issuance of a \$60 million GO bond for 15 years. Based on current market conditions these bonds will be sold at a premium and will provide the City with \$58.4 million in total capital revenue with an expected interest rate about 3.58%.

The following is a summary prepared by RBC that offers further information.

	City of Cape Coral General Obligation Bonds, Series 2019	
Dated Date Delivery Date	02/01/2019 02/01/2019	
Sources:		
Bond Proceeds:		
Par Amount	54,200,000.00	
Net Premium	5,797,049.65	
	59,997,049.65	
Uses:		
Project Fund Deposits:		
Project Fund	58,400,234.31	
Other Fund Deposits:		
Capitalized Interest Fund	1,281,315.34	
Delivery Date Expenses:		
Cost of Issuance	180,000.00	
Underwriter's Discount	135,500.00	
	315,500.00	
	59,997,049.65	

SOURCES AND USES OF FUNDS

Figure 1 Table prepared by RBC, Julie Santamaria, Director Capital Markets

ORDINANCE 38 - 18

AN ORDINANCE ORDERING AND CALLING FOR A BOND REFERENDUM ELECTION TO BE HELD ON NOVEMBER 6, 2018 IN THE CITY OF CAPE CORAL, FLORIDA TO DETERMINE IF THE QUALIFIED ELECTORS RESIDING IN THE CITY APPROVE THE ISSUANCE BY THE CITY OF GENERAL OBLIGATION BONDS WHICH SHALL MATURE NOT LATER THAN FIFTEEN (15) YEARS FROM THEIR DATE OF ISSUANCE IN AN AGGREGATE PRINCIPAL AMOUNT NOT PAYABLE EXCEEDING \$60,000,000 FROM AD VALOREM TAXES LEVIED IN AMOUNTS SUFFICIENT TO PAY DEBT SERVICE ON SUCH BONDS ON ALL TAXABLE PROPERTY WITHIN THE CITY TO FINANCE RELATING COSTS TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF VARIOUS PARKS, NATURAL AREAS, RECREATIONAL AND ATHLETIC FACILITIES; TRAILS, BOATING, FISHING SWIMMING FACILITIES, AND WILDLIFE AND SHORELINE PROTECTION HABITAT AND IMPROVEMENTS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA:

SECTION 1. FINDINGS. The City Council of the City of Cape Coral Florida (the "City") hereby finds and determines that:

(a) It is necessary and desirable and in the best interests of the City to acquire, construct and equip various parks, natural areas, recreational and athletic facilities, trails, boating, fishing and swimming facilities, and wildlife habitat and shoreline protection improvements (as generally described in Exhibit A hereto and more particularly described in the plans and specifications on file with the City, the "Project"), in order to promote, improve, maintain and protect the health, safety and welfare of the residents of the City.

(b) The most efficient and fair method of financing costs of the Project is through the issuance of general obligation bonds (the "Bonds") maturing not later than fifteen (15) years from their date of issuance, and secured by and payable from ad valorem taxes levied in amounts sufficient to pay debt service on such Bonds on all taxable property within the City (the "Ad Valorem Taxes").

(c) In accordance with the Constitution of the State of Florida and the Charter of the City, the question as to whether or not such Bonds should be issued to finance costs of the Project must be submitted to the qualified electors of the City.

SECTION 2. BOND REFERENDUM ELECTION. A bond referendum election of the qualified electors in the City is hereby ordered and called to be held on November 6, 2018, to determine whether or not the City shall issue the Bonds in one or more series to finance costs of the Project. Such Bonds shall mature not later than fifteen (15) years from their date of issuance, shall be issued in an aggregate principal amount of not exceeding \$60,000,000, shall bear interest at a rate not in excess of the maximum lawful rate and shall be secured by and payable from the Ad Valorem Taxes. If the issuance of

1

the Bonds is approved by the qualified electors, the specific provisions of the Bonds shall be set forth in a resolution or ordinance subsequently adopted by the City Council.

SECTION 3. MANNER OF VOTING. The referendum election shall be conducted in accordance with applicable law at the same time and places as the general election to be held on November 6, 2018, coordinated by the Supervisor of Elections of Lee County and, to the extent required, the City Clerk. Early voting may be utilized to the extent allowable by, and in accordance with, applicable law.

SECTION 4. OFFICIAL BALLOT. The form of ballot to be used shall be in substantially the form as attached hereto as Exhibit B. The ballots to be used in the referendum election, including any required sample ballots, shall be prepared and distributed by the Supervisor of Elections of Lee County in accordance with applicable law. Electronic balloting may be utilized to the extent allowable by, and in accordance with, applicable law.

SECTION 5. VOTE BY MAIL. Adequate provision shall be made by the Supervisor of Elections of Lee County for "Vote by Mail". Ballots to be used in the referendum election for "Vote by Mail" shall be in substantially the same form as those ballots utilized at the polling places on the day of the referendum election. Ballots for "Vote by Mail" shall be distributed, collected and canvassed in accordance with applicable law.

SECTION 6. ELECTION RESULTS. Returns of the votes cast at the referendum election shall be certified by the City Council in accordance with Article IX of the City's Charter. If a majority of the votes cast at such election in respect to the aforestated proposition shall be "YES - For Bonds" votes, such proposition shall be approved and the Bonds may be issued by the City. If a majority of the votes cast at such election in respect to the aforestated proposition shall be "NO - Against Bonds" votes, such proposition shall be defeated and the Bonds may not be issued by the City.

SECTION 7. NOTICE OF BOND REFERENDUM ELECTION. A public notice, substantially in the form attached hereto as Exhibit C, shall be published in full in a newspaper of general circulation in the City in the manner provided by law. The notice shall be published at least 30 days prior to the bond referendum election, once in the fifth week prior and once again in the third week prior to the week in which the bond referendum election is held, all in the manner provided in Section 100.342, Florida Statutes. The City Clerk is hereby charged with the responsibility of this notice procedure.

SECTION 8. SUPERVISORS OF ELECTIONS. The City Clerk is hereby authorized and directed to coordinate with and through the Supervisor of Elections of Lee County in carrying out the purposes of this Ordinance.

SECTION 9. CONFLICTS. If there is conflict between the provision of this Ordinance and any other ordinance or resolution or portions thereof, the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 10. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 11. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Cape Coral, Florida.

ADOPTED AT A REGULAR COUNCIL MEETING THIS ____ DAY OF JUNE, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	NELSON	
GUNTER	STOKES	
CARIOSCIA	WILLIAMS	
STOUT	COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF JUNE, 2018.

REBECCA VAN DEUTEKOM, CITY CLERK

APPROVED AS TO FORM:

Dolores D. Menindy CITY ATTORNEY 6/4/18

EXHIBIT A

The Project consists of various park and recreational capital improvements, including but not limited to, parks, natural areas, recreational and athletic facilities, trails, boat ramps, piers, swimming and fishing facilities and improvements and facilities to protect wildlife habitat and improve shoreline protection, all as more particularly described in the City of Cape Coral Parks Master Plan and other plans and specifications on file with the City, as the same may be amended and supplemented from time to time by the City.

EXHIBIT B

Official Ballot City of Cape Coral, Florida Bond Referendum Election November 6, 2018

Cape Coral General Obligation Bonds For Parks, Wildlife Habitat and Shoreline Protection and Recreational Facilities

To finance costs of various parks, natural areas, recreational and athletic facilities, trails, boat ramps, piers, swimming and fishing facilities, and improvements for wildlife habitat and shoreline protection, shall the City of Cape Coral issue general obligation bonds not exceeding \$60,000,000, maturing within 15 years of issuance, with interest not exceeding the maximum legal rate, and payable from ad valorem property taxes levied in amounts sufficient to pay debt service on such Bonds?

INSTRUCTIONS TO VOTERS:

YES - FOR BONDS

NO - AGAINST BONDS

EXHIBIT C

Notice to Electors of the City of Cape Coral of a Bond Referendum Election to be held on November 6, 2018 Regarding Cape Coral General Obligation Bonds For Parks, Wildlife Habitat and Shoreline Protection and Recreational Facilities

Notice is herby given that a bond referendum election will be held on November 6, 2018, to determine whether the City of Cape Coral may finance the acquisition, construction and equipping of various parks, natural areas, recreational and athletic facilities, trails, boat ramps, piers, swimming and fishing facilities, and improvements for wildlife habitat and shoreline protection by issuing general obligation bonds maturing not later than fifteen (15) years from their issuance date in a principal amount not exceeding \$60,000,000, with interest not exceeding the maximum legal rate, which bonds shall be payable from ad valorem property taxes levied in amounts sufficient to pay debt service on such Bonds on all taxable property within the City.

As required by Ordinance No. _____, this Notice is given by publishing said Ordinance No. _____ in full as follows:

[copy Ordinance]

Item B.(3) Number: B.(3) Meeting 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Introductions





TITLE:

Ordinance 39-18 Set Public Hearing for Transmittal Date for June 18, 2018

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No

2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending Policy 1.15 of the Future Land Use Element to establish the Seven Islands Sub-District Land Use Classification, which provides specific development limitations that are unique to the area.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 39-18 Future Land Use Element GOP excerpt Ord 39-18 Summary 7 Islands Sub-District TXT 18-0002 case report

PREPARED BY:

Division- Department- City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Wyatt Daltry, Planning Team Coordinator

ATTACHMENTS:

Description

- D Ordinance 39-18
- E Future Land Use Element GOP excerpt
- D Ord 39-18 Summary 7 Islands Sub-District
- D TXT 18-0002 Case Report

Туре

Ordinance Backup Material Backup Material Backup Material

ORDINANCE 39 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING POLICY 1.15 OF THE FUTURE LAND USE ELEMENT TO ESTABLISH THE SEVEN ISLANDS SUB-DISTRICT LAND USE CLASSIFICATION; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS AS FOLLOWS:

Section 1. The City of Cape Coral hereby adopts Comprehensive Plan amendments necessary to update the Comprehensive Plan as follows:

The amendment to Policy 1.15 of the Future Land Use Element establishes the Seven Islands Sub-District which provides specific development limitations that are unique to the area. The amendment to the Future Land Use Element is described in Exhibit A, attached hereto and incorporated herein by reference.

Section 2. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this plan amendment shall be thirty-one (31) days after the state land planning agency notifies the City that the plan amendment package is complete, or if timely challenged, the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184(3)(c)4., F.S., whichever is applicable.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	
GUNTER	
CARIOSCIA	
STOUT	

NELSON STOKES WILLIAMS COSDEN

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM CITY CLERK

APPROVED AS TO FORM:

BRIAN R. BARTOS

ASSISTANT CITY ATTORNEY Comp Plan Amendment-Seven Island Sub District

EXHIBIT A

FUTURE LAND USE ELEMENT

GOAL: TO PROTECT THE PUBLIC INVESTMENT BY ENCOURAGING THE EFFICIENT USE OF COMMUNITY INFRASTRUCTURE AND NATURAL RESOURCES; ASSURE THE ORDERLY, EFFICIENT GROWTH OF THE CITY BY ENCOURAGING DEVELOPMENT IN THOSE AREAS WHICH ARE BEST SERVED BY INFRASTRUCTURE AND COMMUNITY SERVICES; PROMOTE NEW LAND USES WHICH CREATE THE LEAST POSSIBLE DISRUPTION TO EXISTING USES; CREATE A STRATEGY WHICH ANTICIPATES FUTURE COMMUNITY NEEDS BY ACQUIRING AND ASSEMBLING PLATTED LANDS; AND PROTECT THE RIGHTS OF INDIVIDUAL PROPERTY OWNERSHIP, CONSISTENT WITH PUBLIC NEEDS.

<u>OBJECTIVE 1:</u> Managing Future Growth and Development: The City of Cape Coral will manage future growth and land development by adopting, implementing, and enforcing new regulatory vehicles. All land development regulations called for in this Plan shall be adopted and implemented in accordance with the provisions of S. 163.3202, Florida Statutes. The short-term planning timeframe shall be established as up to the year 2020, while the long-term planning horizon shall be the year 2035.

•••

<u>Policy 1.15:</u> Land development regulations adopted to implement this comprehensive plan will be based on, and will be consistent with, the standards for uses and densities/intensities as described in the following future land use classifications. In no case shall maximum densities allowable by the following classifications conflict with Policy 4.3.3 of the Conservation and Coastal Management Element regulating density of development within the Coastal High Hazard Area.

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OPEN SPACE (OS): The Open Space Future Land Use Classification is designed r. to designate, with the consent of the property owner, areas for purposes or activities having no dwelling units, non-residential floor area or demand for public facilities. Areas suitable for designation under this classification include, but are not limited to, the following: lakes or other waterways not platted as rights-of-way, which may be used for recreational purposes; stormwater treatment facilities; buffer areas; preserves or conservation areas; or recreation areas having no access except by owners, guests or employees of the surrounding development project. Areas included within this future land use classification used for recreation may have amenities, including, but not limited to, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Floor areas of any such structures shall not be considered as non-residential floor area, and may not be used to support the sale or rental of any items; nor may such structures be used for office or administrative purposes. No commercial use shall be made for any recreational facilities located within the Open Space Future Land Use Classification.

Paving of areas within this future land use classification shall be limited to the construction of foot paths and floors for open-sided shelters or pavilions, basketball, tennis or other recreational courts (however, no such courts shall have associated

spectator seating or administrative/maintenance structures), as well as paving associated with minimal parking areas, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Lands or areas within this future land use classification shall not be used as parking for residential, commercial or industrial areas, although minimal onsite parking, including an access drive, may be allowed to facilitate recreational use of lands under this future land use classification, or to serve as parking for nearby properties that are within the Natural Resources/Preservation Future Land Use Classification.

All zoning districts are considered compatible with this future land use classification. However, this future land use classification allows only those activities that are consistent with this classification, as delineated above, and, which have no associated density, intensity, or demand for public facilities.

<u>s.</u> <u>Sub-Districts:</u> In addition to the regulations listed above, the City of Cape Coral also has sub-districts, as a means to efficiently regulate development in particular areas of interest. These sub- districts include:

Tyson Shores Sub-District

Within the Tyson Shores Sub-District, development shall be limited to a maximum of115 dwelling units. All property within the Tyson Shores Sub-District shall be entitled to a proportional share of the 115 dwelling units; however, the development rights may be transferred among any properties within the Tyson Shores Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan. This limitation may be amended when central water and sewer service is available to serve the site.

Judd Creek Sub-District

Within the Judd Creek Sub-District, development shall not exceed 10 dwelling units per acre on lands with a future land use map designation of Multi-Family. Nonresidential intensity on lands with a future land use map designation of Pine Island Road District shall not exceed 250,000 square feet of gross leasable floor area. All lands within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District shall be entitled to a proportional share of the 250,000 square feet of gross leasable floor area; however, the development rights may be transferred among any properties within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District through mutual agreement of the affected property owners, as long as the intensity is consistent with all Land Use and Development Regulations and other provisions of this Plan. These limitations may be amended in the event that roadway network improvements are made that would allow development beyond these limitations without degradation of roadway level of service below the adopted level of service.

Paradise Preserve Sub-District

Within the Paradise Preserve Sub-District, development shall be limited to a maximum of 420 dwelling units. All property within the Paradise Preserve Sub-District shall be entitled to a proportional share of the 420 dwelling units; however, the development rights may be transferred among any properties within the Paradise Preserve Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan.

Seven Islands Sub-District

Within the Seven Islands Sub-District, development shall be limited to a maximum of 995 dwelling units and 110,000 square feet of non-residential development. A hotel of no more than 240 rooms is also permitted in addition to the aforementioned non-residential square footage. Development rights in the Sub-District may be transferred among any properties in the Seven Islands Sub-District through mutual agreement of the property owners, as long as the density and intensity is consistent with all Land Use and Development Regulations and other provisions of this Plan.

This Sub-District shall be placed in the Mixed-Use future land use map classification, but is not subject to Mixed-Use future land use map classification baseline densities and intensities found in Policy 1.15.f and development incentive program requirements identified in Policy 1.23. Mixed use development is required in the Seven Islands Sub-District. Development in the Seven Islands Sub-District shall not require a PDP.

The location of the Sub-District is legally described as:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400; All of Tract "G" and all of Lots 1 through 5, Block 6401; All of Tract "F" and all of Lots 1 through 7, Block 6402; All of Tract "E" and all of Lots 1 through 4, Block 6403; All of Tract "D" and all of Lots 1 through 3, Block 6404; All of Tract "C" and all of Lots 1 and 2, Block 6405; All of Tract "B" and all of Lots 1 through 7, Block 6406; All of Tract "A" and all of Lots 1 through 8, Block 6407; All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record. <u>Policy 1.16</u>: Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address the location and extent of both residential and non-residential land uses in accordance with the Future Land Use Map and the policies and description of types, sizes, densities, and intensities of land use contained in the "Future Land Use Map" section of this Element.

•••

FUTURE LAND USE ELEMENT

GOAL: TO PROTECT THE PUBLIC INVESTMENT BY ENCOURAGING THE EFFICIENT USE OF COMMUNITY INFRASTRUCTURE AND NATURAL RESOURCES; ASSURE THE ORDERLY, EFFICIENT GROWTH OF THE CITY BY ENCOURAGING DEVELOPMENT IN THOSE AREAS WHICH ARE BEST SERVED BY INFRASTRUCTURE AND COMMUNITY SERVICES; PROMOTE NEW LAND USES WHICH CREATE THE LEAST POSSIBLE DISRUPTION TO EXISTING USES; CREATE A STRATEGY WHICH ANTICIPATES FUTURE COMMUNITY NEEDS BY ACQUIRING AND ASSEMBLING PLATTED LANDS; AND PROTECT THE RIGHTS OF INDIVIDUAL PROPERTY OWNERSHIP, CONSISTENT WITH PUBLIC NEEDS.

- •••
- OPEN SPACE (OS): The Open Space Future Land Use Classification is designed r. to designate, with the consent of the property owner, areas for purposes or activities having no dwelling units, non-residential floor area or demand for public facilities. Areas suitable for designation under this classification include, but are not limited to, the following: lakes or other waterways not platted as rights-of-way, which may be used for recreational purposes; stormwater treatment facilities; buffer areas; preserves or conservation areas; or recreation areas having no access except by owners, guests or employees of the surrounding development project. Areas included within this future land use classification used for recreation may have amenities, including, but not limited to, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Floor areas of any such structures shall not be considered as non-residential floor area, and may not be used to support the sale or rental of any items; nor may such structures be used for office or administrative purposes. No commercial use shall be made for any recreational facilities located within the Open Space Future Land Use Classification.

Paving of areas within this future land use classification shall be limited to the construction of foot paths and floors for open-sided shelters or pavilions, basketball, tennis or other recreational courts (however, no such courts shall have associated spectator seating or administrative/maintenance structures), as well as paving associated with minimal parking areas, boat ramps, piers, docks, open- sided picnic shelters, gazebos or pavilions. Lands or areas within this future land use classification shall not be used as parking for residential, commercial or industrial areas, although minimal onsite parking, including an access drive, may be allowed to facilitate recreational use of lands under this future land use classification, or to serve as parking for nearby properties that are within the Natural Resources/Preservation Future Land Use Classification.

All zoning districts are considered compatible with this future land use classification. However, this future land use classification allows only those activities that are consistent with this classification, as delineated above, and, which have no associated density, intensity, or demand for public facilities.

<u>s.</u> <u>Sub-Districts:</u> In addition to the regulations listed above, the City of Cape Coral also has sub-districts, as a means to efficiently regulate development in particular areas of interest. These sub- districts include:

Tyson Shores Sub-District

Within the Tyson Shores Sub-District, development shall be limited to a maximum of115 dwelling units. All property within the Tyson Shores Sub-District shall be entitled to a proportional share of the 115 dwelling units; however, the development rights may be transferred among any properties within the Tyson Shores Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan. This limitation may be amended when central water and sewer service is available to serve the site.

Judd Creek Sub-District

Within the Judd Creek Sub-District, development shall not exceed 10 dwelling units per acre on lands with a future land use map designation of Multi-Family. Nonresidential intensity on lands with a future land use map designation of Pine Island Road District shall not exceed 250,000 square feet of gross leasable floor area. All lands within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District shall be entitled to a proportional share of the 250,000 square feet of gross leasable floor area; however, the development rights may be transferred among any properties within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District through mutual agreement of the affected property owners, as long as the intensity is consistent with all Land Use and Development Regulations and other provisions of this Plan. These limitations may be amended in the event that roadway network improvements are made that would allow development beyond these limitations without degradation of roadway level of service below the adopted level of service.

Paradise Preserve Sub-District

Within the Paradise Preserve Sub-District, development shall be limited to a maximum of 420 dwelling units. All property within the Paradise Preserve Sub-District shall be entitled to a proportional share of the 420 dwelling units; however, the development rights may be transferred among any properties within the Paradise Preserve Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan.

Seven Islands Sub-District

Within the Seven Islands Sub-District, development shall be limited to a maximum of 995 dwelling units and 70,000 square feet of non-residential development. A hotel of no more than 240 rooms is also permitted in addition to the aforementioned non-residential square footage. Development rights within the Sub-District may be transferred among any properties within the Seven Islands Sub-District through mutual agreement of the property owners.

This Sub-District shall be placed within the Mixed-Use future land use map

classification, but is not subject to Mixed-Use future land use map classification baseline densities and intensities found within Policy 1.15.f and Policy 1.23. Mixed use development is required within the Seven Islands Sub-District. Development within the Seven Islands Sub-District shall not require a PDP.

The location of the Sub-District is legally described as:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400; All of Tract "G" and all of Lots 1 through 5, Block 6401; All of Tract "F" and all of Lots 1 through 7, Block 6402; All of Tract "E" and all of Lots 1 through 4, Block 6403; All of Tract "D" and all of Lots 1 through 3, Block 6404; All of Tract "C" and all of Lots 1 and 2, Block 6405; All of Tract "B" and all of Lots 1 through 7, Block 6406; All of Tract "A" and all of Lots 1 through 8, Block 6407; All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

<u>Policy 1.16</u>: Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address the location and extent of both residential and non-residential land uses in accordance with the Future Land Use Map and the policies and description of types, sizes, densities, and intensities of land use contained in the "Future Land Use Map" section of this Element.

Cape Coral City Council Summary June 4, 2018 ORDINANCE 39-18 TXT18-0002

Background

• City is amending Policy 1.15.s of the Comprehensive Plan to create the Seven Islands Sub-District

 Sub-District is an overlay of the Mixed Use future land use

 Purpose is to provide specific development parameters for the Seven Islands site, in accordance with the adopted vision plan

Background

• Development parameters within Sub-District include:

 995 dwelling units with up to 3 multi-family residential structures up to 8 stories in height (including parking);
 70,000 square footage of commercial space, including restaurants and hotel (240 rooms);

- 3. A 40,000-square foot community center;
- 4. A marina; and
- 5. Park uses.
- Follow up ordinance (Ordinance 40-18) would map the Sub-District

Planning Division Staff Report

TXT18-0002

Review Date:	April 26, 2018
Prepared by:	Wyatt Daltry, AICP, Planning Team Coordinator
Request:	Amend Policy 1.15.s of the Comprehensive Plan's Future Land Use Element to create the Seven Islands Sub-District, to permit greater development flexibility in the Mixed-Use future land use map classification.

STAFF RECOMMENDATION:

APPROVAL

Positive Aspects of Application:	 Streamlines the development review process in the Mixed-Use (MX) future land use by removing the PDP requirement for the Seven Islands Sub-District
Negative Aspects of Application:	 Some parties may wish to have greater oversight through the PDP process for the Seven Islands development
Mitigating Factors:	 Adequate protection for potential impacts to surrounding residential areas are assured through LUDR requirements and landscape buffering

Background

In 2016, the City embarked upon a master planning effort for the Seven Islands site, off Old Burnt Store Road. The master planning effort involved feedback from residents and visitors. A vision plan was approved by the Cape Coral City Council in late-2016. The Council considered a number of options for the Seven Islands and approved Option D-1. In late-2017, the City Council adopted Ordinance 23-17, which established the Mixed-Use future land use map classification on the Seven Islands site.

Efforts to prepare the property for future development in accordance with the vision plan are moving forward. These include development of a Seven Islands-specific zoning district as part of the Land Development Code update and this Comprehensive Plan text amendment for a specific Sub-District to establish specific development uses, intensities and densities for this property.

Summary and Analysis of the Proposed Changes

The language below in Policy 1.15.s establishes the Seven Islands Sub-District which provides specific development limitations that are unique to the area. Sub-Districts are specific areas mapped on the Future Land Use Map; a future land use map amendment is considered to be proposed concurrently with this ordinance.

Staff proposes the following language to Policy 1.15:

- •••
- OPEN SPACE (OS): The Open Space Future Land Use Classification is designed to designate, r. with the consent of the property owner, areas for purposes or activities having no dwelling units, non-residential floor area or demand for public facilities. Areas suitable for designation under this classification include, but are not limited to, the following: lakes or other waterways not platted as rights-of-way, which may be used for recreational purposes; stormwater treatment facilities; buffer areas; preserves or conservation areas; or recreation areas having no access except by owners, guests or employees of the surrounding development project. Areas included within this future land use classification used for recreation may have amenities, including, but not limited to, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Floor areas of any such structures shall not be considered as non-residential floor area, and may not be used to support the sale or rental of any items; nor may such structures be used for office or administrative purposes. No commercial use shall be made for any recreational facilities located within the Open Space Future Land Use Classification.

Paving of areas within this future land use classification shall be limited to the construction of foot paths and floors for open-sided shelters or pavilions, basketball, tennis or other recreational courts (however, no such courts shall have associated spectator seating or administrative/maintenance structures), as well as paving associated with minimal parking areas, boat ramps, piers, docks, open- sided picnic shelters, gazebos or pavilions. Lands or areas within this future land use classification shall not be used as parking for residential, commercial or industrial areas, although minimal onsite parking, including an access drive, may be allowed to facilitate recreational use of lands under this future land use classification, or to serve as parking for nearby properties that are within the Natural Resources/Preservation Future Land Use Classification.

All zoning districts are considered compatible with this future land use classification. However, this future land use classification allows only those activities that are consistent with this classification, as delineated above, and, which have no associated density, intensity, or demand for public facilities.

<u>s.</u> <u>Sub-Districts:</u> In addition to the regulations listed above, the City of Cape Coral also has subdistricts, as a means to efficiently regulate development in particular areas of interest. These sub- districts include:

Tyson Shores Sub-District

Within the Tyson Shores Sub-District, development shall be limited to a maximum of115 dwelling units. All property within the Tyson Shores Sub-District shall be entitled to a proportional share of the 115 dwelling units; however, the development rights may be transferred among any properties within the Tyson Shores Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan. This limitation may be amended when central water and sewer service is available to serve the site.

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Paradise Preserve Sub-District

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Seven Islands Sub-District

Within the Seven Islands Sub-District, development shall be limited to a maximum of 995 dwelling units and 70,000 square feet of non-residential development. A hotel of no more than 240 rooms is also permitted in addition to the aforementioned non-residential square footage. Development rights within the Sub-District may be transferred among any properties within the Seven Islands Sub-District through mutual agreement of the property owners.

This Sub-District shall be placed within the Mixed-Use future land use map classification, but is not subject to Mixed-Use future land use map classification baseline densities and intensities found within Policy 1.15.f and Policy 1.23. Mixed use development is required within the Seven Islands Sub-District. Development within the Seven Islands Sub-District shall not require a PDP.

The location of the Sub-District is legally described as:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400; All of Tract "G" and all of Lots 1 through 5, Block 6401; All of Tract "F" and all of Lots 1 through 7, Block 6402; All of Tract "E" and all of Lots 1 through 4, Block 6403; All of Tract "D" and all of Lots 1 through 3, Block 6404; All of Tract "C" and all of Lots 1 and 2, Block 6405; All of Tract "B" and all of Lots 1 through 7, Block 6406; All of Tract "A" and all of Lots 1 through 8, Block 6407; All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

<u>Policy 1.16:</u> Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address the location and extent of both residential and non-residential land uses in accordance with the Future Land Use Map and the policies and description of types, sizes, densities, and intensities of land use contained in the "Future Land Use Map" section of this Element.

Consistency with the Comprehensive Plan

The proposed changes are consistent with the following policies in the Future Land Use Element of the Comprehensive Plan.

Mixed Use

The proposed language is consistent with Policy 1.20, FLUE:

<u>Policy 1.20:</u> The City will promote the development of identifiable residential neighborhoods and commercial districts through the encouragement of more compact development patterns, the use of shared design and landscaping characteristics, and the development of landmarks and gateways.

Recommendation

Staff recommends approval of the proposed text amendment.

Item B.(4) Number: B.(4) Meeting 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Introductions





TITLE:

Ordinance 40-18 (LU 18-0002) Set Public Hearing for Transmittal Date for June 18, 2018

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No

2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map to designate a parcel of land classified as Mixed Use (MX) Land Use as comprising the Seven Islands Sub-District for parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 40-18 LU 18-0002 Aerial LU 18-0002 Proposed FLU LU 18-0002 Zoning LU 18-0002 Case Report Staff Presentation - Introduction

PREPARED BY:

Division- Department-City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Wyatt Daltry, Planning Team Coordinator

ATTACHMENTS:

Description

- D Ordinance 40-18 (LU 18-0002)
- LU 18-0002 Aerial
- LU 18-0002 Proposed FLU
- LU 18-0002 Zoning
- LU 18-0002 Case Report
- Staff Presentation Intro

Туре

Ordinance Backup Material Backup Material Backup Material Backup Material

ORDINANCE 40 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO DESIGNATE A PARCEL OF LAND CLASSIFIED AS MIXED USE (MX) LAND USE AS COMPRISING THE SEVEN ISLANDS SUB-DISTRICT, SAID PROPERTY BEING DESCRIBED AS PARCELS OF LAND LYING IN SECTIONS 12 AND 13, SECTION 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, SAID PARCELS OF LAND BEING MORE PARTICULARLY DESCRIBED HEREIN; AMENDING THE CITY OF CAPE CORAL LAND USE MAP OF ALL PROPERTY WITHIN THE LIMITS OF THE CITY OF CAPE CORAL TO REFLECT THE LAND USE MAP AMENDMENT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral on February 13, 1989, adopted a Comprehensive Plan pursuant to the Comprehensive Planning Act; and

WHEREAS, as part of the Comprehensive Plan the City of Cape Coral adopted therewith a future land use map designating land uses and proposed land uses throughout the City of Cape Coral consistent with the Comprehensive Plan and Comprehensive Planning Act; and

WHEREAS, the City of Cape Coral City Council has considered the testimony, evidence, and documentation for the Land Use Amendment initiated by the CITY OF CAPE CORAL regarding the below described property, and considered the recommendation of the Planning & Zoning Commission/Local Planning Agency and City staff.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. That the below-described real property located within the City of Cape Coral, Florida, is hereby amended consistent with the City of Cape Coral Comprehensive Plan. The below-described parcel has a land use designation of Mixed Use (MX) and is hereby further designated the Seven Islands Sub-District as follows:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400; All of Tract "G" and all of Lots 1 through 5, Block 6401; All of Tract "F" and all of Lots 1 through 7, Block 6402; All of Tract "E" and all of Lots 1 through 4, Block 6403; All of Tract "D" and all of Lots 1 through 3, Block 6404; All of Tract "C" and all of Lots 1 and 2, Block 6405; All of Tract "B" and all of Lots 1 through 7, Block 6406; All of Tract "A" and all of Lots 1 through 8, Block 6407; All of Tract "I" and all of Lots 1 through 8, Block 6407; All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

SECTION 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this plan amendment shall be: The date a final order is issued by the Department of Community Affairs finding the amendment to be in compliance in accordance with Chapter 163.3184(9), F.S.; or the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184(9), F.S.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLONELSONGUNTERSTOKESCARIOSCIAWILLIAMSSTOUTCOSDEN

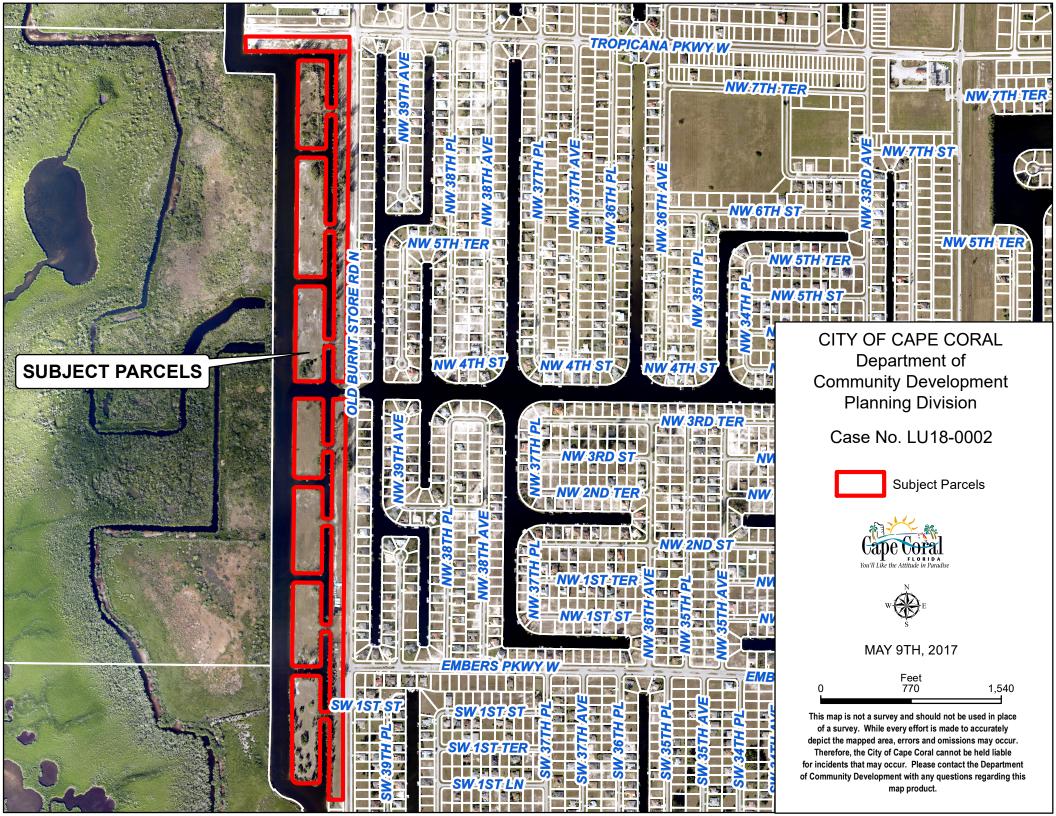
ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

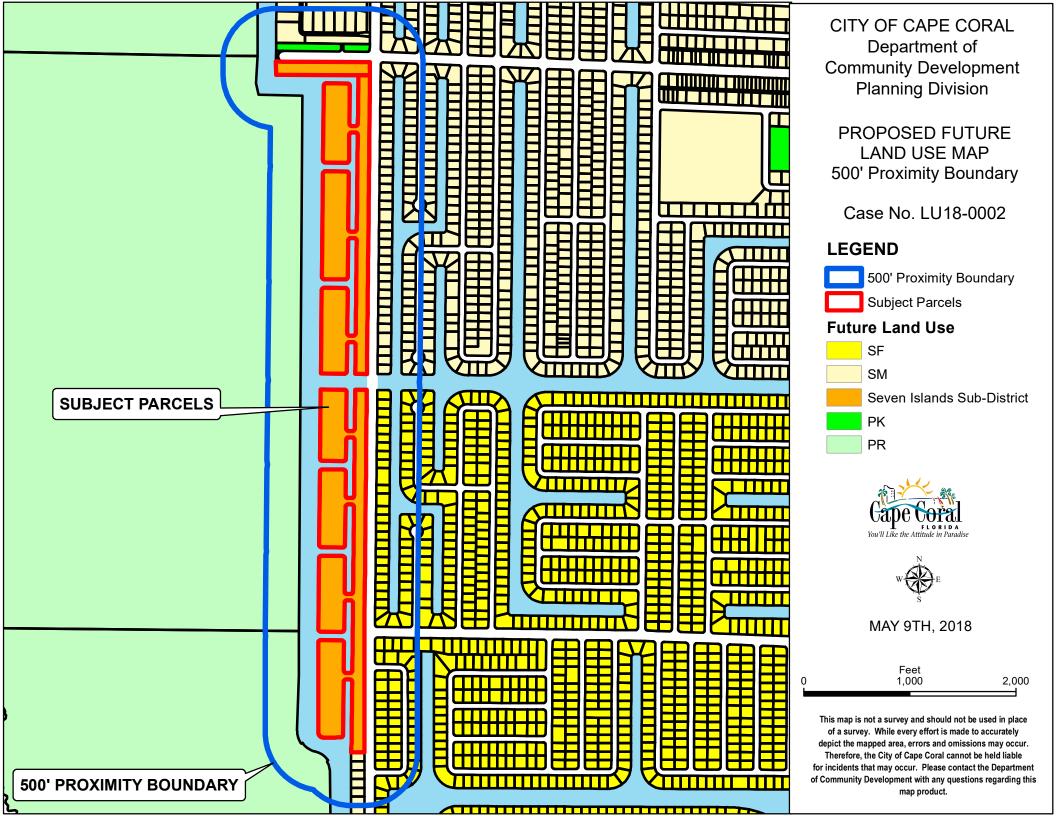
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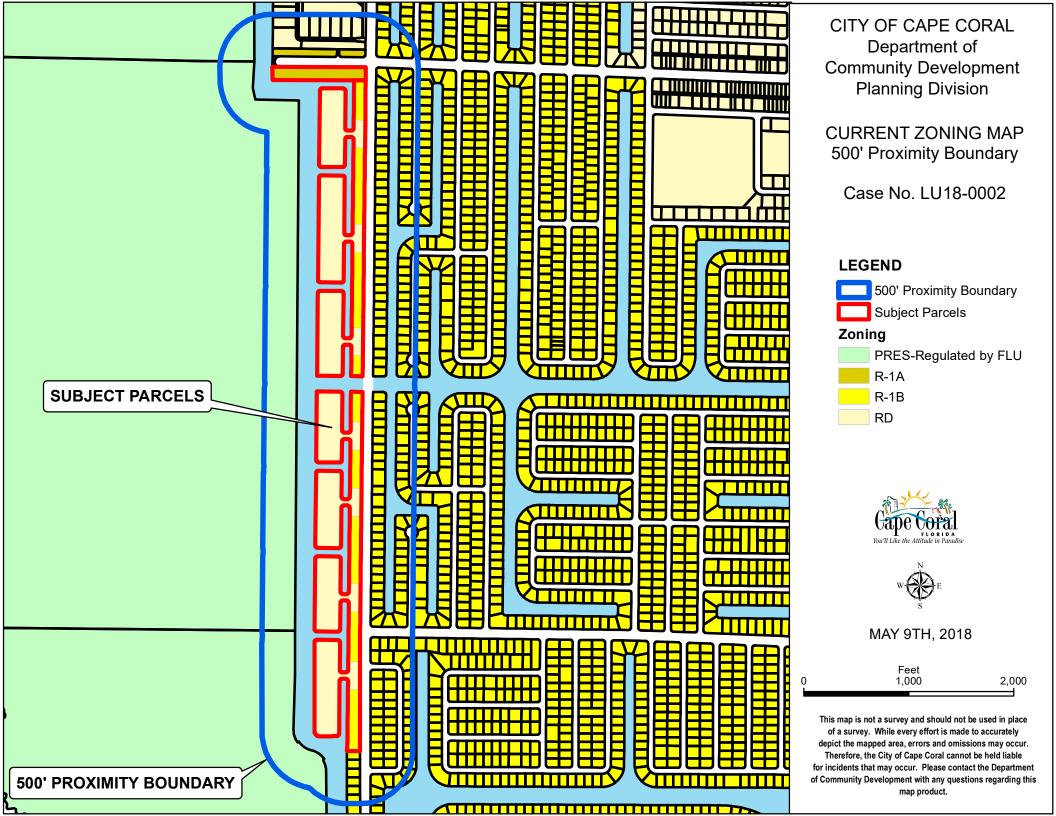
APPROVED AS TO FORM:

VELA BRIAN R. BARTOS

ASSISTANT CITY ATTORNEY ord/lu18-0002







STAFF REPORT LU18-0002

DOCKET/CASE/APPLICATION NUMBER Wyatt Daltry, AICP, Planning Team Coordinator (239) 573-3160, wdaltry@capecoral.net STAFF PLANNER

City of Cape Coral APPLICANT/PROPERTY OWNER 101 Old Burnt Store Road North 606 Old Burnt Store Road North 4100 Tropicana Parkway West

PROPERTY ADDRESS/LOCATION

BRIEF SUMMARY OF REQUEST

City-initiated Future Land Use Map Amendment to amend three properties (50.72 acres) from Mixed Use (MX) to the Seven Islands Sub-District.



MAP SOURCE

EXISTING ZONING Residential	EXISTING LAND USE	PROPOSED LAND USE	SITE IMPROVEMENTS	SIZE OF PROPERTY
Residential	N 41/			
Development (RD)	MX	MX w/in the Seven Islands	Undeveloped.	50.72 acres
		STAFF RECOMMEN	DATION	
APPROVE				DENY
Compatibility with the C	Comprehensive Plan:	PROPERTY HISTO	DRY	
		Property purchased by City of Cape Coral in 2013. Site of future		
		Seven Islands development. City Council identified preferred		
		development option and adopted the Seven Islands Vision Plan		
		on December 11, 2016. Amendment to Mixed Use completed in		
		late-2017.		
Positive Aspects of		 N2 UEP 	is bringing utilities to ar	еа
Application:		Amendment will implement adopted City Vision Plan		
		Develo	pment of site can be a p	oositive transformative project
		for NW	Cape Coral	
Negative Aspects of		 Nearby 	residents may have co	oncerns will scale, noise, and
Application:		traffic f	or project allowable in S	ub-District
Mitigating Factors:		 Old Bu 	rnt Store RD is being v	widened, providing additional
		traffic c	apacity for area	

Review Date: April 26, 2018

Case Staff: Wyatt Daltry, AICP, Planning Team Coordinator

Review Approved

Robert Pederson, AICP, Planning Manager

Location:

By:

Northwest Cape Coral. Unit 76, Cape Coral Subdivision.

STRAP Number	Block	Lot	Site Address
134422C200801G000	6400	12	106 OLD BURNT STORE RD N
124422C200808I000	6408	TR I	4100 TROPICANA PKWY W
124422C200807A000	6405	TR C	606 OLD BURNT STORE RD N

Area:

±50.72 acres

Current FLU	Proposed	Acreage
Mixed Use	Mixed Use within the Seven Islands Sub-District	50.72
		F0 70

50.72 acres total

Subject Property:	Future Land Use	Zoning
Current:	Mixed Use (MX)	Residential Development (RD)
Proposed:	Mixed Use within the Seven Islands Sub-District	N/A
	Surrounding Future Land Use	Surrounding Zoning
North:	Single Family/Multi-Family by PDP	R-1B, and RD
South:	Single Family Residential (SF)	R-1B, and RD
East:	SF	R-1B, and RD
West:	Natural Resources/Preservation (PRES)	Preservation – regulated by Preserve FLU (PRES)

Urban Service Area: Tra

Transition

Type of Street Access:

Seven Islands are accessible from Embers Parkway, Ceitus Parkway, Tropicana Parkway, and local roadways. Direct access to site will be from Old Burnt Store Road.

BACKGROUND

In 2013, the City of Cape Coral purchased 491 properties; most of which are north of Pine Island Road (SR 78) and have sizes from 0.25 acres to 50-acre tracts. Part of the Seven Islands were included in that transaction.

Cape Coral has long needed additional commercial and mixed use opportunities, particularly along the waterfront. The 2013 purchase provided the City with a unique opportunity to facilitate mixed use development on the waterfront. To accomplish this, the City contracted with CPH Engineers who, with sub-consultants, developed a Seven Islands and Northwest Cape Coral Vision Plan with assistance and input from city staff and the public.

In late 2016, the City Council evaluated several development options for the Seven Islands property. Council directed City staff to move forward with implementing a vision plan, which had the following development metrics:

- 1. 995 dwelling units with up to 3 multi-family residential structures up to 8 stories in height (including parking);
- 2. 70,000 square footage of commercial space, including restaurants and hotel (240 rooms);
- 3. A 40,000-square foot community center;
- 4. A marina; and
- 5. Park uses.

Subsequently, staff reviewed the Comprehensive Plan and determined that the MX future land use map classification was the land use that would best accomplish Council direction to implement the newly-adopted vision plan. Ordinance 23-17 was adopted last year which accomplished this task. A new zoning district is contemplated for the site, to be adopted as part of the City update to the Land Use and Development Regulations.

In order to best effectuate the future development of the site in accordance with the Vision Plan, staff proposes a future land use map amendment to place a Sub-District on the Seven Islands site. Sub-Districts are used to identify specific development mixes or limitations. Three Sub-Districts are currently mapped on the Future Land Use Map: Paradise Preserve, Tyson Shores, and Judd Creek. This Sub-District will be an overlay of the Mixed Use future land use map classification. Parallel with this effort is a text amendment that will establish the Seven Islands Sub-District in the Future Land Use Element of the Comprehensive Plan.

Additional Site Information

Protected Species

Eagle nests are present in the vicinity. The City requires species surveys prior to issuance of City of Cape Coral permits or development approvals, in accordance with the Conservation and Coastal Management Element of the Comprehensive Plan. Furthermore, development within 1,100' of an active eagle nest is regulated by Chapter 23 of the City Code of Ordinances.

Should additional protected species be identified on the property as part of the development review of the site, the City will abide by Policy 1.2.5 of the Conservation and Coastal Management Element, which states:

<u>"Policy 1.2.5:</u> The City will assist in the implementation of and compliance with all state and federal regulations concerning species listed as endangered, threatened, species of special concern, or commercially exploited by monitoring development activities, providing information on listed species in building permit packages, and assisting in investigations as requested."

<u>Utilities</u>

The site is in the Urban Services Transition and Reserve area as designated by the City Comprehensive Plan. Utilities are in the process of construction, which started in late 2017.

Soils and Drainage

The site has two soil classifications; Estero Muck and Matlacha Gravelly Fine Sand. These soils have various limitations for development, which are typically overcome using various engineering solutions such as importing fill. The soil types should not present an obstacle to future land development although special feasibility studies may be required.

The soil study for this area dates from a 1984 Soil Survey of Lee County, Florida performed by the Soil Conservation Service. The area has been modified significantly since the survey was undertaken; most of the area identified by Estero Muck has since been converted into the Northwest Spreader canal, or has had additional dredge spoil more consistent with Matlacha Gravelly Fine Sand.

REGIONAL PLAN ANALYSIS

Southwest Florida Regional Planning Council's (SWFRPC) Strategic Regional Policy Plan (SRPP):

This amendment is addressed by Economic Development Goal 1, Strategy: "Ensure the adequacy of lands for commercial and industrial centers, with suitable services provided."

Lee County Metropolitan Planning Organization's (MPO) Long Range Transportation Plan:

This area is not addressed in the MPO's Long Range Transportation Plan.

COMPREHENSIVE PLAN ANALYSIS

Staff analyzed the Comprehensive Plan to evaluate the proposed future land use map amendment. Most direction in the Comprehensive Plan for complex, multi-use development is based in the Future Land Use Element.

Future Land Use Element

<u>Policy 1.20</u>: The City will promote the development of identifiable residential neighborhoods and commercial districts through the encouragement of more compact development patterns, the use of shared design and landscaping characteristics, and the development of landmarks and gateways.

Unlike many pre-platted, residential areas of Cape Coral, a mixed-use development such as the Seven Islands area has an opportunity to become an identifiable commercial district.

<u>Policy 3.1:</u> The City of Cape Coral will encourage the development of future commercial (retail, office and/or services) areas at or near transportation nodes by assigning appropriate future land use designations.

The FLUMA site is located at two intersections of collectors and arterial roadways (Tropicana PKWY/Old Burnt Store RD and Embers PKWY/Old Burnt Store RD).

<u>OBJECTIVE 4:</u> Location of Future Development: Future private development requiring public water and wastewater will be directed into the Urban Services Infill Area and the Urban Services Transition Area illustrated on the Future Land Use Map, unless specifically accepted by the provisions of this plan.

The site is in the Urban Services Transition Area. Utilities will be extended to this area as part of the North 2 Utility Expansion Project, which began in 2017.

<u>Policy 10.1</u>: Requests for development orders and building permits will be coordinated with governmental agencies including, but not necessarily limited to, Lee County, Charlotte County, the Regional Planning Council, the South Florida Water Management District, and other State and Federal agencies.

The City will implement this policy as part of the development review. The proposed FLUMA will be reviewed by the SWFRPC, SFWMD, and other state agencies.

Conservation and Coastal Management Element

<u>Policy 1.1.8</u>: The City will (as a cooperative effort with appropriate governmental agencies) continue to investigate the effectiveness and function of the spreader waterway systems in reducing the adverse environmental impacts of surface water discharge from Cape Coral into Matlacha Pass State Aquatic Preserve, and will periodically evaluate whether improvements are needed in the spreader system to reduce measurable negative impacts on the Matlacha Pass Ecosystem.

The City continues to abide by this policy.

<u>Policy 1.3.9</u>: Marina and boat ramp siting preference shall be given to areas where water depths can accommodate vessels with a four foot, or greater, draft, and to those facilities which are to be available for public use, and where economic need and feasibility can be demonstrated.

Depths of four (4) feet or greater are present at this location.

<u>Policy 1.3.10</u>: The City will consider consistency with the countywide marina siting plan, adopted on June 29, 2004, in the permitting of marinas The City will also consider consistency with the general criteria of the Florida Fish and Wildlife Conservation Commission, Boat Facility Siting Guide, adopted August 2000:

- Expansion of existing facilities may be preferred over new facilities, if environmentally sound;
- There should be no impact to seagrass;
- Mitigation for seagrass destruction should not be allowed;
- Areas with adequate depth and good flushing which require no new dredging are preferable;
- Locations near inlets and popular boating destinations are preferable;
- Piling construction is preferred over dredge and fill techniques;

- Marinas should not be sited in essential manatee habitats; and
- Marinas should not be situated in areas with high manatee mortality occurrence.

Impact to seagrass is anticipated to be minimal due to lack of seagrass present in area. The Spreader Canal has adequate depth during most of the year, and currently indicates sufficient flushing. Seven Islands is north of former boat lift, near the canal entrance to Matlacha Pass; a popular boating destination. Seven Islands is north of Manatee Park at Sirennia Vista, which is not designated an essential manatee habitat, but a popular location for spotting manatees.

<u>Policy 1.7.16</u>: Recognizing the importance of the Matlacha Pass Preservation Area, including the Matlacha Pass State Aquatic Preserve and the Matlacha Pass National Wildlife Refuge, as representing a unique and vitally important estuarine mangrove community, the City of Cape Coral will continue to abide by all rules and regulations imposed by state authorities to ensure the protection of this area. To implement this policy the City will prohibit all development within the Preservation Area, except for providing public access for enjoyment of the natural area, and will review adjacent applications for development orders to minimize adverse impacts of development upon this unique area.

This policy is best addressed during the development of the site; however, care will be taken to ensure protection of the adjacent Aquatic Preserve. No development within the Preservation area is anticipated.

<u>Objective 2.1</u>: Public Access to the coast. The City will continue to maintain and/or increase public access sites to the coastal zone.

The proposed marina use and public park will provide and improve public access to the Northwest Spreader Canal.

<u>Policy 2.1.3</u>: All coastal public access development will be done in accordance with the objectives and policies of Goal 1 so as not to destroy or damage coastal natural resources.

Acknowledged.

<u>Policy 4.3.3:</u> The City shall not approve any future land use map amendment that would increase the maximum residential density within the coastal high-hazard area, unless one of the following criteria is met, in accordance with Section 163.3178(9), F.S.:

- 1. The proposed amendment would not exceed a 16-hour out-of-county hurricane evacuation time for a category 5 storm event, as measured on the Saffir-Simpson scale; or
- 6. A 12-hour evacuation time to shelter is maintained for a category 5 storm event as measured on the Saffir-Simpson scale and shelter space reasonably expected to accommodate the residents of the development contemplated by a proposed comprehensive plan amendment is available; or
- 7. Appropriate mitigation is provided that will satisfy the provisions of either of the previous two paragraphs. Appropriate mitigation shall include, without limitation, payment of money, contribution of land, and construction of hurricane shelters and transportation facilities. Required mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to development. For future land use map amendments initiated by a developer, the City and the developer shall enter into a binding agreement to memorialize the mitigation plan prior to adoption of the amendment.

The City will work with Lee County to meet the third criteria of this policy, to provide additional shelter space necessary to mitigate the proposed increase of dwelling units in the Coastal High Hazard Area.

Transportation Element

<u>Policy 2.2.7:</u> The City shall discourage new strip style commercial development through efforts to promote the concentration of commercial development at the nodes of major intersections.

As discussed in Policy 3.1, Future Land Use Element, the site is located at two intersections of collector and arterial roadways (Tropicana PKWY/Old Burnt Store RD and Embers PKWY/Old Burnt Store RD). Furthermore, the Seven Islands site is not representative of "strip-style" commercial development, given the mixed-use nature and waterfront focus in the vision plan.

In conclusion, the FLUMA meets the policies of the Comprehensive Plan.

Impact Assessment Summary

The following calculations summarize approximate conditions for each municipal service analyzed. To determine the impact assessment, staff utilized the adopted future land use and zoning designations to determine the existing impacts <u>at buildout</u>. Therefore, the impacts discussed in this assessment do not necessarily reflect the actual amount of dwelling units, population, etc.

<u>Current Impacts</u>: The entire 50.72-acre site is MX, and the analysis below assumes a density of 16 dwelling units per acre and using this floor-area-ratio, a maximum of 552,341 square-feet of commercial space.

<u>Proposed Impacts</u>: The impact assessment summary of the proposed use, a maximum of 995 dwelling units for the site, a 240-room hotel, and 70,000 square-feet of commercial space.

Dwelling Units

Existing:	811 presently
Proposed:	995
Net Change:	+184

Population*

Existing:	2,059 with existing FLUM
Proposed:	2,527
Net Change:	+468

* 2.54 persons/household = avg. household size; 2010 Census

Water Use

Existing: <u>327,902 gal/day total</u> 162,200 gal/day residential (200 gal/day x 811 DU's) + 165,702 gal/day

	commercial (552,341 square feet x 0.3 gal/sq ft/day)
Proposed:	<u>244,000 gal/day total</u> 199,000 residential gal/day (200 gal/day x 995 DU's) + 21,000 gal/day
	commercial (70,000 square feet x 0.3 gal/sq ft/day) + 24,000 gal/day hotel (100 gal/day/room x
	240 rooms)
Net Change:	-83,902 gal/day
Facility Capacity:	30.1 MGD
Permitted Usage:	16.9 MGD
Avg. Daily Usage:	9.4 MGD
<u>Sewage</u>	
Existing:	<u>327,902 gal/day total</u> 162,200 gal/day residential (200 gal/day x 811 DU's) + 165,702 gal/day
	commercial (552,341 square feet x 0.3 gal/sq ft/day)
Proposed:	244,000 gal/day total 199,000 residential gal/day (200 gal/day x 995 DU's) + 21,000 gal/day

Proposed:	<u>244,000 gal/day total</u> 199,000 residential gal/day (200 gal/day x 995 DU's) + 21,000 gal/day
	commercial (70,000 square feet x 0.3 gal/sq ft/day) + 24,000 gal/day hotel (100 gal/day/room x
	240 rooms)
Net Change:	-83,902 gal/day
Facility Capacity:	28.4 MGD
Avg. Daily Usage:	12.8 MGD

The wastewater generated by development permitted by future land use map amendments in the future would be evaluated as part of those later reviews and concurrency requirements would be required to be met at the time of those respective reviews.

Solid Waste

Existing Generation:	84,877 lbs. total/day 9,759 lbs/day residential (4.74 lbs./person/day x 2,059 residents) + 75,118
	lbs/day commercial (552,341 square feet x 0.136 gal/sq ft/day)
Proposed:	22,458 lbs. total/day 11,978 lbs/day residential (4.74 lbs./person/day x 2,527 residents) + 9,520
	lbs/day commercial (70,000 square feet x 0.136 gal/sq ft/day) + 960 lbs/day hotel (4 lbs/day/room
	x 240 rooms)
Net Change:	-62,419 lbs./day
Facility Capacity:	1,836 tons/day
Existing Demand:	1,384 tons/day
Capacity Available:	Yes

Traffic/Daily Trips

Existing Generation:	0 presently; 772 AM peak trips/hour and 2,323 PM peak trips/hour with existing FLUM
Proposed:	438 AM peak trips/hour and 713 PM peak trips/hour
Net Change:	-334 AM peak hour trips and -1,610 PM peak hour trips
Facility Capacity:	Old Burnt Store Road, a collector roadway, Tropicana Parkway, a minor arterial roadway, and Embers Parkway, a minor arterial roadway currently access the subject properties. All roadways meet or surpass the minimum acceptable Level of Service Standard of "D."
Capacity Available:	Yes

Development Impact Analysis

Hurricane Evacuation

The site is in Evacuation Zone A (most vulnerable). The Seven Islands Sub-District future land use could increase potential residential dwelling units by 184 dwelling units, thus causing an impact on hurricane evacuation times. The City will mitigate impacts of increased dwelling units within the Coastal High Hazard Area through an agreement with Lee County, to provide additional shelter space.

Park Lands

The level of service standard (LOS) for parkland and facilities is based on permanent population. Based on 184 additional dwelling units, there could be a maximum increase in park demand of 1.87 acres.

Protected Species

The City requires an environmental survey prior to issuance of any land clearing, site clearing, or development permits. Any future land alteration activities will be preceded by the completion of an environmental survey identifying the presence of protected flora and fauna. Based on the results of the environmental survey, City, state, or federal protective or mitigation measures may be required by the developer to proceed.

School Impacts

There will be an increase in the potential number of dwelling units with a Seven Islands Sub-District future land use, resulting in an increase in the projected number of students.

Existing dwelling units:	0 presently; 811 dwelling units with existing FLUM
Existing students:	0 presently; 73 (811 DU x.091 students per multi-family dwelling unit)
Proposed dwelling units:	995 dwelling units
Proposed students:	91 (995 DU x .091 students per multi-family dwelling unit)
Change:	+18 students

Recommendation:

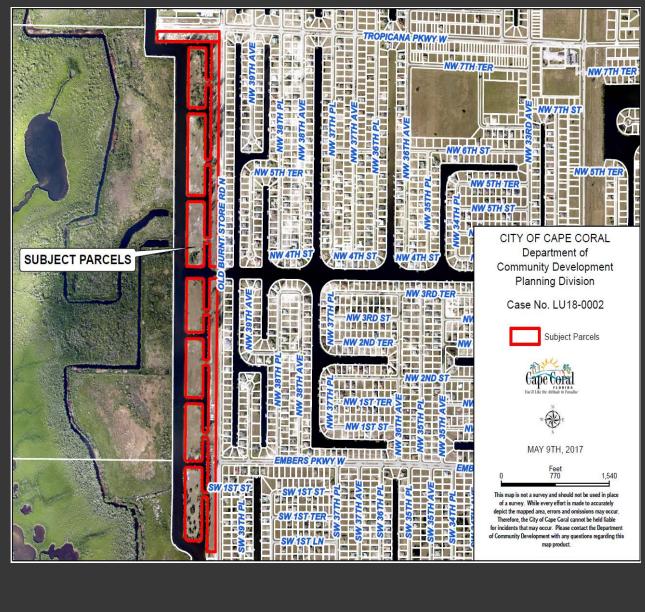
Planning Division staff recommends **Adoption** of the proposed large-scale future land use map amendment request.

CAPE CORAL CITY COUNCIL ORDINANCE 40-18 LU18-0002 JUNE 4, 2018

LU18-0002

- Applicant: City of Cape Coral
- Request: A large-scale future land use amendment from Mixed Use (MX) to the Seven Islands Sub-District for a 50.72-acre site.



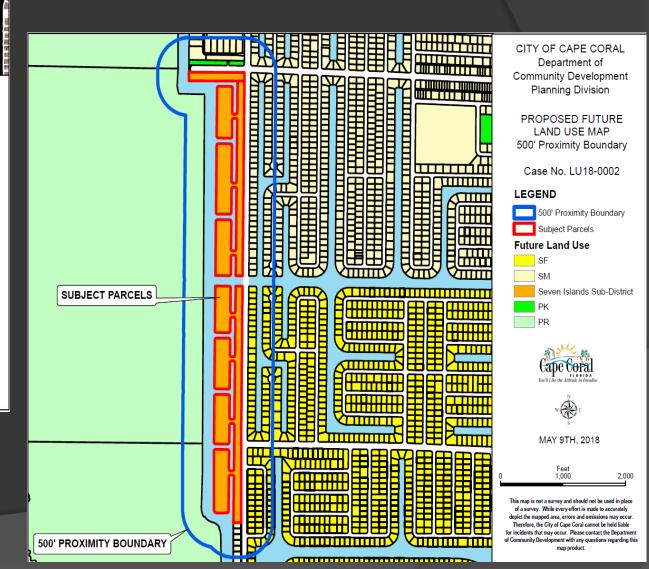


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Background

- Purpose of amendment is to place a Sub-District on the property
- Sub-Districts are placed over the future land use; development would be in accordance with mixed-use future land use
- Following limitations within Sub-District:
- 1. 995 dwelling units with up to 3 multi-family residential structures up to 8 stories in height (including parking);
- 2. 70,000 square footage of commercial space, including restaurants and hotel (240 rooms);
- 3. A 40,000-square foot community center;
- 4. A marina; and
- 5. Park uses.

Summary

- N2 UEP is bringing utilities to area
- Amendment will implement adopted City Vision Plan and provide specific development guidance for the Seven Islands site
- Development of site can be a positive transformative project for NW Cape Coral

Recommendation

Planning Division staff recommends <u>Transmittal</u> for the following reasons:

• The request is consistent with the Comprehensive Plan and Land Use and Development Regulations

• The request will provide support for development of Seven Islands site in accordance with adopted city vision



Item B.(5) Number: B.(5) Meeting 6/4/2018 Date: 6/4/2018 Item ORDINANCES/RESOLUTIONS -Type: Introductions





TITLE:

Ordinance 41-18 Set Public Hearing Date for June 18, 2018

REQUESTED ACTION:

Introduction

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	Yes
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	

ELEMENT A: INCREASE ECONOMIC DEVELOPMENT AND REDEVELOPMENT IN THE CITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

Establishes time, place, manner regulation for mooring in the Bimini Basin within the City of Cape Coral Code of Ordinances. This is the first phase for the implementation of a mooring field in the Bimini Basin. Next steps will also be discussed at this meeting. The City's consultants, Stantec, will also be in attendance. This ordinance and associated work products were funded by a grant from the Florida Department of Economic Opportunity.

LEGAL REVIEW:

EXHIBITS:

Ordinance 41-18 Deliverable #1 Deliverable #2 (redacted)

PREPARED BY:

Wyatt Division-Planning Division

Department-Community Development

SOURCE OF ADDITIONAL INFORMATION:

Wyatt Daltry, AICP Planning Team Coordinator

ATTACHMENTS:

Description

- D Ordinance 41-18
- Deliverable #1
- Deliverable #2 Redacted

Type Ordinance Backup Material Backup Material

ORDINANCE 41 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 10, "LAND, WATERWAY USE RESTRICTIONS," BY ESTABLISHING ARTICLE V, "MOORING FIELDS"; PROVIDING FOR GENERAL CONDITIONS; PROVIDING FOR BIMINI BASIN MOORING FIELD RULES; PROVIDING FOR RESPONSIBILITIES OF TENANTS FOR ALL MOORING FIELDS; PROVIDING FOR AMENITIES AND SERVICES FOR ALL MOORING FIELDS; PROVIDING FOR LEASING REQUIREMENTS FOR ALL MOORING FIELDS; PROVIDING FOR SPEED LIMITS; PROVIDING FOR SEVERE STORM OR HURRICANE PLANS FOR ALL MOORING FIELDS; PROVIDING FOR PLANS FOR FUTURE EXPANSION FOR ALL MOORING FIELDS; PROVIDING FOR MANAGED MOORING AREAS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 10, "Land, Waterway Use Restrictions," Article V, "Mooring Fields," is hereby established as follows:

CHAPTER 10

LAND, WATERWAY USE RESTRICTIONS

• • •

ARTICLE V. MOORING FIELDS

DIVISION 1. – GENERAL CONDITIONS

§ 10-26 - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings described to them in this section, except where the context clearly indicates a different meaning:

Anchorage area means a customary, suitable and designated harbor area in which vessels may anchor.

Anchoring means the use of a heavy device fastened to a line or chain to hold a vessel in a desired position.

Designated special anchorage areas means anchorage areas designated by the coast guard where it has been determined such an anchorage ground is necessitated due to maritime or commercial interests.

Dinghy means a small boat usually 13 feet or less, either inflatable or rigid, that serves to provide transportation between a larger anchored vessel and land.

Emergency means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Harbor means a natural or manmade anchorage and/or mooring area providing some degree of protection and security from storms.

Harbor management plan for mooring area means a plan adopted by ordinance of the city council to address the rules and regulations of anchoring, mooring, and speed limits in the waters administrated by the city.

Harbormaster/dockmaster means a designated city employee charged with implementation of the harbor management plan for mooring area.

Houseboat means a vessel that is used primarily as a residence for at least 21 days during any 30-day period in a county of this state if such residential use of the vessel is to the preclusion of its use as a means of transportation.

Idle speed is the minimum speed that will maintain the steerageway of a motorboat.

Live-aboard vessel means:

- (a) <u>A vessel used solely as a residence and not for navigation:</u>
- (b) <u>A vessel for which a declaration of domicile has been filed pursuant to s. 222.17</u>, Florida Statutes; or
- (c) A vessel used as a residence that does not have an effective means of propulsion for safe navigation.

A commercial fishing vessel is expressly excluded from the term "live-aboard vessel."

Marine sanitation device means any equipment for installation on board a vessel, which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 C.F.R. part 159, as may be amended.

Mooring means permanent ground tackle where vessels are kept at anchor.

Mooring field means a designated area where permanent ground tackle is utilized to provide multiple vessel moorings in accordance with the harbor management plan for mooring area.

<u>Slow speed means the speed at which a vessel proceeds when it is fully off plane and completely settled</u> into the water, and when it creates only a minimum wake that does not endanger other vessels or marine life. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific numerical speed is assigned to slow speed.

Transient mooring means a mooring for use by vessels for periods of no more than 10 total days per month.

Vessel means a term synonymous with the word "boat," as referenced in section 1(b), section VII of the state constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water under the Florida Vessel Registration and Safety Law.

§ 10-27 - Applicability; enforcement.

The harbor management plan for mooring area shall apply to all vessel(s), owner(s), crew(s), and guests entering the managed mooring field. Any vessel operator in violation of federal law(s) or regulation(s), state law(s) or regulation(s), or this Code would result in cause for eviction from the managed mooring field.

DIVISION 2. - BIMINI BASIN MOORING FIELD RULES

§ 10-28 - General description.

Bimini Basin, located in the City of Cape Coral Florida, is a 980,000-square foot body of water surrounded by four (4) access waterways. One of these four (4) waterways, Bimini Canal, provides boaters direct gulf access without any overhead obstructions.

§ 10-29 - Authority of harbormaster/dockmaster.

The harbormaster/dockmaster has the right to assign berths and moorings. No vessel shall occupy any mooring berth without the approval of the harbormaster/dockmaster or his designee. Subleasing of any mooring by the lessee is prohibited. Owners wishing to transfer to a different mooring other than the one assigned must obtain the prior authorization of the harbormaster/dockmaster or his designee and complete the required forms. It may be necessary to reassign a vessel from the particular space rented to another mooring within the managed mooring field as dictated by the practical needs of the existing use of the managed mooring field and the tenants therein. The decision or interpretation of this article shall be the responsibility of the harbormaster/dockmaster.

§ 10-30 - Intent and Purpose.

It is the intent of the harbor management plan for mooring area to address the primary management of the managed mooring field located in the Bimini Basin in the City of Cape Coral. This will provide a safe mooring option for transient boaters, while also allowing the City of Cape Coral the ability to effectively monitor and regulate the activities inside Bimini Basin.

§ 10-31 - Target group of boaters.

The Bimini Basin Mooring Field is designed to accommodate the needs of vessels, which are typically sailboats up to 35 feet in length. However, the mooring field layout can also be adjusted to allow larger vessels up to 45 feet in length.

§ 10-32 - Vessels allowed; toilet facilities.

- (a) Only vessels that are in compliance with the United States Coast Guard (USCG) regulations, and state statutes, particularly the operational and safety standards, shall be allowed within the managed mooring field. Only seaworthy vessels in good operating condition, capable of maneuvering under their own power or sail, possessing current registration and acceptable documentation, shall be allowed to moor or anchor within the managed mooring field. This is to ensure that all vessels are functional and operational, in the interest of public safety.
- (b) The decision of whether a vessel is considered to be in good operational condition and capable of maneuvering under its own power shall be the responsibility of the harbormaster/dockmaster, based on the United States Coast Guard and state laws and regulations concerning safety and operational requirements.
- (c) All vessels, except dinghies, without an integral source of propulsion (sail or motorized) are not allowed to remain within the managed mooring field. Examples of vessels that would not be allowed to remain within the managed mooring field are a sailboat with no motor and no sails, a motorboat with no motor, or a vessel that must be towed. This requirement does not include vessels that require minor sail or engine repairs.
- (d) Every vessel with an enclosed cabin and berthing facilities, including live-aboard vessels, shall, while on the waters of the state, be equipped with a toilet. On a vessel, other than a houseboat, the toilet may be portable or permanently installed. Every permanently installed toilet shall be properly attached to the appropriate United States Coast Guard certified or labeled marine sanitation device.
- (e) Every houseboat shall be equipped with at least one permanently installed toilet, which shall be properly connected to a United States Coast Guard certified or labeled type III marine sanitation device. If the toilet is simultaneously connected to both a type III marine sanitation device and another approved marine sanitation device, the valve or other mechanism selecting between the two marine sanitation devices shall be set to direct all sewage to the type III marine sanitation device and, while the vessel is on the waters of the state, shall be locked or otherwise secured by the boat operator so as to prevent resetting.

§ 10-33 - Transportation requirements.

All vessels should have a dinghy or other small craft as a method of conveyance to enable access to the dinghy dock and the office of the harbormaster/dockmaster. The vessel owner shall report the absence of a dinghy to the harbormaster/dockmaster. The vessel owner is responsible for transportation to and from the office of the harbormaster/dockmaster for registering to rent the mooring facilities. The vessel owner can utilize his main vessel for this purpose by temporarily bringing it to the fuel dock. The lack of such a dinghy shall not be a cause to refuse rental of a mooring. It is the sole responsibility of the occupants of the vessel to provide their own conveyance to the upland facilities. Under no circumstances is the city responsible for owning, operating, or maintaining a dinghy for the exclusive use of mooring patrons.

§ 10-34 - Commercial uses.

- (a) <u>Commercial activities or vessels engaged in commercial activities are prohibited from</u> mooring in the managed mooring field. The site is designed as a recreational and residential site and shall be maintained as such. No advertising or soliciting shall be permitted on any vessel moored within the managed mooring field, except for "for sale" signs, not to exceed one square foot in size. Each vessel shall be limited to two "for sale" signs.
- (b) Minor commercial activities and vessels, such as water taxis, delivery vessels, pumpout vessels, and those performing minor repairs on mooring vessels, may extend service to the vessels in the managed mooring field. The harbormaster/dockmaster shall make the final decision on determining whether a commercial vessel is allowed in the managed mooring field.

<u>§ 10-35 - Repairs.</u>

Major repairs or refitting of vessels, including any activity that could result in a deposition of any materials into the waterway or within the managed mooring field, are strictly prohibited since a significant water quality violation would result in an adverse impact to public health. Only minor repairs or mechanical adjustments may be conducted on vessels while in the managed mooring field. The harbormaster/dockmaster office shall be notified in advance to verify compliance of any proposed activity.

§ 10-36 - Mooring and anchoring methods.

- (a) The method of mooring vessels in the managed mooring field shall be by tying the buoy line to the bow only. The line used to attach a vessel to the mooring buoy shall be the one furnished, which has one end permanently attached to the buoy. No vessel shall be moored at the stern or be tied to more than one buoy or points on a vessel. Dropping or placement of additional anchors or anchor systems from any vessel in the managed mooring field is prohibited. All vessels within the managed mooring field shall only use the established buoys and anchoring systems.
- (b) Vessels may not anchor in a manner that:
 - (1) Jeopardizes other vessels at anchor or underway;
 - (2) Might cause damage to other property or persons; and/or
 - (3) Impedes access to docks, slips or public or private property.

§ 10-37 - Abandonment of vessels.

If a vessel is left unattended for more than 72 continuous hours without giving prior notification to the harbormaster/dockmaster, the vessel shall be considered abandoned. If any vessel is determined to be abandoned, it may be stored in a secure location or commercial marina for 30 days, during which time the harbormaster/dockmaster shall make a reasonable, diligent effort to locate the owner of the vessel. If the vessel is not reclaimed within 30 days, the vessel shall be sold under the process prescribed by state statutes, at fair market value, which will cover the cost of unpaid rental fees, as well as any fees due for storage and removal.

§ 10-38 - Illegal activities prohibited.

Any illegal activity within the boundaries of the city, which includes the manned mooring field, shall be grounds for immediate prosecution under the provisions of state statutes and/or this Code. It is the intent of the city to prosecute each violation to the fullest extent of the law.

§ 10-39 - Liability of city.

The city neither assumes, nor accepts any liability for use of the managed mooring field by tenants or guests. Also, the city neither assumes, nor accepts any responsibility for personal possessions, vessel, dinghy, or their contents or use while said vessels are located within the managed mooring field or upland facilities. Persons using the water of the city shall assume all risk of personal injury and damage

or loss to their property. The city neither assumes, nor accepts any risk due to accident, fire, theft, vandalism, or acts of God.

§ 10-41 - Anchoring outside designated anchorage.

Overnight anchoring outside of the mooring field boundary is prohibited within the Bimini Basin.

<u>§ 10-41 - Special Events.</u>

All vessels located in the Bimini Basin mooring field will need to be removed in advance of special events, including but not limited to:

- (a) Cardboard regatta; and
- (b) Christmas boat parade.

DIVISION 3. - RESPONSIBILITIES OF TENANTS – ALL MOORING FIELDS

§ 10-42 - Safe operation of vessels.

Reckless or careless operation of any vessel, including but not limited to violation of navigation rules, when the vessel endangers or is likely to endanger life, limb, property, or person, shall be grounds for eviction from the managed mooring field.

§ 10-43 - Use of sewage pump-out facilities.

- (a) Discharge of sewage or other pollutants within the managed mooring field is prohibited. All vessels permitted to use the anchorage area shall be equipped with an approved and properly operating marine sanitation device. The harbormaster shall have authority to inspect the device and require a vessel to use the pumpout facility before assigning a mooring. The dockmaster shall have the authority to require periodic pumpouts and install a lockout device on the system, if deemed necessary. The other pump-out facility could be a floating facility, sometimes known as a "honey barge," should one be put into operation. All tenants within the managed mooring field must maintain strict compliance with 33 CFR 159 and F.S. § 327.53 as amended, as to the operation and management of marine sanitation devices to reduce discharges that would adversely impact public health. The use of the pump-out facility will be included in the fee for all tenants.
- (b) Violation of this section will be reason for immediate eviction, withholding of any security deposit and prosecution to the fullest extent provided by federal, state and city laws. Enforcement of sewage discharge laws will be by the state fish and wildlife conservation commission, or federal, state and local marine patrol.

<u>§ 10-44 - Conduct of tenants.</u>

- (a) Noise shall be kept at a minimum at all times so as to avoid creation of a nuisance or disturbance. The anchorage area is in a residential neighborhood and tenants shall use discretion in using any sound producing devices or machinery, which may include but is not limited to televisions, radios, stereos and musical instruments, so as not to create a nuisance to other tenants and the surrounding community. Generators, blowers or other noisy machinery shall not be operated between the hours of 8:00 p.m. and 7:00 a.m. Disorderly, boisterous or rowdy conduct by a vessel owner, crew or guest that disturbs the peace of other occupants in the managed mooring field and the surrounding community shall be cause for a warning to the operator/tenant or eviction of the vessel from the managed mooring field.
- (b) The use of charcoal burners or any open flame equipment is prohibited on the docks or other common areas. All pets must be leashed while on the docks or in any common areas. Pets are permitted, provided they do not disturb other tenants. Laundry shall not be placed in public view aboard any vessel or in any common area.

§ 10-45 - Discharge of waste or other materials.

- (a) While within the managed mooring field, any discharge into the basin of any fluids, waste or other material, regardless of the nature thereof, that would adversely impact public health, except for clean bilge or properly treated wastewater, is prohibited by state and federal law. If the harbormaster/dockmaster or any employee observes any such discharge, they will immediately notify the department of environmental protection or call the state warning point number (800-320-0519). If such a discharge occurs and is illegal, eviction from the managed mooring field shall be mandatory, once appropriate environmental enforcement action has been taken.
- (b) In the event of an accidental discharge, the vessel captain, operator, or owner shall immediately notify the harbormaster/dockmaster to ensure any action that could improve the containment of the spilled/discharged material will begin as soon as possible.

§ 10-46 - Boarding by law enforcement personnel.

The vessel operator is encouraged to cooperate with and assist law enforcement personnel in the lawful pursuit of their duties. The vessel operator shall not improperly resist or obstruct a lawful boarding or inspection conducted by a law enforcement officer.

§ 10-47 - Emergency repairs in absence of tenant.

The harbormaster/dockmaster shall have the authority to make necessary repairs in the event of an emergency when an unattended vessel is in immediate danger of sinking or represents a threat to other vessels. The emergency may include, but shall not be limited to, the vessel sinking or fire, breakdown of a bilge, fuel or sewage pumps or fluid leaks or broken lines. The cost of repairs, parts and labor will be assessed to the owner of the vessel and be due and payable within 48 hours of the return of the owner of the vessel or as provided by the harbormaster/dockmaster. Failure to pay this cost shall result in the City placing a lien on the vessel for unpaid fees or charges assessed by the harbormaster. If the vessel is deemed to be in imminent danger of sinking, fails to meet United States Coast Guard and state standards, leaks fluids or materials, or represents a threat to other vessels, the harbormaster/dockmaster will require repairs to be made within a reasonable, but specific period. If the repairs are not adequately accomplished, the vessel may be evicted from the managed mooring field.

<u>§ 10-48 - Departure of vessels with delinquent dockage accounts.</u>

It is unlawful for the vessel owner to vacate a mooring without the permission of the harbormaster/dockmaster when said vessel has a delinquent dockage account. Additionally, as part of the lease agreement, the city will be authorized to place a lien on the vessel for the cost of the unpaid fees or charges assessed by the harbormaster/dockmaster.

DIVISION 4. - AMENITIES AND SERVICES - All MOORING FIELDS

§ 10-49 - Damage of amenities and property.

Misuse of any amenity or property is grounds for eviction. If any tenant, crew or guest damages any property or equipment of the amenities, due to neglect, misuse, vandalism or failure to follow stated instructions, the tenant shall be held responsible for the cost of repair and replacement, as well as any civil or criminal charges for the activity.

<u>§ 10-50 - Use of dinghy docks.</u>

- (a) Registered managed mooring field tenants shall have free use of the dinghy docks provided in the area by the City of Cape Coral. Dockage is limited to a single dinghy at any one time, with a maximum length of 13 feet overall. Dinghies must be kept in the water and secured by a single line of good quality from the bow to a cleat or ring on the dock.
- (b) Use of the dinghy docks by vessels anchored in designated anchorage is included in the anchorage amenity package. The same restrictions apply as to vessels in the managed mooring field.

§ 10-51 - Use of sewage pump-out facility.

For the Bimini Basin mooring field, a pump-out facility provided by the City of Cape Coral identified in the tenant lease agreement shall be open and in operation from 8:00 a.m. to 6:00 p.m., seven days a week, with the exception of Thanksgiving Day and Christmas Day. There is no fee for the use of this facility by registered mooring field tenants. All vessels in the managed mooring field must use the pump-out facility on an as required basis.

DIVISION 5. - LEASING REQUIREMENTS – ALL MOORING FIELDS

<u>§ 10-52 - Lease agreement.</u>

- (a) Tenancy in the managed mooring field shall fall into three categories defined as follows:
 - (1) <u>Transient: 5 days maximum, with 1 day out, then 5 more consecutive days, not</u> to exceed 10 days in any given month. This will be known as the "5-1-5" rule.
 - (2) <u>Monthly: Not allowed</u>
 - (3) <u>Annually: Not allowed</u>
- (b) All vessels with the intention of utilizing the managed mooring field must make prior reservations with the office of the harbormaster/dockmaster, regardless of the planned length of stay. Arrangements for transient stays are on a space available basis and can be made upon arrival utilizing a very high frequency (VHF) radio on channel 16.
- (c) The tenants, upon taking residence within the managed mooring field, shall execute acknowledgement of the rules of the harbor management plan for mooring area, as well as the operational requirements of the managed mooring field. The lease agreement shall contain reasonable language, as deemed necessary, to enforce compliance with the provisions of this article.
- (d) <u>A description of the requirements of the tenants, based on the terms of their</u> <u>anticipated stay, shall be as follows:</u>
 - (1) Transient tenant (one day to five days) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required daily fee in advance. There will be no assessment of a security deposit for transient tenants.
 - (2) Monthly tenant Not allowed.
 - (3) <u>Annual tenants Not allowed.</u>

<u>§ 10-53 - Tenant information required.</u>

- (a) The owner/vessel operator shall provide the following information for the lease/dockage agreement for the managed mooring field:
 - (1) Owner's or operator's name;
 - (2) Owner's or operator's home address, including city and state;
 - (3) Owner's or operator's telephone number;
 - (4) Emergency number (monthly and annual agreements);
 - (5) Length overall (LOA);
 - (6) <u>Beam;</u>
 - (7) <u>Draft;</u>
 - (8) Type of vessel;
 - (9) Mooring assignment;
 - (10) Vessel name;
 - (11) Registration or document number;
 - (12) Proof of insurance.

(b) The tenant shall be responsible to inform the harbormaster/dockmaster of any changes in the preceding required lease information within 72 hours of any such changes.

§ 10-54 - Mooring rental rate.

The city council shall set the daily rental rate for the mooring fields by resolution. The rate shall be posted in the dockmaster's office and on the signs at the entrance to the mooring field.

§ 10-55 - Vacation of moorings.

Mooring field leaseholders are required to notify the office of the harbormaster/dockmaster whenever they plan to vacate the mooring for greater than 24 hours. A date of departure and planned time of return must be provided, if the vessel operator wants to maintain the right of tenancy. The harbormaster/dockmaster reserves the right to rent any unoccupied mooring space when an assigned vessel is absent for 24 hours or more, without any compensation to the mooring field leaseholder.

<u>§ 10-56 - Moorings signage.</u>

To ensure compliance with the rules and regulations of the mooring field, a single sign shall be placed at the west end of the mooring area. The sign shall be four feet high by six feet wide and shall display the following wording: "(NAME) MOORING FIELD," "ALL VESSELS MUST USE MOORING BUOYS," "FOR MOORING ASSIGNMENT REGISTER AT THE DOCKMASTER'S OFFICE," "\$ PER DAY MOORING RENTAL FEE."

DIVISION 6. - SPEED LIMITS

<u>§ 10-57 - Bimini Basin.</u>

The speed limit in Bimini Basin and surround access waterways shall be slow speed, minimum wake or idle speed no wake as designated by the Florida Fish and Wildlife Commission.

DIVISION 7. - SEVERE STORM OR HURRICANE PLAN – ALL MOORING FIELDS

<u>§ 10-58 - Safety plan.</u>

The office of the harbormaster/dockmaster shall, if possible, warn the managed mooring field tenants to exercise prudent and appropriate judgment in the event that a severe storm or hurricane threatens the area. The tenants shall be advised that the mooring equipment provided in the managed mooring field may not be able to withstand a hurricane or tropical storm and/or the associated wind and tidal surges. Evacuation of the managed mooring field will not be mandatory; however, it may be recommended.

DIVISION 8. - PLANS FOR FUTURE EXPANSION – ALL MOORING FIELDS

§ 10-59 - Expansion of mooring field.

It may become necessary or desirable to expand a managed mooring field to address additional mooring requirements. At such time, a mooring field management plan may be modified to the extent that state and federal permit allow.

DIVISION 9. - MANAGED MOORING AREA

§ 10-60 - Physical moorings.

The mooring systems will consist of an embedment anchoring system, downline, and floating buoy system marked with permit and anchorage numbers. Specific installation details and engineered drawings will provide further details.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	
GUNTER	
CARIOSCIA	
STOUT	

		-
 	-	 -

NELSON	
STOKES	-
WILLIAMS	-
COSDEN	

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____ 2018.

> REBECCA VAN DEUTEKOM CITY CLERK

APPROVED AS TO FORM:

Cerend DOLORES D. MENENDEZ

CITY ATTORNEY ord\Mooring Fields



Mooring Field Ordinance

Development Plan and Regulatory Analysis for Bimini Basin City of Cape Coral, Florida



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Legal and Regulatory Constraints Summary

Federal laws defer to states to regulate anchoring in areas adjacent to navigation channels. Limitations on the restrictions are intended to ensure unobstructed and safe navigation to boaters while also preventing degradation of the surrounding environment. The legal and regulatory constraints that define mooring fields have been referenced to help with planning and implementing a mooring field management plan and developing an ordinance in the Bimini Basin area of Cape Coral, Florida.

Currently in Florida statewide, vessels can anchor anywhere as long as the vessels are moored in a way as to maintain the submerged lands in its natural condition and a mooring light is present per F.S. 253.037(1).

Mooring Field Locations

Mooring fields should be located as to provide protection from winds and waves, good sediment to hold anchors, shore access/amenities, and be aesthetically developed. The mooring field location should be referenced in cruising guides, on webpages, social media, and other online forums to provide the boating community access to the local rules and regulations.

Permitting Requirements and Regulatory Authorizations:

The Florida Department of Environmental Protection (FDEP) and the United States Army Corps of Engineers (USACE) have permitting authority over submerged lands and overlying waters that would be applicable to a managed mooring field. The United States Coast Guard (USCG) and the Florida Fish and Wildlife Conservation Commission (FWC) have authority over navigation safety and signage including the following state/federal permits:

- $_{\odot}~$ USCG Federal Permits Rivers and Harbors Act, Section 10, USACOE
- FWC Permits "Uniform Waterway Markers" Fla. Stat. 327.40

FWC and the United States Fish and Wildlife Service (USFWS) also have authority over protected species (e.g. Manatees and Seagrasses) and regulate state Aquatic Preserve designations. The mooring area will also likely require FWC approval to create a boating restricted area and associated signage and/or buoys.

Florida regulates mooring fields through the submerged lands lease, the FDEP Environmental Resource Permit and the establishment of boating restricted areas by FWC. The submerged lands lease authorizations and the FDEP permit are obtained through a joint application process that includes the USACE federal permit. The submerged lands lease incorporates the FDEP Permit, and all local government governance documents including:

- The local adopted ordinance
- o The Harbor Management Plan

If the proposed mooring field is in a Florida Aquatic Preserve, it will be subject to the Florida Aquatic Preserve Act and FDEP regulations.

- o This will impose separate criteria for obtaining a permit.
- $\,\circ\,$ For approval of the project it must be found in the public interest.
- Public interest determination is based on balancing legal factors as outlined in 18.20.004 (2) of the Florida Administrative Code.
- Projects in more pristine and less developed Aquatic Preserves are subject to even higher standards in the public interest analysis.





The following list provides a general overview of the legal steps to establish a Managed Mooring Field (MMF) in Florida:

- 1. Confirm the ownership of submerged lands
- 2. Confirm relevant political jurisdiction
- 3. Review Local Government Comprehensive Plans to determine whether a MMF will be consistent with the plan
- 4. Initiate Drafting of Proposed Ordinance or Resolution
- 5. Select administration option:
 - Governmental Municipal
 - Concession Draft agreement between local government and concessionaire
 - Not-For Profit Organization
- 6. Obtain authorizations
 - Submerged lands lease
 - Environmental Resource Permit FDEP
 - Obstructions to Navigation section 10 Rivers and Harbor Act - USACE
 - Boating restricted area FWC
 - Special Anchorage Area Designation USCG
- 7. Resource Agency Consultations
 - United States Fish and Wildlife Service (USFWS)
 - Fish and Wildlife Conservation Commission

8. City should consult with its own attorney

2-Step Process in creating a Managed Mooring Field in Florida:

Project Initiation

- Technical
- Legal
- Public (Educational)

Project Development

- Legal
- Technical
- Public (Legal)

Develop permit(s) application information

- Navigational
 - Establish signage and buoy needs
 - Hydrographic survey
- \circ Biological
- $_{\odot}~$ Water quality

Prepare rules for boats that would use the Mooring Field:

- Comply with U. S. Coast Guard regulations and safety standards and Chapter 327 of the Florida Statutes
- Be in good operational condition, capable of maneuvering under its own power
- Have current registration or acceptable documentation otherwise
- Have Liability Insurance coverage
- Contain a U. S. Coast Guard approved marine sanitation device, that complies with the U. S. Coast Guard requirements governing the installation and use of such devices upon that particular vessel



Safe Anchoring and Mooring Procedures for the Mooring Field:

- Boats must anchor so that they are not harming any other vessels, damaging property or injuring people, or preventing access to boats or property.
- Boats should not anchor in sea grass or coral areas because of the damage that the anchors can do to these habitats.
- Boats should be able to get underway within a reasonable amount of time.
- Safety of the crew and boat is a primary concern.

Regulating Activities within the Mooring Field by Developing Ordinance:

- Prohibit other nuisance-like activities in Mooring Field Ordinance
 - Rowdy Conduct
 - Hanging laundry
- Hours for Repairs, or Not Allow Repairs
- Consider Major or Refitting Vessels vs. Minor
- Limit "For Sale" Signage
- No Advertising or Soliciting
- Leashed pets only
- o Operational Hours for Noise & Machinery
- Prohibit grills
- Fishing in designated areas, or not at all
- Swimming Prohibited
- Feeding Wildlife Prohibited
- Insurance Requirements
- Proof of Insurance
- Clear Dispute Resolution Processes
- o Schedule Inspections & Maintenance During Off-Peak Season

Potential Issues:

 Nearly all moorings must be made available to public on a first-come first- serve basis (i.e. 90% Sarasota & Fort Myers

Beach)

- o Commercial activities generally prohibited
- Use of revenue may be restricted
- Manatee education plan
- Length of stay
- \circ Live-aboards
- Fee structure
- Relationship between harbormaster and boaters
- A mooring field may consider restricting & varying length of stay within the mooring field.
- The State generally discourage live-aboards but they are allowed in some instances such as in Ft. Myers Beach.
- Pursuant to the Fort Myers Beach Lease, a Live-Aboard is:
 - "A vessel docked at the facility and inhabited by a person for any 5 consecutive days or a total of 10 within a 30-day period."
 - If allowed, "live-aboard status cannot exceed 6 months within any 12-month period".

Florida Statute Regarding Live-aboard Vessels:

2009 amendments to Chapter 327:

1. Definitions: Live-aboard vessel means – any vessel used solely as a residence and not for navigation (emphasis added); or 2, 3

2. F.S. 327.60 – prohibits a county or municipality from enacting, continuing in effect, or enforcing any ordinance or local regulation:

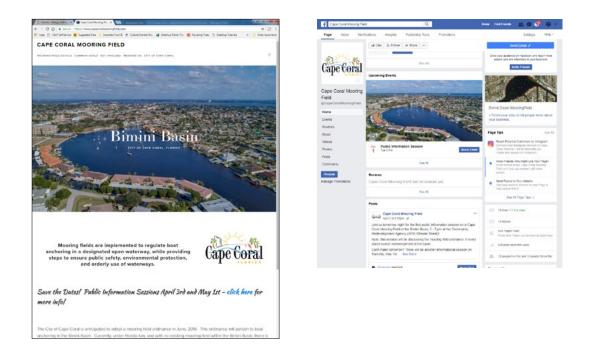
• Regulating the anchoring of vessels other than live-aboard vessels outside the marked boundaries of mooring fields permitted as provided in 327.40

Stakeholder and Public Engagement

During the project kickoff meeting with staff, a stakeholder and public engagement plan was identified that included: project website, Facebook page, two public informational meetings, one presentation to the Community Redevelopment Agency Commission, and print collateral to be available at public meetings or other city venues.

Website & Social Media:

Following kickoff, the project website and Facebook pages were created.



To use these as a resource, Stantec began direct social media target posts, including project web address and meeting dates to vested Cape Coral organizations and local media, including: South Cape CRA, Bimini Basin Social Media, Chamber of Commerce of Cape Coral, Cape Coral Civic Association, News-Press, ABC 7, NBC 2, Fox 4, WINK TV, among others. These were also included in apps such as Next Door to notify those specifically signed up for neighborhood news.



City of Cape Coral // Mooring Field Ordinance Development Plan and Regulatory Analysis of Bimini Basin 4

Identified Stakeholders:

The city also provided Stantec the Bimini Basin Stakeholder List including 41 contacts that represent residents, businesses, property owners, organizations, and developers.

Email notice was sent to all contacts including the meeting dates and project website.

Public Meetings:

Public information meetings have been scheduled to involve the community in the process and set for:

- $\,\circ\,$ Public Information Meetings: April 3rd & May 1st, 5:00 7:00 pm
- Presentation to the Community Redevelopment Agency Commission: May 1st, 3:00 pm
- $_{\odot}~$ City Council Public Hearings: June 4th & June 11th, 4:30 pm

April 3rd Public Information Meeting:

The first session was held on April 3rd and resulted in approximately 40 attendees who participated group style in a general Q&A format. City staff and Stantec were present to share background, explain the process, and answer questions. Informational rack cards and handouts were available to the attendees and mounted graphic boards of the potential mooring area were displayed to show where a mooring field might be in the basin.

The key purpose of this meeting was to ensure the public had an opportunity to hear clearly what a mooring field is, and how this could be created within the city. The feedback that was gathered will be used in establishing various items in preparation for the second public information session, including potential mooring field layouts, number of potential boats that may be within it, duration of stay, and a draft ordinance, among others.

Print Material:

Working to enable interested community members to understand this project and process, consistent messaging has been used on the project website, social media outlets and in all print material. Multiple pieces of print material have been created and are being distributed for public use.



Mooring Field Priorities Program and Managed Mooring Field Development

Goals and Objectives:

- 1. Promote the establishment and use of public mooring fields
- 2. Promote public access to the waters of this state
- 3. Enhance navigational safety
- 4. Protect maritime infrastructure
- 5. Protect the marine environment
- 6. Deter improperly stored, abandoned or derelict vessels
 - Provide public access to Florida waters
 - Be ecologically and habitat friendly
 - Promote tourism and provide economic benefit to merchants with minimal infrastructure requirements
 - Be a self-sustaining, user-funded amenity
 - Provide proprietary moorings more secure than normal anchors
 - Enable higher density of vessels for space available
 - · Not accommodate or allow derelict or abandoned vessels
 - Enhance oversight of the water resource
 - Enhance real estate values

Mooring Field Management Plan Development

- o A harbor management plan should be developed.
- The plan should be based on objective data obtained by inventories of natural and cultural resources.
- The plan should be based on consensus of local stakeholders and city officials.
- A local board should be consulted that includes boaters in order to create the local harbor management plan.
- A Harbormaster should be identified.
- The management plan should focus on providing adequate space via moorings both for transient boaters and for safe shelter during storm events.
- The management plan should provide for a dinghy dock and on-shore facilities for boaters.
- o The management plan should provide for signage and/or buoys.
- The board should inquire into funding mechanisms for signs, moorings, improvements and amenities (dinghy dock, showers, laundry facilities, etc.).
- Try to get Special Anchorage Designation.
- Create a dispute resolution mechanism.
- Obtain necessary permits to use the submerged lands.

Mooring Field Issues and Options:

- o Vessel Storage Not defined by state statutes, possible abandonment of vessels
- Abandoned / Derelict Vessel State/County derelict vessel program. Education and enforcement
- o Marine Sanitation pump-out locations, education and enforcement
- o Anchor Drags / Sea grass Impacts signs and buoys, education and enforcement
- Anchor Light defined anchorage areas, education and enforcement
- o Determine whether mooring field will be municipal, concession or non-profit
- $_{\odot}~$ Solicit public input

Fee Schedule Considerations

- o Different Transient vs. Live-Aboard fees
- Reduced rate for off-peak season
- o Monthly facility fee for amenities not included in base rate
 - Ex.: Vero Beach fees support facilities including fueling facility, pump-out facility, and restrooms.
- $\circ~$ Reduced rate or tiered fees, graduated down for long-term stay

Amenities and Services:

- $\circ~$ Included Services
 - Are they covered in the basic fee structure?
 - o Shower?
 - Parking?
 - o Laundry?
- Services Provided at Additional Cost
 - Will boaters expect the service to be at an additional cost?
- o Consider a monthly flat fee

Technical Considerations

- Vessel Types & Sizes
- $\circ~$ Subsurface Conditions
- \circ Tidal Parameters
- Wind Exposure & Fetch
- Mooring Radius Overlap

Mooring Field Vessel and Example Ordinances

Establishing a mooring field in Florida may seem like a daunting process, but by following the lead of other communities in Florida, the process can be streamlined by learning from the development of other ordinances. The list below includes some of the mooring fields referenced in this document that the City of Cape Coral can model their own ordinance from. Included at Appendix A, are the mooring field ordinances from some of the boating communities in South Florida.

Existing and Permitted Mooring Fields in Florida:

- City of Naples 12 moorings
- Fort Myers 49 moorings
- o Fort Myers Beach 70 moorings
- Key West 149 moorings
- o Marathon Boot Key 226 moorings
- o Punta Gorda 42 moorings
- Sarasota 35 moorings
- o Stuart 69 moorings
- Vero Beach 57 moorings

Technical Resources to Support Mooring Field Development:

- State of Florida Technical Assistance Team (FDEP)
- Working Waterfronts Florida
- Office of Boating and Waterways (FWC)
- Florida Boating Improvements Trust Fund
- Florida Inland Navigation District (FIND)
- Clean Vessel Act grant program (FDEP)
- Florida Sea Grant

Pros/Cons:

- Future upland facilities could be required by FDEP permitting process to include restrooms, showers, garbage disposal, and sewage pump-out at Four Freedoms Park. This can also include ongoing maintenance of pump out apparatus and annual reporting to various regulatory agencies. This is a substantial investment that needs to be evaluated on a return on investment business value equation/business plan.
- USACE, FDEP, FWC and the State Health Department would need to be part of the permitting process. This is multi-year permitting process.
- Alternative opportunity contract with third party entity to oversee/manage all mooring operations. At some point, this could be a viable economic alternative.
- Funding constraints state and WCIND –specific criteria would have to be met for possible funding for a pump out station or pump out vessel.
- Permitting considerations if seagrasses are present in study area. This is also a consideration from a permitting perspective that may involve future mitigation for potential impacts if seagrasses are present.
- FWC will likely need be consulted on essential fish habitat for possible habitat impacts.



Boot Key Harbor Mooring Field



City of Naples Mooring Field:

- \$15 per day
- Maximum of 4 consecutive nights, then out 1 day, then back for a maximum of 4 nights. (8 days total in a 30-day period)
- Pump out and lockout requirements
- No hanging clothes
- Noise restrictions

Fort Myers Beach Mooring Field:

- Fees depend on length of stay
- Pump-out services and facilities included in fees
- Facilities include dinghy docks, restrooms, laundry room and garbage disposal
- Private Marina manages mooring field under concession from city

Vero Beach Municipal Mooring Field:

- Mooring Field offers long-term and transient moorings.
- Anchoring limited outside mooring field by city ordinance
- Length of stay regulation
- Fees support facilities including fueling facility, pump-out facility, and restrooms.
- Employees include harbormaster, assistant harbor master and part time employees.
- Harbormaster resides at the anchorage.
- There is also an advisory board to the anchorage.
- Establishes Enterprise Fund money that it earns goes back to support the MMF.

	*Rates (\$)			
Mooring Field	Daily	Weekly	Monthly	
City of Naples	15	n/a	n/a	
Fort Myers	18	103	312	
Fort Myers Beach	20	140	225	
Key West	19	133	343	
Marathon-Boot Key	22	115	324	
Punta Gorda	13	72	226	
Sarasota	25	175	250-345	
Stuart	35	170	400	
Vero Beach	16	112	324	

Current Mooring Field Rates:

*Data accurate as of March 30, 2018.

References

A Guide for Local Communities that are Considering Creating a Managed Mooring Field PowerPoint Presentation. UF/IFAS Extension and Charlotte County, 2015.

Anchoring Away: Government Regulation and the Rights of Navigation in Florida, Sea Grant, 2011.

Number of vessels berthed within Bimini Basin

In an email dated March 7, 2018 from the City of Cape Coral Harbormaster, Rich Gainley to Wyatt Daltry, the City sees on average 12 vessels per month in anchored in the Bimini Basin. This would translate to 144 vessels annually that would visit the area annually. If assumed to representative of past years, a total of 720 vessels would have been anchored in the Bimini Basin.

Cape Coral Mooring Field Public Information Session #1 April 3rd, 2018





The first public information session was held on Tuesday, April 3rd at the Cape Coral Community Redevelopment Agency from 5 – 7 pm.

The session was promoted through the project website, social media, calendar postings, local news, business, and community organizations, and through the city. Print collateral was available in information rack cards and flyers. Mounted boards were posted for attendees to view the potential maximum area of a mooring field.

Approximately 40 community members participated in the open Q&A session. It was clear that this is a very passionate issue for residents and there was unanimous support for moving forward. While some residents question the current inability to enforce any former or current policy/ordinance/regulation immediately, they support this process.

Several key concerns and considerations were expressed during the session. A few of the most common are identified below. Following this summary are the comment cards or prepared notes that were submitted at the end of the session.

- Water quality and dumping into the basin was consistently the #1 issue
- Multi-day (transient) mooring is supported, however should be limited to a few to several days at a time
- $\circ~$ No live aboard boats
- Limit the number of boats within the mooring field generally ranges from 10 25 based on feedback
- \circ Limit the sizes of boats within the mooring field generally ranges from 20 40'
- Noise levels must be included within the ordinance
- Concern boats that will either be denied permits or will exhaust their permit time will simply move to another location in Cape Coral
- Restrict amount of boat repair or maintenance that can be done on the water
- Multiple significant events occur within the Bimini Basin annually that cannot be disrupted by boats in the mooring field

These items will be used in the process of creating the mooring field layout options as well as the draft ordinance for use during the May 1st public information session.

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Address (optional): **Email:** Name: 444 Tudo Dr#(D abra Brett # 2I e Carpo 434 TUDOr Pr 4015 PACIN Tree BLID OANOI BOX 10/655 MATUN LIEWI171 Petrace 3185EL nince ind AUA MENER CHARLES 5109 Dunnybroof Ct #14 3761 SE 107 ICK TULTS 4302 SW 24TH CT JOHN MEDEVIT 728 SE 44 55 33904 LINDA BIONDI 4003 SE 1st PL, Cape Conal. FL 33904 + Shirley mon Kraig Hamkins Sonis Keim

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Address (optional): **Email:** Name: Huguetter Haaland @ gmail.com 434 Tuder Dr. Unchu Smith usmith 44@ Add. com 434 Tudor RALPH Smith WSTOCKY@AOL.com 434 Tudor DR. Part Prince Cape Cric 1962 agrail, con Alla Tom & Linda Ritter LinRit@Yahoo.com 1505 SW 47 TERR John colly or Dially Dr & good 416 Tudat-JOHN MIZHER JUNIBOZEAL Aimader Fo delvioalma@gmail.com

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Jon Collier

Comments:

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CAPE CORAL MOORING FIELD

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Comments:

· Establish moring balls and charge a fixed daily fee with a maximum of 5 days to 7 days. size of the boats a enforce the ordinance · Regulate the CCPD Marine Unit. rules with the · Do not need dingy docks

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HOW WILL WE KEEP THIS FROM HAPPENING BASINS DTHER BUAT MG

CAPE CORAL MOORING FIELD

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Cape Coral

Comments:

KEEP MOOTING TIME LIMITED 3-5 DAYS NOISE OFDINANCE NEEDS TO BE IN PLACE PUMP OUT STATION OF BY BOAT, WHAT'S MOST FEASBLE NEED Dingy DOCKING ATEA W/ rESTROOMS ShowErs TRASH MODIFIER FOR 10-15 BOATS 40' or LESS GENERAL MAINT ONLY

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AdinoiFi

We Need a mooring field Comments: Tipically there are 12-15 boats in the Basin which is enough. We want have high cost moring und to attract people that we less apt to dumping. Having a dumping boat to assist in getting rid of their tanks would be great giving even less chance of more dumping. emioy seeing boats in the basin but the dumping is a huge problem for Cardboard boat races, Taste of the The Christmas Board Parade and many more and people Cope

CAPE CORAL MOORING FIELD

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Comments:

Toy - Good when -! first more late - less Boat - 15-20 at - STILL Enforcement - mead STAFF - high fee's - NOISE Controls - voig close To homes 8Am -> 8pm . Need some to Enforce 65/60 Db et

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Comments: lees for uchara Dernice lem ille moni Boats ac leave out if 200 Givent as -ong odt. A. Mappe eauly 10 Head on Till/Colored if Head is Drapped Boat UseZock Highpit Smaller - 20 ft 25 Boats 1002 reak ordinance Emergency Plan for Bugger Bootts / Buby Anchorage Enforcement

tape

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comments: Comments: 1) linit mooring balls 40 15-25-2) Enforcement ability/patrolo -3) Dump bocet a site 4) higher all incluseme fee for _ mooning, decuping etc 5) limit mooning time to 3-5 days 6) NO LIVE ABORDS-7) Keep our mater clean 8) create Noise ordiances (our) g) Enpty Mooring the 9) @ linit mountenarce Knos paíode 10) on site personal 1] Boat size not to exceed 35ft 12) Cerrent lic / insurance / registeratio 13) lock down tanks & oard dye - see Naples 15) No free anchoiry in the aspection nooring field 17) Reserventions A Procho Milit

Mooring issues/concerns to be addressed in development of Cape Coral's ordinance for the Bimini Basin

The following are things we the resident/owners of the Sunnybrook Harbur Condominium Association believe are important and should be included in the new ordinance.

- 1) No Wake Buoys should be prominently displayed. Boaters speed thru the Bimini Basin as if they were in the open waters of the Gulf.
- 2) No wet storage
- 3) Reservations should be made in advance. An exception could be made if the boater has an emergency situation but, immediate request for a permit would be required.
- 4) All renters MUST register and obtain a permit and their vessel must be properly registered with current (not expired) decals displayed.
- 5) The mooring fee established should not be reduced for live aboard boaters.
- 6) In addition to the mooring fee live aboard boaters should pay an additional fee similar to that of the City of Vero Beach's \$100.00 per month fee. Perhaps even an amount greater than \$100.00.
- 7) Live aboard boaters should be limited to number of months they may stay in one calendar year. No more than 3 regardless if consecutive or at intervals. Some of our owners feel three months is too long. They would prefer a one month limit.
- 8) Length of stay is limited to a number of days for transient boaters passing by. Perhaps no more than five days.
- 9) If the ordinance does not include a weekly pumpout vessel service, then proof of weekly pump-out should be required and proof that it has occurred and if the boater cannot provide proof he/she should be fined according to Florida boater law of \$250.00.
- 10) The number of moorings should be limited as not to over crowd the Bimini Basin. Perhaps a maximum of 20 boats total. Long anchor lines make it already dangerous to come back at night to docks and piers east of the Bimini Basin at night. The traffic in this area will only increase once the condos are built on the west side of Coronado Parkway between Cape Coral Parkway and Tower Street.
- 11) Anchoring light regulations must be observed at night and enforced.

Name: Edwin Hauck

Email Address: ehauck1@hotmail.com

Message: Moorings have been greatly needed for the Bimini Basin, which I have a condo no the basin

Just to eliminate the derelick boat and to control the flushing of holding tanks in our waterways

I have traveled to the virgin islands and everywhere you go you must use a mooring and it works fine

E Hauck

Name: Gina Chancy

Email Address: Ginachancy@gmail.com

Message: Why isn't there a big warning sign posted? It was our 1st time there & wondered over from playground to the picturesque picknic tables. We were there this Tuesday with my 3 yr old (& 6 yr old niece, & other kids) who played in the water.

Name: jason pim

Email Address: jpim1@comcast.net

Message: Is there any way to receive a recap or minutes of Tuesday public information session?

Name: Jim Fogle

Email Address: jfogle7885@aol.com

Message: I am on the Board of Directors for Waterside West COA at 416 and 420 Tudor Dr. I observe illegal activities every day as my home office overlooks the Basin. On calm mornings, you can see an oil and sewage sheen on top of the water. Some of the abandoned boats have been out there for 3-4 years with no one on them except for the 2 boats of gypsies that came in last fall and are still there. One of the gypsie's boat has four adults and a mid sized dog living on board a 25ft sailboat (hull # MO71628). The other gypsie boat is a Hunter 25ft with 2 adults living on board (Hull # FL3570GH). They have boarded most of the derelict boats numerous times and transport items back and forth for storage. I have personally dealt with several of the boats breaking loose from their moorings and ending up on our dock. Cape Coral Marine units do nothing to enforce maritime mooring rules such as waste containment and anchorage lights. I know what I am talking about as I am a USCG Master Captain observing this situation for 5 years now. I will be at the meeting on May 1st.

Name: Joe Galewski

Email Address: joe@avalon-insurance.com

Message: Will the mooring field invite more boats to anchor in the Bimini Basin? I am all about getting rid of the eye soars and squatters that are currently living in the basin now. I own a home looking directly at the basin and can no longer stand looking at these nasty boats filled with drifters that could possibly be drug attics and sex offenders. It is amazing that they are allowed to stay there for years not maintaining their vessels . To top it off they are anchored right off Four Freedoms Park where many children play (not saying any of these squatters are sex offenders but who regulates that if they are and are they allowed to live next to the park?) Will changing the Basin to a mooring field have any repercussions on future events that are always held in the Basin such as the Christmas Boat Parade and the Cardboard boat races? Thank you for taking the time to read and thank you for helping with the problem in our beautiful Bimini Basin!

Joe Galewski

Name: John Conroy

Email Address: JohnFloridaSW@aol.com

Message: A regulated "Mooring Field" in the Bimini Basin is long overdue!

Well over 70 percent of the boats currently anchored there have been there for more than six months. I have witnessed and reported brown discharges coming from the side of sailboats and predawn dumping of 5 gallon pails over the side of other boats.

Marine Division officers and Florida Fish and Wildlife officials tell me that nothing can be done unless they see it happen.

The West end of Four Freedoms park has become a daytime safe haven for some of the boaters and nearly a dozen land based homeless persons. They leave behind their trash and bottles strewn about.

Occasionally, an elderly gentleman and my wife and I pick up the trash and deposit it in the nearby receptacles. The City workers remove the bags several times a week, but seldom bend over to pick up trash strewn about.

Name: John Lewis

Email Address: Jail16@aol.com

Message: What was the City of Cape Coral thinking when they built a beach fifty yards from where boaters have been dumping their bodily wastes for years and years? Now they want to build up around this Basin and put more people in the water which is already polluted. My neighbors and myself are tired of calling to boasters to "slow down". The more boaters, the more speeders and wakes that travel back and forth across the canal long after the boat has passed. No one should fish or swim in that sludge being left by the boaters. Making them pay will not solve the problem. The pollution will still be there. Stop it all together. The rainy season will not help as some have suggested. There is just more run off from the streets to assist with the pollution. I own a condo on the Bimini Canal so I see this every day.

Name: Leonard Epp

Email Address: EPPLG@MOUNTUNION.EDU

Message: Late this afternoon I learned about the public meeting regarding the potential mooring field in Bimini Basin. As a condo owner on the basin I am unhappy that I will not be able to attend as I made unchangeable out-of-town plans for tomorrow. As a snowbird I will be back in Ohio on the May date so again will not be able to attend. So, I would like to make the following comments here. PLEASE, get rid of the moldy, unattractive and abandoned boats outside my window. (One of the 17 out there today has been there, honestly I believe, for all 6 years I have been renting/owning on the basin and I have never seen anyone on it.) PLEASE, get rid of the homeless live-aboards who have been out there for years, storing their belongings on multiple boats, living all day in the park next to the children's playground in Four Freedoms Park, and dumping their bilge in the basin outside my window. PLEASE get rid of Cape Coral's only existing slum which is an embarrassment to our whole community. (I must say I don't understand why the city is worried about legitimate hardworking, taxpaying residents parking their business vehicles in their driveways and paying the city taxes on their business income, while ignoring the abandoned, derelict and homeless-occupied boats parked in one of the most scenic and desirable parts of our city. And how much do those derelict boat owners pay in taxes? Hmmmm?). Now I suppose there will be some residents in the area of the basin who will oppose the Bimini Basin area development no matter what. I feel development of this valuable area is unavoidable and accept it because I fully believe that this development will progress with all due consideration to the current area residents. But, the current basin situation is, in my estimation, a separate matter. It is a situation that the city should deal with, not because it affects future development, but because it is the right thing to do for the city of Cape Coral. Thank you for considering my opinion.

Name: Paul Rod

Email Address: Paulrod@comcast.net

Message: I live on the water in Cape Coral and occasionally visit Bimini Basin whenever there are special events. Some of the boats anchored are complete garbage and probably don't have running engines and are clearly dumping sewage.. So much growth on the hulls that they probably couldn't even be towed. A mooring field would be a great idea for the city but would have to be carefully monitored and standards for vessels would have to be set (working engines, properly secured sewage lines, etc.).

Name: Richard Ordway

Email Address: Svcambia@yahoo.com

Message: Moorings work. We sailed full time for 17 yrs. Loved the places with moorings and pump out boats . It makes for a secure, clean harbor.

Name: Sam McKay

Email Address: smckay2004@hotmail.com

Message: The Bimini Basin is the only sailboat-draft anchorage area assessable via public easement (Four Freedoms Park) within walking distance to 47th terrace. I know of no other Florida city that provides free public mooring so close to its downtown. When the basin is developed to resemble Cape Harbour (a certainty), how many retirees will remain to complain about anything going on there? Who could afford it?

Name: Tim Argie

Email Address: tjargie@yahoo.com

Message: Over the past several years, we have enjoyed anchoring in Bimini Basin numerous times - on our way out the Caloosahatchee River to cruise various places and on our way back in the Caloosahatchee River. We store our boat near LaBelle.

We come here to provision at the nearby grocery stores (Paesano's is great). Anything we need is at the nearby hardware and West Marine. Laundry and propane refills are also very convenient. We also enjoy eating at the local restaurants. Many of our cruising friends are reluctant to stay here because of the crowded conditions with the stored boats and the large number of full time liveaboards. We would welcome the extra security of a mooring field in Bimini Basin!

Appendix - Mooring Field Example Ordinances

DIVISION 1. - GENERALLY

Sec. 46-91. - Definitions.

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

Anchorage means a customary, suitable and designated harbor area in which vessels may anchor.

Anchoring means the use of a heavy device fastened to a line or chain to hold a vessel in a desired position.

Designated special anchorage areas means anchorage areas designated by the coast guard where it has been determined such an anchorage ground is necessitated due to maritime or commercial interests.

Emergency means any occurrence, or threat thereof, whether natural, technological or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Harbor means a natural or manmade anchorage and/or mooring area providing some degree of protection and security from storms.

Harbor management plan for mooring area means a plan adopted by ordinance of the city council to address the rules and regulations of anchoring, mooring, and speed limits on the river bottom owned by the city.

Harbormaster/dockmaster means a designated city employee charged with implementation of the harbor management plan for mooring area.

Houseboat/live-aboard vessel means any vessel which is used primarily as a residence for a minimum of 21 days during any 30-day period, in a county of this state, and this residential use of the vessel is to the preclusion of the use of the vessel as a means of transportation. This includes any vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence. A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

Mooring means permanent ground tackle where vessels are kept at anchor.

Mooring field means a designated area where permanent ground tackle is utilized to provide multiple vessel moorings in accordance with the harbor management plan for mooring area.

Vessel means a term synonymous with the word "boat," as referenced in section 1(b), section VII of the state constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water under the Florida Vessel Registration and Safety Law.

(Code 1991, § 9-64; Ord. No. 2999, § 2, 1-16-2001)

Cross reference— Definitions and rules of construction, § 1-2.

Sec. 46-92. - Intent.

It is the intent of the harbor management plan for mooring area to address the primary management of the managed mooring field located in the Caloosahatchee River on the Okeechobee Waterway. The harbor management plan for mooring area also addresses anchoring outside the designated anchorage and speed/wake limitations on the remainder of the city-owned river bottom. The purpose of the city yacht basin is to be boater friendly and encourage more boaters to visit downtown; therefore, there is a need to provide additional facilities to accommodate transient vessels in an anchorage or a mooring, or at a dock. (Code 1991, § 9-60; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-93. - Purpose.

The purpose of the harbor management plan for mooring area is to establish a plan for adequate management of the managed mooring field in a manner that will reduce the potential discharge of pollutants into the water and provide boaters with maximum protection from irresponsible or unthinking actions of other boaters.

(Code 1991, § 9-61; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-94. - Target group of boaters.

The harbor management plan for mooring area is designed to accommodate the needs of operators of adequately equipped sailboats operating their vessels in a responsible manner. However, this plan also addresses possible issues that may arise from irresponsible actions of a minority group of boaters anticipated to utilize the managed mooring field. It is acknowledged that the majority of vessel operators are responsible and comply with applicable federal and state requirements.

(Code 1991, § 9-62; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-95. - Applicability; enforcement.

The harbor management plan for mooring area shall apply to all vessel(s), owner(s), crew(s), and guests entering the managed mooring field. Any vessel operator in violation of federal law(s) or regulation(s), state law(s) or regulation(s), or this Code would result in cause for eviction from the managed mooring field.

(Code 1991, § 9-63; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-96-46-120. - Reserved.

DIVISION 2. - MANAGED MOORING FIELD RULES

Sec. 46-121. - Authority of harbormaster/dockmaster.

The harbormaster/dockmaster has the right to assign berths and moorings. No vessel shall occupy any mooring berth without the approval of the harbormaster/dockmaster or his designee. Subleasing of any mooring by the lessee is prohibited. Owners wishing to transfer to a different mooring other than the one assigned must obtain the prior authorization of the harbormaster/dockmaster or his designee and complete the required forms. It may be necessary to reassign a vessel from the particular space rented to another mooring within the managed mooring field as dictated by the practical needs of the existing use of the managed mooring field and the tenants therein. The decision or interpretation of this article shall be the responsibility of the harbormaster/dockmaster.

(Code 1991, § 9-70; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-122. - Vessels allowed; toilet facilities.

(a) Only vessels that are in compliance with the United States Coast Guard (USCG) regulations, and state statutes, particularly the operational and safety standards, shall be allowed within the managed

mooring field. Only seaworthy vessels in good operating condition, capable of maneuvering under their own power or sail, possessing current registration and acceptable documentation, shall be allowed to moor or anchor within the managed mooring field. This is to ensure that all vessels are functional and operational, in the interest of public safety.

- (b) The decision of whether a vessel is considered to be in good operational condition and capable of maneuvering under its own power shall be the responsibility of the harbormaster/dockmaster, based on the United States Coast Guard and state laws and regulations concerning safety and operational requirements.
- (c) All vessels, except dinghies, without an integral source of propulsion (sail or motorized) are not allowed to remain within the managed mooring field. Examples of vessels that would not be allowed to remain within the managed mooring field are a sailboat with no motor and no sails, a motorboat with no motor, or a vessel that must be towed. This requirement does not include vessels that require minor sail or engine repairs.
- (d) Every vessel 26 feet or more in length, which has an enclosed cabin with berthing facilities, shall, while on the waters of the state, be equipped with a toilet. On a vessel, other than a houseboat, the toilet may be portable or permanently installed. Every permanently installed toilet shall be properly attached to the appropriate United States Coast Guard certified or labeled marine sanitation device.
- (e) Every houseboat shall be equipped with at least one permanently installed toilet, which shall be properly connected to a United States Coast Guard certified or labeled type III marine sanitation device. If the toilet is simultaneously connected to both a type III marine sanitation device and another approved marine sanitation device, the valve or other mechanism selecting between the two marine sanitation devices shall be set to direct all sewage to the type III marine sanitation device and, while the vessel is on the waters of the state, shall be locked or otherwise secured by the boat operator so as to prevent resetting.

(Code 1991, § 9-71; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-123. - Transportation requirements.

All vessels should have a dinghy or other small craft as a method of conveyance to enable access to the dinghy dock and the office of the harbormaster/dockmaster. The vessel owner shall report the absence of a dinghy to the harbormaster/dockmaster. The vessel owner is responsible for transportation to and from the office of the harbormaster/dockmaster for registering to rent the mooring facilities. The vessel owner can utilize his main vessel for this purpose by temporarily bringing it to the fuel dock. The lack of such a dinghy shall not be cause to refuse rental of a mooring. It is the sole responsibility of the occupants of the vessel to provide their own conveyance to the upland facilities. Under no circumstances is the city yacht basin responsible for owning, operating or maintaining a dinghy for the exclusive use of mooring patrons.

(Code 1991, § 9-72; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-124. - Commercial uses.

- (a) Commercial activities or vessels engaged in commercial activities are prohibited from mooring in the managed mooring field. The site is designed as a recreational and residential site and shall be maintained as such. No advertising or soliciting shall be permitted on any vessel within the managed mooring field, except for "for sale" signs, not to exceed one square foot in size. Each vessel shall be limited to two "for sale" signs. Commercial vessels, such as day charter or sport fishing boats, will be allowed to store the boats on a mooring the same as a private vessel tenant.
- (b) Minor commercial activities and vessels, such as water taxis, delivery vessels, pump-out vessels, and those performing minor repairs on mooring vessels, may extend service to the vessels in the

managed mooring field. The harbormaster/dockmaster shall make the final decision on determining whether a commercial vessel is allowed in the managed mooring field.

(Code 1991, § 9-73; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-125. - Repairs.

Major repairs or refitting of vessels, including any activity that could result in a deposition of any materials into the waterway or within the managed mooring field, are strictly prohibited since a significant water quality violation would result in an adverse impact to public health. Only minor repairs or mechanical adjustments may be conducted on vessels while in the managed mooring field. The harbormaster/dockmaster office shall be notified in advance to verify compliance of any proposed activity.

(Code 1991, § 9-74; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-126. - Mooring and anchoring methods.

- (a) The method of mooring vessels in the managed mooring field shall be by tying the buoy line to the bow only. The line used to attach a vessel to the mooring buoy shall be the one furnished, which has one end permanently attached to buoy. No vessel shall be moored at the stern or be tied to more than one buoy or points on a vessel. There shall be no dropping or placement of additional anchors or anchor systems from any vessel in the managed mooring field. All vessels within the managed mooring field shall only use the established buoys and anchoring systems.
- (b) Vessels may not anchor in a manner that:
 - (1) Jeopardizes other vessels at anchor or underway;
 - (2) Might cause damage to other property or persons; and/or
 - (3) Impedes access to docks, slips or public or private property.

(Code 1991, § 9-75; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-127. - Abandonment of vessels.

If a vessel is left unattended for more than 72 continuous hours without giving prior notification to the harbormaster/dockmaster, the vessel shall be considered abandoned. If any vessel is determined to be abandoned, it may be stored in a secure location or commercial marina for 30 days, during which time the harbormaster/dockmaster shall make a reasonable, diligent effort to locate the owner of the vessel. If the vessel is not reclaimed within 30 days, the vessel shall be sold under the process prescribed by state statutes, at fair market value, which will cover the cost of unpaid rental fees, as well as any fees due for storage.

(Code 1991, § 9-76; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-128. - Drug use or possession policy.

It is the policy of the city not to tolerate any illegal drug use or possession within its boundaries, which includes the managed mooring field. Such use or possession shall subject the offender to be immediately prosecuted to the fullest extent of the provisions of all applicable laws.

(Code 1991, § 9-77; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-129. - Illegal activities prohibited.

Any illegal activity within the boundaries of the city, which includes the manned mooring field, shall be grounds for immediate prosecution under the provisions of state statutes and/or this Code. It is the intent of the city to prosecute each violation to the fullest extent of the law.

(Code 1991, § 9-78; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-130. - Liability of city.

The city assumes no liability for use of the managed mooring field by tenants or guests. Also, the city neither assumes, nor accepts any responsibility for personal possessions, vessel, dinghy, or their contents or use while said vessels are located within the managed mooring field or upland facilities. Persons using the water of the city shall assume all risk of personal injury and damage or loss to their property. The city assumes no risk due to accident, fire, theft, vandalism, or acts of God.

(Code 1991, § 9-79; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-131. - Anchoring outside designated anchorage.

- (a) Overnight anchoring south of the Intracoastal Waterway is prohibited from markers 39—58. Shortterm anchoring in this area is permitted during city permitted waterfront activities, such as band concerts and firework displays. For the purposes of this subsection, the term "short-term" means three hours before and after said event. Overnight anchoring will not be allowed.
- (b) Vessels may anchor not more than seven consecutive days out of any 28 days north of the Intracoastal Waterway from markers 39—58, but not in the managed mooring field, nor in any other location that would impede other vessels' travel to channels or docks in the area. Vessels anchored on the city-owned river bottom, but not in the designated anchorage, are not allowed to utilize any city yacht basin amenities, including the dinghy dock.

(Code 1991, § 9-80; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-132—46-150. - Reserved.

DIVISION 3. - RESPONSIBILITIES OF TENANTS

Sec. 46-151. - Safe operation of vessels.

Reckless or careless operation of any vessel, including but not limited to violation of navigation rules, when the vessel endangers or is likely to endanger life, limb, property or person, shall be grounds for immediate eviction from the managed mooring field.

(Code 1991, § 9-85; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-152. - Use of sewage pump-out facilities.

(a) Absolutely no discharge of sewage or other pollutants within the managed mooring field is allowed. Use of the pump-out facility located at the fuel dock of the city yacht basin or some other pump-out facility is required on an as needed basis. The other pump-out facility could be a floating facility, sometimes known as a "honey barge," should one be put into operation. All tenants within the managed mooring field must maintain strict compliance with 33 CFR 159 and F.S. § 327.53, as to the operation and management of marine sanitation devices to reduce discharges that would adversely impact public health. The use of the yacht basin pump-out facility is free for all tenants and the general public.

(b) Violation of this section will be reason for immediate eviction, withholding of any security deposit and prosecution to the fullest extent provided by federal, state and city laws. Enforcement of sewage discharge laws will be by the state fish and wildlife conservation commission, state marine patrol, who currently perform random boarding and inspections of anchored and docked vessels.

(Code 1991, § 9-86; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-153. - Conduct of tenants.

- (a) Tenants shall use discretion in using any sound producing devices or machinery, which may include but is not limited to televisions, radios, stereos and musical instruments, so as not to create a nuisance to other tenants. Generators, blowers or other noisy machinery shall not be operated between the hours of 8:00 p.m. and 7:00 a.m. Disorderly, boisterous or rowdy conduct by a vessel owner, crew or guest that disturbs the peace of other occupants in the managed mooring field shall be cause for a warning to the operator/tenant or eviction of the vessel from the managed mooring field.
- (b) The use of charcoal burners or any open flame equipment is prohibited on the docks or other common areas, except as provided by the city yacht basin. Swimming, diving and fishing are prohibited from yacht basin docks and bulkheads. All pets must be leashed while on the docks or in any of the common areas. Pets are permitted, provided they do not disturb other tenants. Laundry shall not be placed in public view aboard any vessel or in the common area.

(Code 1991, § 9-87; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-154. - Discharge of waste or other materials.

- (a) While within the managed mooring field, any discharge into the river of any fluids, waste or other material, regardless of the nature thereof, that would adversely impact public health, except for clean bilge or properly treated wastewater, is prohibited by state and federal law. If the harbormaster/dockmaster or any employee observes any such discharge, they will immediately notify the department of environmental protection or call the state warning point number (800-320-0519). If such a discharge occurs and is illegal, eviction from the managed mooring field shall be mandatory, once appropriate environmental enforcement action has been taken.
- (b) In the event of an accidental discharge, the vessel captain, operator, or owner shall immediately notify the harbormaster/dockmaster to ensure any action that could improve the containment of the spilled/discharged material will begin as soon as possible.

(Code 1991, § 9-88; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-155. - Boarding by law enforcement personnel.

The vessel operator is encouraged to cooperate with, and assist law enforcement personnel in, the lawful pursuit of their duties. The vessel operator shall not improperly resist or obstruct a lawful boarding or inspection conducted by a law enforcement officer.

(Code 1991, § 9-89; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-156. - Emergency repairs in absence of tenant.

The harbormaster/dockmaster shall have the authority to make necessary repairs in the event of an emergency when an unattended vessel is in immediate danger of sinking or represents a threat to other vessels. The emergency may include, but shall not be limited to, the vessel sinking or fire, breakdown of a bilge, fuel or sewage pumps or fluid leaks or broken lines. The cost of repairs, parts and labor will be assessed to the owner of the vessel and be due and payable within 48 hours of the return of the owner of the vessel or as provided by the harbormaster/dockmaster. If the vessel is deemed to be in imminent danger of sinking, fails to meet United States Coast Guard and state standards, leaks fluids or materials, or represents a threat to other vessels, the harbormaster/dockmaster will require repairs to be made within a reasonable, but specific time frame. If the repairs are not adequately accomplished, the vessel may be evicted from the managed mooring field.

(Code 1991, § 9-90; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-157. - Departure of vessels with delinquent dockage accounts.

It is unlawful for the vessel owner to vacate a mooring without the permission of the harbormaster/dockmaster when said vessel has a delinquent dockage account. Additionally, as part of the lease agreement, the city clerk will be authorized to place a lien on the vessel for the cost of the unpaid fees or charges assessed by the harbormaster/dockmaster.

(Code 1991, § 9-91; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-158—46-180. - Reserved.

DIVISION 4. - AMENITIES AND SERVICES

Sec. 46-181. - Damage of amenities and property.

Misuse of any amenity or property is grounds for eviction. If any tenant, crew or guest damages any property or equipment of the amenities, due to neglect, misuse, vandalism or failure to follow stated instructions, they shall be held responsible for the cost of repair and replacement, as well as any civil or criminal charges for the activity.

(Code 1991, § 9-95; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-182. - Use of parking spaces.

- (a) Use of city yacht basin parking spaces is limited to customers who have a monthly lease agreement for a specified numbered parking space. Vehicles parked in the city yacht basin numbered parking spaces must at all times display an authorized parking pass on the dash or on the back of the rear view mirror. The pass must reflect the same number as the parking space.
- (b) Parking spaces are leased on an as available basis only. Parking spaces, when available, will only be leased to slip holders or tenants with managed mooring field leases.

(Code 1991, § 9-96; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-183. - Use of dinghy docks.

(a) Registered managed mooring field tenants shall have free use of the dinghy docks located at floating dock D, slips D34—D40, at the city yacht basin. Dockage is limited to a single dinghy at any one time, with a maximum length of ten feet overall. Dinghies must be kept in the water and secured by a single line of good quality from the bow to a cleat or ring on the dock. (b) Use of the dinghy docks by vessels anchored in designated anchorage is included in the anchorage amenity package. The same restrictions apply as to vessels in the managed mooring field.

(Code 1991, § 9-97; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-184. - Use of sewage pump-out facility.

The city yacht basin pump-out facility, located on the riverside of the fuel dock, shall be open and in operation from 8:00 a.m. to 5:30 p.m., seven days a week, with the exception of Thanksgiving Day and Christmas Day. There is no fee for the use of this facility. All vessels in the managed mooring field must use the pump-out facility on an as required basis.

(Code 1991, § 9-98; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-185-46-200. - Reserved.

DIVISION 5. - LEASING REQUIREMENTS

Sec. 46-201. - Lease agreement.

- (a) Tenancy in the managed mooring field shall fall into three categories defined as follows:
 - (1) *Transient:* Overnight to less than one month;
 - (2) *Monthly:* One to 11 months;
 - (3) Annually: Twelve months or longer.
- (b) All vessels with the intention of utilizing the managed mooring field must make prior reservations with the office of the harbormaster/dockmaster, regardless of the planned length of stay. Arrangements for transient stays are on a space available basis and can be made upon arrival utilizing a very high frequency (VHF) radio on channel 16. Arrangements for any other length of stay shall be made prior to arrival, in person or via telephone.
- (c) The tenants, upon taking residence within the managed mooring field, shall execute acknowledgement of the rules of the harbor management plan for mooring area, as well as the operational requirements of the managed mooring field. The lease agreement shall contain reasonable language, as deemed necessary, to enforce compliance with the provisions of this article.
- (d) A description of the requirements of the tenants, based on the terms of their anticipated stay, shall be as follows:
 - (1) Transient tenant (one day to less than one month) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required daily fee in advance. There will be no assessment of a security deposit for transient tenants.
 - (2) Monthly tenant (one month to less than 12 months) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required monthly fee(s) in advance. A tenant may pay in advance for multimonth mooring; however, there will be no refunds. It is the responsibility of the tenant for payment of the monthly fee at the beginning of each rental period. There will be no assessment of a security deposit for monthly tenants.
 - (3) Annual tenants (12 months or longer) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section of the acknowledgement of the rules and operational requirements within the managed mooring field. A security deposit equal to two months'

mooring fee will be paid at the beginning of the lease. The security deposit will be returned after the final bill is paid in full. The monthly mooring fee will be billed the first of each month for the preceding month or partial month. Partial months will be pro rated.

(Code 1991, § 9-101; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-202. - Tenant information required.

- (a) The owner/vessel operator shall provide the following information for the lease/dockage agreement for the managed mooring field:
 - (1) Owner's name;
 - (2) Owner's home address, including city and state;
 - (3) Owner's telephone number;
 - (4) Emergency number (monthly and annual agreements);
 - (5) Length overall (LOA);
 - (6) Beam;
 - (7) Draft;
 - (8) Type of vessel;
 - (9) Mooring assignment;
 - (10) Vessel name;
 - (11) Registration or document number.
- (b) The tenant shall be responsible to inform the harbormaster/dockmaster of any changes in the preceding required lease information.

(Code 1991, § 9-102; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-203. - Vacation of moorings.

Monthly and annual managed mooring field leaseholders are required to notify the office of the harbormaster/dockmaster whenever they plan to vacate the mooring for greater than 24 hours. A date of departure and planned time of return must be provided, if the vessel operator wants to maintain the right of tenancy. The harbormaster/dockmaster reserves the right to rent any unoccupied mooring space when an assigned vessel is absent for 24 hours or more, without any compensation to the mooring field leaseholder.

(Code 1991, § 9-103; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-204-46-220. - Reserved.

DIVISION 6. - SPEED LIMITS

Sec. 46-221. - Outside Intracoastal Waterway.

The speed limit in the water bounded by the southbound Edison Bridge on the east, the Caloosahatchee Bridge on the west, a line drawn between the bridges through the southern end of Lofton's Island (Pleasure Key) on the north, and the southern edge of the Caloosahatchee River on the

south shall be idle speed/no wake. The speed limit between the bridges north of the above-mentioned line to the north shore of the Caloosahatchee River shall be slow speed, minimum wake.

(Code 1991, § 9-110; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-222-46-240. - Reserved.

DIVISION 7. - SEVERE STORM OR HURRICANE PLAN^[3]

Footnotes:

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Cross reference— Civil emergencies, ch. 22; emergency services, ch. 34.

Sec. 46-241. - Established.

The office of the harbormaster/dockmaster shall, if possible, warn the managed mooring field tenants to exercise prudent and appropriate judgment in the event that a severe storm or hurricane threatens the area. The tenants shall be advised that the mooring equipment provided in the managed mooring field may not be able to withstand a hurricane or tropical storm and/or the associated wind and tidal surges. Evacuation of the managed mooring field will not be mandatory; however, it may be recommended.

(Code 1991, § 9-115; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-242-46-260. - Reserved.

DIVISION 8. - PLANS FOR FUTURE EXPANSION

Sec. 46-261. - Expansion of mooring field.

It may become necessary or desirable to expand the managed mooring field to address additional mooring requirements.

(Code 1991, § 9-120; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-262-46-280. - Reserved.

DIVISION 9. - MANAGED MOORING AREA

Sec. 46-281. - General description.

The 24.3-acre managed mooring area is located northwest of Pleasure Key (Lofton's Island) and provides for 49 moorings with a radius of 75 feet. The current plan is to install 25 moorings initially in every other mooring spot to secure the entire area as a managed mooring field, allowing for the installation of the additional 25 moorings when expansion is required. The mooring anchor points will be 150 feet apart, which will provide for a 75-foot radius. Under normal wind and current conditions, with the full complement of 49 moorings, the vessels will be kept 75 feet apart. Initially, with every other mooring installed, the distance will double to 150 feet, allowing experience to be gained in how the vessels lie in all wind and current conditions.

(Code 1991, § 9-125; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-282. - Physical moorings.

The moorings, manufactured by Force 5 Mooring Systems, Inc., consist of a ten and one-half-foot long galvanized three-quarter-inch diameter steel rod with an eye at one end. Each mooring will have two or four two-inch by three-inch steel U-channels that are 12 inches long and located near the bottom of the rod and hinged to a flat section of the rod. It is water jetted to its full length and then pulled upward. The upward pull extends the U-channels and locks the mooring in the river bottom. Units that have four U-channels are rated by the manufacturer for 60-foot vessels in class 3 hurricanes (120-mile per hour winds). Units with two U-channels are rated by the manufacturer for 40-foot vessels in class 3 hurricanes. The eye of the mooring rod is connected to a surface buoy by a three-quarter-inch polypropylene line. The surface fiberglass buoys are 16 inches high and 24 inches in diameter. A mooring pennant will connect the mooring buoy to the moored vessel.

(Code 1991, § 9-126; Ord. No. 2999, § 2, 1-16-2001)

Chapter 82 - WATERWAYS^[1]

Footnotes:

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Charter reference— Authority of city commission in development of free port, § 1.03.

Cross reference— Buildings and building regulations, ch. 14; coastal construction and floodplain management codes, § 14-391 et seq.; environment, ch. 26; floods, ch. 34; planning and development, ch. 54; streets and sidewalks, ch. 62; planning and development, ch. 108; resources protection, ch. 110; coastal resources, § 110-181 et seq.; zoning, ch. 122; waterways, watercraft and marine-related structures, § 122-1186.

State Law reference— Vessels, F.S. ch. 327.

ARTICLE I. - IN GENERAL

Sec. 82-1. - Penalties.

Violations of this chapter shall be punishable in accordance with section 1-15. Penalties imposed under section 1-15 shall not be exclusive of any other applicable penalty or remedy under federal, state or local law.

(Code 1986, § 42.12)

Sec. 82-2. - Alteration of Key West's main ship channel.

- (a) Unless approved by a super majority vote of the city commission, the city commission, its boards, committees, agencies, authorized representatives or employees in the course of their duties, shall not take any action individually or in cooperation with any person or entity which could result in the widening, deepening or other alteration of Key West's main ship channel. Any such super majority vote may only occur after notice by publication at least twenty-one (21) days in advance of the meeting at which the vote is to take place.
- (b) This ordinance [section] may only be amended, rescinded or otherwise altered by a super majority vote of the city commission.

(Ord. No. 14-01, § 1, 2-19-2014)

Secs. 82-3-82-30. - Reserved.

ARTICLE II. - VESSELS^[2]

Footnotes:

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Charter reference— Extension of police powers in the tidal waters, § 1.02; power for development of municipal free port, § 103.

State Law reference— Vessel safety, F.S. ch. 327; beautification and improvement of waterways by municipalities, F.S. § 342.03.

Sec. 82-31. - Unlawful docking and mooring.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Dinghy means a small boat usually 13 feet or less, either inflatable or rigid, that serves to provide transportation between a larger anchored vessel and land.

Tender means a small boat larger than 13 feet but normally less than 20 feet, either inflatable or rigid that serves to provide transportation between a larger anchored vessel and land.

- (b) It is unlawful to tie, moor, anchor, beach or attach in any way a vessel to public or private property, including seawalls, structures, other vessels, waterway markers, signposts or fence posts, vegetation (trees, bushes, plants) and submerged lands, without prior written permission from the owner within the city limits, unless authorized by state and/or federal law. When the owner of the property is the city, the written permission must be granted by the city manager or his/her designee. This written permission shall be specific to the vessel by registration number and operator by name and shall include the duration of permission to stay. Failure to provide written permission to a law enforcement official may result in the removal and storage of the vessel at the owner's expense consistent with state and local law. Responsibility of compliance with this section is the burden of the vessel owner/operator.
- (c) All vessels docking at a city marina or mooring in a city mooring field shall abide by the rules and regulations of the city. The respective dockmasters are authorized to enforce such rules and regulations.
- (d) The city manager or his/her designee shall designate areas to be used as dinghy docks.
- (e) Dinghies in disrepair, with protruding edges or any other conditions that may damage a neighboring docked dinghy will not be permitted to dock at the dinghy dock.
- (f) Prior to securing a dinghy at any city-owned dinghy dock designated by the city manager or his/her designee or prior to securing a tender at any city-owned dock, the owner of the dinghy or tender shall provide payment for dockage in advance. In addition, the owner of the dinghy or tender shall present proof that the dinghy or tender was tethered to a vessel which is currently enrolled and participating in the pump-out service administered by Monroe County. In the alternative, the owner of the dinghy or tender was tethered to a vessel which was serviced by a pump-out service within fourteen (14) days of the owner's request to dock.
- (g) In the event a dinghy is placed at a city-owned dock designated by the city manager or his/her designee or a tender is placed at a city-owned dock without permission and without complying with subsections (e) and (f) above, a notice of the violation will be placed on the dinghy or tender directing the owner to contact the dock master to correct the violation or violations and to pay the dockage fee within one (1) hour. In the event the violations are not remedied within the prescribed period, the dinghy or tender will be towed by the dock master to the dock master's office where it will be impounded and secured. A \$25.00 impound fee to the marina will be required for release of the dinghy or tender to its owner.

(Code 1986, § 42.01; Ord. No. 14-10, § 1, 5-6-2014)

Sec. 82-32. - Certain prohibitions for Salt Ponds.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Motorized vessel means any vessel powered by fuel, including but not limited to gasoline and diesel fuel.

Salt Ponds means the following described area: From the intersection of South Roosevelt Boulevard with the south bank of Riviera Canal, proceed south and then west along South Roosevelt Boulevard to Bertha Street; thence north along Bertha Street to Flagler Avenue; thence east along Flagler Avenue to 11th Street; thence south along 11th Street to the south bank of Riviera Canal; thence along the south bank of Riviera Canal to its intersection with South Roosevelt Boulevard, but excluding the extension of Riviera Canal, between Salt Run Creek and 11th Street, and excluding the two finger canals extending southward from Riviera Canal and located within the Riviera Shores Subdivision.

Vessel means every type of watercraft used or capable of being used as a means of transportation on or in water.

(b) *Prohibitions.* No person shall:

- (1) Operate a motorized vessel in the Salt Ponds.
- (2) Conduct a commercial tour in the Salt Ponds using any type of vessel.
- (c) *Exemption.* Emergency craft shall be exempt from this section.

(Code 1986, § 42.02)

Sec. 82-33. - Marine sanitation systems.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Compost system means a self-contained dry composting toilet.

Habitable vessel means a waterborne craft, including liveaboard vessels, that is equipped with an onboard toilet which is connected to a fitting that allows for the overboard discharge of sewage.

Habitation means overnight occupation of a vessel or floating home by one or more persons, while the vessel or floating home is moored, docked or anchored in any of the public waterways lying within the city.

Incineration device means a facility approved by the United States Coast Guard located on a vessel which is capable of reducing waste from any vessel to clean ash.

Marine sanitation device means a functioning facility capable of removing waste from any vessel and discharging the waste into a disposal system approved by all governmental authorities having jurisdiction over this system and available for use by persons living aboard habitable vessels.

- (b) Use required. Every owner of a habitable vessel where habitation is occurring and which is docked or moored within the jurisdictional limits of the city and every real property owner who has a habitable vessel where habitation is occurring docked or moored at his property shall be required to have such vessel at all times use one of the following:
 - (1) A marine sanitation device consistent with F.S. § 327.53;
 - (2) An approved incineration device;
 - (3) A dock or shoreside holding tank;
 - (4) A compost system; or
 - (5) A city sewer line.
- (c) *Consistency with federal and state laws.* All marine sanitation requirements of the city shall be consistent with applicable federal and state laws.
- (d) Operators in Key West Bight. All operators of habitable vessels in the jurisdiction of the Key West Bight shall abide by the following terms set forth in the Sovereignty Submerged Land Leases between the city and the state: 440027185 page 6 section J & K and D.E.P. Marina Permit

440027185 section 9 & 10 (j&9): "The marina operator shall direct all vessels entering the facilities, for the purpose of mooring, to the sewage pumpout facilities where 1. All holding tanks shall be pumped 2. All vessels without holding tanks shall have the head discharge sea cock closed and sealed. It is the responsibility of the lessee (City of Key West) to ensure thereafter that the holding tanks of liveaboards are pumped at required intervals, and that vessels without holding tanks shall have their sea cocks sealed.... The Lessee (City of Key West) and marina operations staff shall inform all slip occupants in writing of the availability and requirements to use the sewage pumpout facilities provided at the docking facility."

(e) Prohibitions. It shall be unlawful for any person to discharge untreated or inadequately treated sewage or, if it so pertains, to violate subsection (d) of this section. It shall be unlawful for any person in the jurisdiction of the city to rent, lease, or otherwise provide dock space for any habitable vessel unless the vessel is equipped with a marine sanitation system pursuant to subsection (b) of this section. It shall be unlawful for any person to build, erect, install or use any article, machine, equipment or other contrivance, the use of which will conceal any discharge that would otherwise constitute a violation of any of the sections of this article.

(Code 1986, § 42.03)

State Law reference— Marine sanitation, F.S. § 327.53.

Sec. 82-34. - Noise.

All vessels shall comply with the muffle and other requirements in F.S. § 327.65.

(Code 1986, § 42.04)

State Law reference— Muffling devices, F.S. § 327.65.

Sec. 82-35. - Dockage fees.

All vessels docked in city marinas or moored at city mooring fields that are subject to dockage fees shall have the dockage fees applied on a length-overall basis. To determine the length overall of a vessel, the dockmaster shall measure the vessel from the furthermost portion of the bow to the aftermost portion of the stern or platform, including additions or extensions.

(Code 1986, § 42.05)

Sec. 82-36. - Charterboats.

- (a) For the purposes of this section, the term "charterboat" means any vessel for hire or other watercraft operated from a city dockage facility or private property for the purpose of providing a charter to private parties.
- (b) All operators of charterboats and vessels for hire docked at a city marina shall execute a lease with the city and shall be subject both to the lease terms and applicable marina regulations.
- (c) All operators of charterboats and vessels for hire shall hold a business tax receipt from the city for each vessel. The license shall be displayed in a conspicuous place on the vessel.
- (d) All fish caught by any particular person on any charterboat shall belong to the person catching it, who may, however, give the fish to the captain or the operator of the charterboat to dispose of as he sees fit.

(e) The city commission shall determine at a public hearing whether and to what extent the city will continue to establish a reasonable number of charterboats within all city-operated marinas. The Key West Bight Board is authorized to extend such limitation to its tenants with respect to their subtenants, if the board so deems necessary.

(Code 1986, § 42.06; Res. No. 06-292, § 1, 9-6-2006)

Sec. 82-37. - Liveaboard vessels.

- (a) Liveaboard vessels within the jurisdictional waters of the city are subject to the city's rate of growth ordinance (ROGO) when such vessels are intended for permanent habitation by docking or mooring. Therefore, liveaboard vessels attempting to be established after the effective date of the ROGO may be limited thereby. Unless otherwise provided in the land development regulations, privately owned bay bottom shall be recognized as the same as upland property for the purposes of density and ROGO units.
- (b) Liveaboard vessels shall be docked or moored consistent with sections 82-31 and 82-33. No liveaboard shall be kept on public or private property in violation of the city zoning laws.
- (c) No private or public utility shall provide water, electricity or other utility service to a liveaboard vessel that is in violation of this article.

(Code 1986, § 42.07)

Sec. 82-38. - Abandonment; mooring creating menace to navigation.

It shall be unlawful for any person to abandon any vessel in the public waterways within the jurisdictional limits of the city or to moor such vessel in such manner as to cause it to become a menace to navigation.

(Code 1986, § 42.08)

Sec. 82-39. - Blocking navigation channel.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Device means any net, seine, rope, stake, piling, pontoon, floatline wire, trap, buoy or any similar device, except a hand-thrown cast net.

Navigation channel means any channel between two land masses, fingers or landfills designed for use by watercraft of any type; any project channel marked and maintained by the federal government; a natural channel marked either by the federal government or a local governmental agency; or any natural or artificial channel which is neither marked nor maintained by any governmental authority.

(b) Prohibition. It shall be unlawful to place into any navigation channel any device that either temporarily or permanently obstructs the navigation channel in such a manner as to impede the movement of vessels within the navigation channel or that impedes the ingress and egress of vessels in such navigation channel, except where placement of such devices is required in carrying out duly authorized dredging and channel maintenance programs.

(Code 1986, § 42.09)

Sec. 82-40. - Removal and impoundment of dangerous or hazardous vessels.

- (a) Any vessel, due to fire, explosion, accident, act of God, or other disaster, which, in the opinion of the city manager, in consultation with the U.S. Coast Guard, constitutes a clear and present danger to life or property shall be subject to removal and impoundment by the city in a manner consistent with the paramount interest of providing for the safety of the public, and costs incident thereto shall be borne by the owner.
- (b) Any sunken vessel which, in the opinion of the city manager, in consultation with the U.S. Coast Guard or the state marine patrol, constitutes a hazard to navigation shall be subject to removal and impoundment by the city in a manner consistent with the paramount interest of maintaining the waterways in a safe and navigable condition, and the costs incident thereto shall be borne by the owner.

(Code 1986, § 42.10)

Sec. 82-41. - No discharge zone.

- (a) For the purpose of this section, the term "vessel" means any boat, houseboat, charterboat, fishing boat, or floating structure, whether or not habitable.
- (b) The jurisdictional waters of the city are declared to be a no discharge zone. It shall be unlawful for any person to discharge treated or untreated sewage into the jurisdictional waters of the city from any vessel, whether moored, docked, in transit, or otherwise located within these waters.
- (c) Every marina in Key West shall install sanitary sewage pump-out facilities to serve every vessel and floating structure that docks at the marina. The marina proprietor shall require that the owner or operator of each vessel and floating structure both lock out the black water discharge pipe and use the pump-out facilities as a condition of dockage; all leases or other agreements for dockage shall include this pump-out requirement, as well as a statement that the jurisdictional waters of Key West are a no discharge zone. Each marina owner shall post conspicuous signage informing vessel operators of the no discharge zone. Except as provided in section 82-33(d), pump-out shall occur within 24 hours of the vessel's arrival at the marina, unless the vessel departs within 24 hours of arrival, in which case pump-out is not required. Every such private marina shall maintain a pump-out log showing the sewage disposal history of each vessel and floating structure during its dockage at the marina. Every owner of a vessel docking or mooring within the jurisdictional waters of Key West shall also maintain such a pump-out log at all times that the vessel is in Key West waters. The marina proprietor shall file with the director of utilities a plan for the collection and disposal of vessel and floating structure sewage not later than December 1, 2002, at which date enforcement of the requirements of this subsection shall commence.
- (d) Violations of this section are punishable as provided in section 82-1. A conviction under this section may result in eviction from a city marina.

(Code 1986, § 42.11; Ord. No. 02-25, § 1, 10-1-2002)

Sec. 82-42. - Mooring field; no anchoring zone.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Personal watercraft means a small class A-1 or A-2 vessel as defined in F.S. § 327.02(27), as amended.

Vessel means any boat, houseboat, charterboat, fishing boat, or floating structure, whether or not habitable.

(b) *Mooring field.* Requirements for the mooring field are as follows:

- (1) All vessels within the seaplane basin are required to moor and tie up to an assigned buoy within the mooring field, which shall serve as a permanent mooring site for transient and liveaboard vessels. The map and description of the mooring field established within the seaplane basin is attached to Ordinance No. 00-32 as composite exhibit A, adopted by reference as if set out at length in this section, and is on file in the city clerk's office.
- (2) The city shall grant a permit for a fee to tie up to an assigned buoy within the mooring field. A mooring fee shall be established by resolution of the city commission as a user's fee for the anticipated length of use and to provide for continued garbage services, restroom facilities, sewage pumpout for vessels, dingy dock, maintenance of these facilities and other boater-related recreational facilities.
- (3) Reservations for space within the mooring field shall be accepted by the city, provided space is available for the entire term of the time period sought in the reservation and provided the daily mooring fee is prepaid to cover the time period to be reserved. Such fees shall be nonrefundable. Space availability priority shall be given to county-registered vessels.
- (4) Accepted reservations shall take priority over applications for extensions when space availability for the term of the reservation and that of the applied for extension conflict.
- (5) The daily mooring fee shall be paid in advance for the number of days the vessel shall be moored. The monthly mooring fee shall be paid on the first day of each calendar month, and a security deposit and late payment penalties may be charged.
- (6) The operators or occupants of all vessels moored in the mooring field shall at all times comply with the permit rules and regulations and this Code. Any vessel for which a permit has been granted for use of the mooring field is declared not to be exercising a right of navigation.
- (7) It shall be unlawful for any person to operate a personal watercraft within the mooring field, except for the limited purpose of ingress or egress to or from a vessel for which a permit has been granted for use of the mooring field.
- (c) No anchoring zone. Requirements for the no anchoring zone are as follows:
 - (1) The area commonly known as the seaplane basin is declared to be a no anchoring zone. The map and description of such land is attached to Ordinance No. 00-32 as composite exhibit A, adopted by reference as if set out at length in this section, and is on file in the city clerk's office.
 - (2) It shall be unlawful for any person to anchor or otherwise attach or intentionally ground any vessel, temporarily or permanently, to the bottom within the seaplane basin, except in an emergency. Any vessel anchored or intentionally grounded in violation of this subsection is declared not to be exercising a right of navigation.
- (d) *Violations.* Violations of this section are punishable as provided in section 82-1.

(Code 1986, § 42.13)

Sec. 82-43. - Marine park established; restrictions on motorized vessels.

- (a) There is hereby established the Key West Marine Park. It shall be located within an area reserved for swimming to be identified by demarcation buoys (the swim areas). The legal description of the swim areas is attached to and made a part of the ordinance from which this section is derived in exhibit A. A map of the swim areas shall be kept on file and be available for inspection in the city clerk's office. No motorized vessels shall operate in the swim areas.
- (b) The city shall designate lanes for motorized vessels for ingress to and egress from the shoreline. The legal description of the two lanes (entry lane one and entry lane two) is attached to and made a part of the ordinance from which this section is derived in exhibit A. A map of such lanes shall be kept on file and be available for inspection in the city clerk's office. Vessels operating within these lanes shall operate at an idle speed, creating no wake.

(c) Violations of this section are punishable in accordance with the provisions of section 82-1.

(Ord. No. 01-16, § 1(42.14), 9-18-2001)

Charter reference— Exhibit A, referred to in this section is not set out herein but is available for inspection in the city clerk's office.

Sec. 82-44. - Idle speed/no wake zone established.

(a) Definitions. [As used in this section, the following words and terms shall have the meaning ascribed thereto:]

Idle speed/no wake zone means an area of water where a vessel shall not proceed at a speed greater than that speed which is necessary to maintain steerageway.

Vessel means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on or in the water.

- (b) An idle/no wake zone is hereby established in the Garrison Bight and described as follows: To include the entire basin of Garrison Bight, as well as the adjacent marked approach channel running west from the entrance to the basin along Trumbo Point, extending out to 300 feet from the residential shoreline. A map describing the boundaries of this zone is Attachment "A" to Ordinance No. 03-08, and is available in the city clerk's office.
- (c) The idle speed/no wake zone described in subsection (b) shall be marked on the waters with uniform regulatory markers in accordance with applicable state and federal laws and regulations.
- (d) The city shall consent to the execution of an agreement with the Florida Fish and Wildlife Conservation Commission and the Florida Department of Environmental Protection, holding their respective agencies harmless for claims arising from alleged negligence in the placement, maintenance or operation of agency-approved markers.
- (e) Violations of the section are punishable in accordance with the provisions of section 82-1 of this Code and/or F.S. § 327.74.

(Ord. No. 03-08, § 1, 2-19-2003)

Secs. 82-45-82-70. - Reserved.

ARTICLE III. - BEACHES

Sec. 82-71. - Removal of sand, rock or fill.

It shall be unlawful for any person to remove sand, rock or fill in any quantity whatsoever from the South Roosevelt Boulevard Bathing Beach or any other municipally owned beach.

(Code 1986, § 81.10)

Sec. 82-72. - Watercraft prohibited near beaches and parks.

(a) For purposes of this section, the term "motorized watercraft" shall mean any watercraft being propelled by any motor, including but not limited to motorboats, sailboats under engine-assisted power, motorized jet skis, wet bikes, and all other craft capable of being propelled on or through water.

- (b) No person shall operate or cause to be operated or knowingly rent or lease to any person intending to operate any motorized watercraft within 300 feet of the apparent shoreline of any public beach or public park in the city or within the confines of city or state parkland wetland habitats of the city or there to disturb migratory or wading or other indigenous bird species.
- (c) Any person in the city offering or causing to be offered any motorized watercraft for rent or lease shall at all such times prominently display upon the rental business premises written public notice of the terms of subsections (a) and (b) of this section.
- (d) No embarkation or disembarkation of passengers of commercial boating, recreational, or sightseeing operations shall take place on, across, by way of, or within 600 feet of any shoreline or any public beach or public park in the city or within the confines of city or state park and wetland habitats of the city, except when taking place at a boatramp designated by the city manager for that purpose, a marina, or a dock or similar concession; nor shall any commercial watercraft, whether motorized or nonmotorized, be anchored, tied off or otherwise stored within 600 feet of such shoreline, public beach or public park in the city or within the confines of city or state park and wetland habitats of the city, unless specifically authorized in a valid franchise or lease agreement with the city or other proprietary entity or when located in a marina or on private property or in a channel marked for navigation.
- (e) Subsection (b) of this section shall have no application to operation of motorized watercraft directly and immediately engaged in temporary use of the Simonton Street or Bertha Street boatramps or docks or operating pursuant to a franchise approved by the city commission.

(Code 1986, § 81.11)

ARTICLE IV. - CITY WATERS AND MOORING FIELDS

Sec. 36-79. - Intent and purpose.

The intent and purpose of this article is to regulate activities within City waters to promote water quality, quality of life, and manage the economic impact of the use of City waters. As such, this Article authorizes and provides for the adoption of rules and regulations governing the management and use of City designated vessel anchorage areas and mooring fields, which may be adopted by separate resolution and amended from time to time. City waters, anchorage areas and mooring fields shall be managed so as to eliminate abandoned and derelict vessels, ensure compliance with the Clean Vessel Act, minimize benthic damage, and provide a safe secure harbor for the boating community. This Article is adopted pursuant to, and shall be construed as consistent with Fla. Stat. chs. 327 and 315.

(Ord. No. 02-01-08, § 1(5.5-227), 1-8-2002; Ord. No. 2006-011, § 1(5.5-227), 7-11-2006)

Sec. 36-80. - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Abandoned vessel means any vessel that is left unattended long enough for the vessel to become a hazard to other boats, unseaworthy, or a hazard to navigation regardless of it being properly registered.

Anchor means a piece of a vessel's equipment designed to temporarily secure the vessel in an anchorage, or the act of anchoring. All anchors and lines will be considered ground tackle.

Anchorage or mooring agreement means an agreement or license between the Ports Manager and any person desiring to use a City anchorage area or mooring field, agreeing to the fees, rules and regulations governing the same.

Anchorage field means an area or areas within the City-owned or leased submerged lands designated for vessels to moor temporarily using their own ground tackle (anchor).

City waters means the waters extending 1,200 feet into the tidal waters adjacent to the City limits, or as may be otherwise designated by the Florida Legislature. The term "commercial vessel" shall have the same meaning as set forth in Fla. Stat. ch. 327.

Derelict vessel means any vessel in a wrecked, junked, or substantially dismantled condition or abandoned upon any City waters or at any anchorage area or mooring field in City waters without the consent of the City or other agency having jurisdiction thereof or docked at any private property without the consent of the owner of the private property.

Floating structure shall have the same meaning as set forth in Fla. Stat. ch. 327.

Live-aboard vessel shall have the same meaning as set forth in Fla. Stat. ch. 327.

Marine sanitation device (MSD) shall have the same meaning as set forth in Fla. Stat. ch. 327 .

Moor means the securing of a vessel, by anchoring, attachment, or mooring, rafting to another vessel, or tying to a dock, pier, pile, or wharf.

Mooring means a semipermanent anchorage installation consisting of a heavy anchor, block, or attachment to the bottom, a rode, and a buoy and pennant used for securing a vessel.

Mooring field means an area designated by the City with a network of moorings.

Navigational channel means any area designated by the appropriate Federal, State or local government agency for the purpose of vessel traffic.

Ports Manager means the City Manager or designee whom shall manage City waters and operate, manage, and maintain any City anchorage areas and mooring fields.

Registered owner means the name denoted on the vessel registration.

Seaworthy condition means a vessel that complies with all applicable Federal, State or local government agency regulations concerning equipment, operation, registration and safety.

Storm event means any declared storm event.

Transient anchoring area or *transient mooring field* mean an area in the City's waters designated for short-term anchoring and mooring.

Vessel means the same as set forth in Fla. Stat. ch. 327.

Vessel registration means Federal, State, or international registration indicating the ownership of the vessel to include its official number, port of registration and address of owner.

Wet storage is the act of leaving a vessel or floating structure unattended within the City of Marathon owned or leased submerged lands such that it is not being utilized exclusively as a live-aboard vessel.

(Ord. No. 02-01-08, § 1(5.5-228), 1-8-2002; Ord. No. 2003-30, § 1, 12-23-2003; Ord. No. 2006-011, § 1(5.5-228), 7-11-2006; Ord. No. 2008-27, § 2, 11-25-2008)

Sec. 36-81. - Rules and regulations for City waters.

The City may adopt by resolution, fees, rules and regulations for the management of designated anchorage areas and mooring fields in City waters.

(Ord. No. 02-01-08, § 1(5.5-229), 1-8-2002; Ord. No. 2006-011, § 1(5.5-229), 7-11-2006)

Sec. 36-82. - Powers and duties of Ports Manager.

In addition to any duties that may be assigned from time to time, the Ports Manager shall have the following powers and duties:

- (1) To enforce the provisions of this Article.
- (2) To remove or cause to be removed, from City owned, operated, or maintained or regulated anchorage areas, docks, and mooring fields all vessels and floating structures not properly anchored, docked or moored, as determined by the Ports Manager.
- (3) To control and regulate the use of City boat ramps.
- (4) To represent the City as its agent in the execution of all anchorage, docking and mooring agreements or licenses.
- (5) To remove, or cause the removal of, wrecks, derelict vessels, abandoned vessels, and floating structures or navigational hazard as authorized by interlocal agreement with applicable Federal, State and local government agencies.
- (6) To inspect the valves and holding tanks and seal the valves upon entry of a vessel to a mooring field or anchorage and to inspect the sealed valves at noticed and scheduled intervals not less than three (3) months apart.

(Ord. No. 02-01-08, § 1(5.5-230), 1-8-2002; Ord. No. 2006-011, § 1(5.5-230), 7-11-2006)

Sec. 36-83. - Anchorage areas and mooring fields.

(a) The City may, by resolution, establish and regulate anchorage areas and mooring fields in City waters to accommodate all vessels both transient and long-term.

- (b) Anchorage in a designated mooring field is prohibited.
- (c) Anchorage in Boot Key Harbor is allowed only in designated anchorage areas, except during imminent and post-storm events, during which time areas outside the designated anchorage areas and not in designated mooring fields may be used as safe harbor for anchorage.
- (d) The Ports Manager has the authority to remove or direct the removal of all vessels, floating structures, ground tackle, or any other equipment or materials prior to the installation of a mooring field. The owners of such vessels, floating structures, ground tackle, or any other equipment or materials shall be responsible for their removal. The City shall attempt to give reasonable notice to owners of those vessels, floating structures, ground tackle, or any other equipment or materials to allow for voluntary removal. If the City is unable to contact the owner of those vessels, floating structures, ground tackle, or any other equipment or materials, those vessels, floating structures, ground tackle, or any other equipment or materials, the City may remove and impound those vessels, floating structures, ground tackle, or any other equipment or materials and dispose of them.
- (e) No one may operate a business from a vessel occupying a mooring without the express written permission of the Ports Manager. This may include, but is not limited to chartering, brokerage, commercial fishing, boat rentals, rental accommodations, and other similar uses.
- (f) All vessels desiring to use a City anchorage area or mooring field shall first register with the Ports Manager or designee. Only seaworthy and registered vessels shall be allowed use of the anchorage areas and mooring fields.
- (g) The vessel operator, upon leaving the anchorage, must remove all ground tackle.
- (h) The registered owner and his/her guests are the only allowed occupants of any vessel on or within City-owned or leased submerged lands within Boot Key Harbor. No vessel anchored or moored on or within City-owned or leased submerged lands may be rented or leased to another party by its registered owner for the purpose of habitation. Vessels or on or within City-owned or leased submerged lands within which the City maintains its mooring field are subject to the terms and conditions of the Boot Key Harbor City Marina License Agreement.
- (i) Wet storage is prohibited on or within the City-leased submerged lands utilized as an anchorage field. Violation of this provision of the ordinance from which this Section derives is enforceable utilizing the penalties defined in Section 36-89.
- (j) Floating structures are prohibited within the City-owned or leased submerged lands utilized as an anchorage field. Violation of this provision of the ordinance from which this Section derives is enforceable utilizing the penalties defined in Section 36-89.

(Ord. No. 02-01-08, § 1(5.5-231), 1-8-2002; Ord. No. 2006-011, § 1(5.5-231), 7-11-2006; Ord. No. 2008-27, § 3, 11-25-2008)

Sec. 36-84. - Wastewater discharge and other activities prohibited.

- (a) No person shall discharge raw or treated sewage from any vessel including live-aboards or any floating structure. At such time as the Florida Keys are designated a no-discharge zone, the disposal of all waste shall comply with all applicable Federal and State rules and regulations applicable to waste discharge. This Section shall be enforced pursuant to Fla. Stat. § 327.70.
- (b) No person on any vessel or on land may throw garbage, waste (solid or liquid) including plastics, fuel oils, or derivatives thereof, rubbish, swill, offal or refuse into City waters.
- (c) With the exception of areas designated by the Ports Manager for emergency purposes, such as hurricane preparations, and until the emergency has subsided (as defined by the City Manager or designee), no person may anchor, moor or dock, or permit or cause to be anchored, moored or docked, any live-aboard vessel:

- (1) In a manmade canal, manmade basin, or manmade cove that is adjacent to any residential area; or
- (2) Within 100 feet of a manmade canal mouth, manmade basin, manmade cove, or a manmade or natural shoreline whose adjacent or upland property is a residential area.

Any vessel with a person or persons aboard that is anchored, moored or docked in the same location for 72 hours is presumed to be a live-aboard vessel. This prohibition does not apply to a marina in lawful operation on the effective date of the ordinance from which this Article is derived. Any marina at which a live-aboard is docked, as a condition for site improvements or redevelopment, shall provide an on-site pump-out station or a contract for pump-out services.

(Ord. No. 02-01-08, § 1(5.5-232), 1-8-2002; Ord. No. 2006-011, § 1(5.5-232), 7-11-2006)

Sec. 36-85. - Removal and impoundment of dangerous or hazardous vessels.

Any vessel, due to fire, explosion, accident, or negligence, which in the determination of the Ports Manager creates an immediate danger to life or property, hazard to navigation, or imminent environmental hazard shall be subject to immediate removal and impoundment of the vessel, and costs incident thereto shall be borne by the vessel owner.

(Ord. No. 02-01-08, § 1(5.5-233), 1-8-2002; Ord. No. 2006-011, § 1(5.5-233), 7-11-2006)

Sec. 36-86. - Abandoned, derelict and wrecked vessels and illegal floating structures.

- (a) No abandoned, derelict or wrecked vessel, or illegal floating structure, shall be allowed in or upon the City waters or the shores of the City. No vessel which is likely to damage private or public property or become a hazard to navigation shall be permitted to anchor, dock or moor in City waters. The Ports Manager or designee shall determine whether any vessel is abandoned, derelict or wrecked, or a floating structure is illegal and if so determined, and as may be authorized by interlocal agreement or State law shall take steps for its removal as follows:
 - (1) To the extent possible, notify the owner or other responsible party, as soon as possible, of the determination; and
 - (2) If the owner or responsible party fails to remedy the condition, in the manner and time directed, the Ports Manager, shall then notify the registered owner, and any other party known by the City to have an interest in the vessel or floating structure, in writing, specifying the remedy required and the time frame within which it is to be completed.

In addition to the penalties herein, the City may choose to remove, or cause to be removed, the vessel or floating structure. The responsible party shall be required to reimburse the City for the costs incurred in the removal. If the responsible party fails to reimburse the City for the costs of removal, the City may place a lien on the responsible party's real and personal property for the costs incurred by the City. The City may foreclose on the lien, or seek a money judgment, as provided for by State law.

- (b) Notwithstanding the above, if the Ports Manager determines that a vessel or floating structure is an imminent risk to the health, safety and welfare of the residents of the City, or is likely to immediately damage private or public property, or is an immediate hazard to navigation, the City may take all steps necessary to immediately remove, or cause to be removed, the vessel or floating structure without written communication.
- (c) In addition to the means of compliance defined in this Section, violation of this provision of the ordinance from which this Section derives is enforceable utilizing the penalties defined in Section 36-89.

(Ord. No. 02-01-08, § 1(5.5-234), 1-8-2002; Ord. No. 2006-011, § 1(5.5-234), 7-11-2006; Ord. No. 2008-27, § 4, 11-25-2008)

Sec. 36-87. - Fees.

All fees may be set by resolution of the City Council.

(Ord. No. 02-01-08, § 1(5.5-235), 1-8-2002; Ord. No. 2006-011, § 1(5.5-235), 7-11-2006)

Sec. 36-88. - [Mangrove maintenance.]

- (a) *Property owner's responsibility.* All property owners shall maintain and trim mangroves and other native vegetation on their properties so as to prevent the vegetation from impeding the navigability of the waterway.
 - (1) The requirements of this Section shall only apply to property owners whose property exists on a manmade canal, with two approximately parallel shorelines, both of which have residential or commercial development on them.
 - (2) For purposes of this Section, navigation will be impeded if vegetation growing from any canal shoreline extends a distance greater than ten (10) feet waterward from mean high or 20 percent of the canal width, whichever is the lesser distance.
- (b) *Permits required.* Mangrove or other native vegetation trimming and removal requires a permit from the Florida Department of Environmental Protection for mangroves and/or the City of Marathon for other vegetation.
- (c) *Standards for trimming.* Mangrove trimming shall be performed in accordance with Fla. Stat. §§ 403.9321—403.9334.
- (d) *Supervision.* Unless otherwise exempt from permitting, all mangrove or other native vegetation trimming or removal shall be directly supervised by a person certified by Florida DEP or as indentified in Chapter 106.07(F), City of Marathon Land Development Regulations.
- (e) *Applicable law.* It is the property owner's responsibility to ensure compliance with all State and local laws governing the removal and maintenance of vegetation.

(Ord. No. 2008-13, § 2, 7-8-2008)

Sec. 36-89. - Penalties.

A violation of this Article may be enforced by issuance of a citation, summons, notice to appear in County court, arrest as provided in Fla. Stat. ch. 901, or in accordance with this Code, and punishable by a fine not to exceed \$500.00. Nothing contained herein, however, shall prohibit the City from enforcing this Article by any other lawful means.

(Ord. No. 2008-27, § 5, 11-25-2008)

Secs. 36-90-36-117. - Reserved.

DIVISION 5. - CITY DOCK/CRAYTON COVE ANCHORAGE

• Sec. 42-141. - Definitions.

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

City dock/Crayton Cove anchorage means the open bay area located between the Naples City Dock and the Naples Yacht Club pier, and the cove south of the Naples Yacht Club.

Moor means to secure a vessel by line, cable, or other device to one of the eight mooring buoys installed in the city dock/Crayton Cove anchorage.

Transient mooring means a mooring for use by inhabited vessels for periods of no more than 14 days out of every 30 days.

Vessel means every description of self-propelled watercraft used or capable of being used as a means of transportation on water, including all types of boats and all uses thereof.

(Code 1994, § 78-109; Ord. No. 00-8820, § 1, 5-3-2000)

Cross reference— Definitions generally, <u>§ 1-2</u>.

• Sec. 42-142. - Prohibitions on mooring and anchoring.

(a)

No vessel may moor to any of the mooring buoys without permission of the dockmaster, who shall assign moorings. Moorings shall only be assigned to transient vessels.

(b)

No vessel may anchor within the anchorage or within the dedicated channels to the north and south of the anchorage. No vessel may anchor on the private submerged land to the west of the anchorage.

(Code 1994, § 78-110; Ord. No. 00-8820, § 1, 5-3-2000)

• Sec. 42-143. - Rules and regulations for use and operation.

The city manager is authorized and directed to promulgate rules and regulations for the use and operation of the city dock/Crayton Cove anchorage in addition to and supplemental to the following, all of which shall be posted at the dockmaster's office on the city dock:

(1)

Vessels desiring to use the anchorage shall register with the dockmaster, who will assign a mooring buoy.

Only legally registered or documented transient vessels in seaworthy condition shall be admitted to the anchorage.

No person shall discharge or throw overboard any oil, fuel, spirits, oily bilge, sewage, or any other foreign material into Naples Bay.

- Any vessel moored in the anchorage may be inspected at any time by the dockmaster or a U.S. Coast Guard representative for safety or sanitary purposes.
- All vessels permitted to use the anchorage shall be equipped with an approved and properly operating marine sanitation device. The dockmaster shall have authority to inspect the device and require a vessel to use the wastewater pumpout facility before assigning a mooring and the dockmaster shall have the authority to require periodic pumpout if the vessel remains moored for more than one week.
- Assignment of a mooring shall constitute permission for the vessel's inhabitants to use the dinghy dock, deposit trash and garbage in the appropriate containers, use the laundry and toilet/lavatory/shower facilities on the city dock, use the dockmaster's bicycles, use the potable water supply, and otherwise enjoy the benefits assigned city dock tenants.
- Graywater discharge shall be kept to a minimum. The laundry machines at the city dock must be used for clothes washing.
- Noise shall be kept at a minimum at all times so as to avoid creation of a nuisance or disturbance. The anchorage is in a residential neighborhood and subsections <u>22-37</u>(d), (e), (h) and (j) apply to waterways as well as ashore.
- No painting, scraping, sanding, or other repairs shall be permitted in the anchorage except such repairs and maintenance as may be authorized by the dockmaster.
- The dockmaster is responsible for the enforcement of the rules and regulations for the city dock/Crayton Cove anchorage and may terminate the mooring agreement and order any vessel to vacate the assigned mooring for violation of any rule or regulation relating to the anchorage. At the dockmaster's discretion, the following enforcement for violations of the rules and regulations relating to the city dock/Crayton Cove anchorage shall be provided:

Verbal warning issued by the dockmaster to the offender, with documentation in the dockmaster's file;

a.

(6)

(8) The

(10)

(9)

(5)

(4)

(3)

(7)

Written warning depending of the severity of the violation (the dockmaster will provide written notice to the offender detailing the violation);

Notice to appear in the county court; and

Termination of the mooring agreement. If the vessel owner or operator cannot be located after termination of the agreement, the vessel shall be towed from the anchorage to a commercial marina for storage at the owner's expense. The mooring rental rate shall be quadrupled until the vessel is towed from the anchorage.

In addition to the procedure dealing with enforcement of the violations at the city dock/Crayton Cove anchorage, the city will provide a hearing and appeals procedure for violation of rules and regulations of the city dock/Crayton Cove anchorage, as follows: Within ten days of the notice of violation the offender may file a written notice of intent to appeal the dockmaster's decision with the city manager, whereby a hearing will be scheduled within five days with the city manager. The decision of the city manager will be final.

(Code 1994, § 78-111; Ord. No. 00-8820, § 1, 5-3-2000)

• Sec. 42-144. - Mooring rental rate.

The city council shall, by resolution, set the daily rental rate for the 12 moorings in the city dock/Crayton Cove anchorage. The rate shall be posted in the dockmaster's office and on the signs at the east ends of the anchorage areas, and shall be as set forth in appendix A to this Code.

(Code 1994, § 78-112; Ord. No. 00-8820, § 1, 5-3-2000; Res. No. <u>17-14057</u>, § 1, 11-1-2017)

• Sec. 42-145. - Moorings signage.

To ensure compliance with the rules and regulations for the city dock/Crayton Cove anchorage, a single sign shall be placed at the east end of each anchorage area. The signs shall be four feet high by six feet wide and shall display the following wording: "MANAGED ANCHORAGE," "ALL VESSELS MUST USE MOORING BUOYS," "FOR MOORING ASSIGNMENT REGISTER AT THE DOCKMASTER'S OFFICE ON THE CITY DOCK," "\$ ______ PER DAY MOORING RENTAL FEE." Beneath those lines the sign shall also state that the anchorage is managed under an agreement with the trustees of the internal improvement trust fund and reference the agreement number.

(Code 1994, § 78-113; Ord. No. 00-8820, § 1, 5-3-2000)

b.

d.

C.

DIVISION 1. - GENERAL REGULATIONS

Sec. 10-20. - Definitions.

The following definitions apply throughout article II:

- (a) *Abandoned* means disposed of on public property in a wrecked, inoperative or partially dismantled, or derelict condition with no identifiable owner.
- (b) *Airboat* means a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.
- (c) Anchor means to secure a vessel by using an object or device that is intended to prevent the vessel from moving.
- (d) *Derelict* means in a wrecked, junked or substantially dismantled condition while upon any public waters or while docked, grounded or beached upon the property of another without the consent of the owner.
- (e) *Harbormaster* means a business organization or other person under contract with the city who is responsible for the daily operation of the Sarasota Bayfront Mooring Field.
- (f) *Licensees* means persons or entities who obligate themselves or another person to the terms of the Management Plan, Mooring Field Rules, and Mooring License Agreement including their agents or guests.
- (g) Live-aboard vessel means any vessel used solely as a residence and not for navigation; any vessel represented as a place of business, or a professional or other commercial enterprise; or any vessel for which a declaration of domicile has been filed pursuant to F.S. § 222.17. A commercial fishing boat is expressly excluded from the term. This definition shall not apply within designated and properly permitted mooring fields.
- (h) Marine sanitation device means any equipment for installation on board a vessel, which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 C.F.R. part 159.
- (i) *Moor* means to tie-off a vessel to any submerged fixed object; or to tie-off or secure a vessel to a piling, dock, wharf, seawall, buoy, another vessel, or other object or thing.
- (j) *Motorboat* means any vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation, or whether the machinery is the primary source of propulsion.
- (k) Personal watercraft means a vessel less than sixteen (16) feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.
- (I) *Recreational vessel* means any vessel (1) manufactured and used primarily for noncommercial purposes, or (2) leased, rented, or chartered to a person for the person's noncommercial use.
- (m) Slow speed means the speed at which a vessel proceeds when it is fully off plane and completely settled into the water, and when it creates only a minimum wake that does not endanger other vessels or marine life. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, there is no specific numerical speed assigned to slow speed.
- (n) *Idle speed* is the minimum speed that will maintain the steerageway of a motorboat.
- (o) *Vessel* is synonymous with boat as referenced in Section 1(b), Article VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-21. - Operation of vessels in marked swimming or bathing areas.

No person shall operate any vessel, except hand- or foot-propelled vessels within a swimming or bathing area which has been clearly marked by duly authorized buoys or other distinguishing devices.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-22. - Operation of vessels near the shore of the Gulf of Mexico.

No person shall operate any motorboat or other vessel in excess of idle speed within three hundred (300) feet of any land in the city fronting on the Gulf of Mexico except in areas designated by the city commission as a corridor for shore access, after public hearing, and when such access corridors are marked by distinguishing devices.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-23. - Towing or manipulating flying or sailing devices, parachuting near beaches.

It shall be unlawful for any person to tow or manipulate any person attached to any flying or sailing device or parachute through or over an area within five hundred (500) feet each side of the water's edge of any shore line in the city below an altitude of five hundred (500) feet above the surface of the water.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-24. - Operating flying devices near beaches.

It shall be unlawful for any person to operate, engage in, be a passenger in or control any flying device carrying a person or persons through or over an area within five hundred (500) feet each side of the water's edge of any public or private gulf beach customarily used for swimming or surf bathing below an altitude of five hundred (500) feet above the surface of the water.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-25. - Launching of vessels from public property.

- (a) It shall be unlawful for any person to launch a vessel into any bayou, canal, bay or the Gulf of Mexico from any property owned by the city, or in which the city has an easement, unless the launching takes place at a marina; or from a boat ramp provided by the city.
- (b) Small vessels including, but not necessarily limited to sailboats, rowboats, dingys, canoes or kayaks may be launched from John Ringling Causeway Park, Ken Thompson Park or any other location approved by the city manager. The city manager may establish rules and regulations pertaining to launchings from these locations.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-26. - Designated waterski area; manatee protection.

(a) The following portion of Sarasota Bay shall be identified by use of appropriate markers as a waterski area:

That portion of Sarasota Bay lying northwesterly of a line one hundred fifty (150) feet northwesterly of and parallel with a line perpendicular to the John Ringling Parkway bridge connecting St. Armand's Key to City Island from the northwesterly end of said bridge, southwesterly of a line seven hundred fifty (750) feet northeasterly of and parallel with the center line of John Ringling Parkway (running northwesterly from St. Armand's Key) northwesterly of a line one thousand fifty (1,050) feet northwesterly of and parallel with a line perpendicular to the aforementioned John Ringling Parkway bridge connecting St. Armand's Key to City Island and from the northwesterly end of said bridge, and southwesterly of a line three thousand two hundred fifty (3,250) feet northeasterly of and parallel with the centerline of the aforementioned John Ringling Parkway (running northwesterly of the aforementioned John Ringling Parkway) a line three thousand two hundred fifty (3,250) feet northeasterly of and parallel with the centerline of the aforementioned John Ringling Parkway).

(b) Within the described area persons who engage in waterskiing activities or other water sports shall be required to keep watch for manatees who are known to frequent that portion of Sarasota Bay. So as to provide public education concerning the existence of manatees within the identified area, appropriate signage will be prepared and posted at boat launching facilities within the city. At a minimum, an appropriate educational sign shall be posted at the Ken Thompson Park boat ramp.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-27. - Boating prohibited in proximity to Saprito Pier.

No person shall operate any vessel within one hundred fifty (150) feet of the Saprito Pier when signs are posted to prohibit such conduct.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-28. - Airboats prohibited.

- (a) It shall be unlawful for any person to operate, or cause to operate an airboat on any bayous, bays, canals, the Gulf of Mexico or any other body of water within the city limits of the city for any cause whatsoever, except that this prohibition shall not apply within the Florida Intracoastal Waterway.
- (b) This section shall not apply to any airboats owned and operated by the state, the county, the city or the United States government while engaged in the discharge of the official activities of the owner entity or official duties of the operating employee.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-29. - Speed limit in certain areas; exceptions.

- (a) It shall be unlawful for any person to operate a motorboat in any bayou, creek, canal, arm of the bay, channel, boat harbor, anchorage, dockage area or within one hundred fifty (150) feet of any shoreline, dock, wharf or bridge within the city in excess of slow speed, when posted.
- (b) This section shall not apply within one hundred fifty (150) feet of a location on a shore, bulkhead or dock being employed as a point of departure or return in connection with waterskiing or aquaplaning activities within the area designated for water skiing by section 10-26(a).

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-30. - Speed limit within certain distance of other vessels; exceptions.

No person shall operate a motorboat at any point within the city in excess of slow speed within one hundred fifty (150) feet of any other vessel except in areas designated for use for waterskiing and aquaplaning. This section shall not apply to any motorboat proceeding on a substantially straight course, either parallel or at right angles to the course of another vessel, for the purpose of clearing such other vessel when proceeding in a channel. For the purposes of this section, the word 'channel' shall include any area of water which, because of its depth, location, or the configuration of nearby obstructions to navigation is routinely used as a route of travel for substantial numbers of vessels within the city.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-31. - Speed not to be greater than what is reasonable under conditions.

Nothing contained in this article shall be construed to authorize or approve any speed greater than is reasonable and proper in consideration of local conditions, other water traffic, persons swimming or fishing in the area or other hazards, whether such speed is more or less than slow speed.

(Ord. No. 12-5002, § 1, 7-16-12)

DIVISION 2. - SARASOTA BAYFRONT MOORING FIELD

Sec. 10-32. - Description of the City of Sarasota Bayfront Mooring Field.

In 2009, the Florida Department of Environmental Protection issued an environmental resource permit to the City of Sarasota, along with authorization to use sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, to establish and maintain a one hundred fourteen-acre mooring field. The permit allows the City of Sarasota Bayfront Mooring Field ("Mooring Field") to install permanent anchoring systems for the mooring of up to one hundred nine (109) private, noncommercial vessels. In addition, a 10.4-acre area will be set aside for the anchorage of section 18-24 transient vessels.

The mooring field is to be located adjacent to Marina Jack, west of U.S. 41 in the City of Sarasota, Sections 19 and 30, Township 36 South, Range 18 East, Sarasota County, within Sarasota Bay, a Class III Outstanding Florida waterbody. It will be located on the southern side of city-owned island park (adjoining Bayfront Park) and will serve boaters on a first-come, first-served basis.

Vessels that occupy the permanent mooring area are to range in size from twenty (20) feet long with a two-foot draft to one hundred (100) feet long with an eight-foot draft. The transient anchorage area is an overflow area for the permanent mooring area, as well as an anchorage area for vessels that arrive at the mooring field after hours. The vessels in the permanent mooring field will be secured to fixed anchors, cables and buoys that are designed to prevent scouring of the submerged bottom and minimize the footprint of the anchoring system.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-33. - Intent.

- (a) The intent of the city in creating the mooring field is to establish a regulated mooring field in an area where approximately one hundred (100) vessels now moor without regulation. The lack of regulation has resulted in environmental degradation and potential health hazards, as well as navigational and safety hazards.
- (b) It is the intent of the city that this division be construed in a manner that is consistent with the City of Sarasota Bayfront Mooring Field Management Plan ("Mooring Field Management Plan"), approved by the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers, as that document may be amended from time to time.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-34. - Applicability.

This division applies to the harbormaster, to licensees, and to all others who enter the mooring field.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-35. - Authority of harbormaster.

- (a) The harbormaster is authorized to manage and operate the mooring field pursuant to a contract with the City of Sarasota. The harbormaster shall manage and operate the mooring field in a manner that is consistent with this division and the mooring field management plan.
- (b) The harbormaster is authorized to establish rules for the mooring field, subject to approval by the city manager and the city attorney.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-36. - Mooring of vessels.

- (a) No person shall moor or anchor a vessel within the mooring field without registering with the harbormaster, who has authority to assign and re-assign mooring slips in accordance with the City of Sarasota Bayfront Mooring Field Operations Agreement. Licenses to occupy moorage and anchorage slips shall be granted on a first-come, first-served, basis. The harbormaster shall require proof that the vessel meets certain safety and sanitation regulations prior to registration and may refuse to register any vessel that does not provide such proof or that does not otherwise meet the conditions set forth in this division.
- (b) Only vessels that meet the definition of "motorboat" and the definition of "recreational vessel" contained in this article are allowed to moor in the mooring field. All vessels that utilize the mooring field must be U.S. Coast Guard documented vessels or be registered with the State of Florida or registered in another U.S. state or foreign jurisdiction; provide documentation establishing U.S. Coast Guard or valid registration, be in compliance with U.S. Coast Guard and state law regulations, be seaworthy, be in good operational condition, and be capable of moving under their own power or sail.
- (c) All vessel owners or operators who moor in the mooring field must enter into a mooring field license agreement with the harbormaster within twenty-four (24) hours of entering the mooring field and must further agree to abide by and act in conformity with the mooring field management plan and mooring field rules.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-37. - Discharge of wastes and pollutants.

- (a) Every vessel that moors or anchors in the mooring field must be equipped with a marine sanitation device in compliance with F.S. § 327.53. Violators of F.S. § 327.53 may be charged with a noncriminal infraction pursuant to F.S. § 327.73.
- (b) Vessels occupying the mooring field shall utilize an upland sewage pump-out facility provided by the harbormaster and/or an authorized pump-out vessel, if provided. Vessels that occupy the mooring field must have their sewage holding tanks emptied upon entering and when leaving, and as otherwise required by the mooring field rules and/or license agreement.

- (c) It shall be unlawful for any person to discharge into the waters of the mooring field human waste or hazardous waste, including but not limited to fuel oils, lubricants, paints, varnishes or bilge waters mixed with a hazardous substance. Such discharge shall also be grounds for immediate eviction from the mooring field.
- (d) Any person who accidentally spills or discharges human or hazardous waste into the waters of the mooring field shall immediately report such discharge to the harbormaster, who is authorized to contain discharges and to conduct emergency repairs of unattended vessels. In the event the harbormaster cannot be reached, such person shall immediately report the spill or discharge to the City of Sarasota Police Department, Marine Patrol Unit.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-38. - License agreements.

- (a) The harbormaster shall enter into license agreements with those who anchor or moor in the mooring field. Such agreements shall be in a form approved by the city manager and city attorney.
- (b) The license agreement may contain the following provisions: an initial term for up to one (1) year; a daily, weekly or monthly fee; a security deposit equal to the one (1) month's usage; a list of amenities and services to be provided by the harbormaster; an indemnification provision that protects the harbormaster and the city from liability; insurance requirements; remedies available to the harbormaster in the event of default; emergency weather procedures; and miscellaneous provisions as are deemed necessary to create a hospitable and safe environment for boaters and the general public, while safeguarding the waters of Sarasota Bay and the property of the harbormaster, the city, and boaters who use the facility.
- (c) The harbormaster is authorized to place a lien on a vessel, and may force a nonjudicial sale of a vessel pursuant to F.S. § 328.17, for breach of the license agreement, including the failure to pay license fees or other sums due the Harbormaster and including but not limited to fines or costs related to an environmental restoration or clean-up necessitated by the vessel.
- (d) In accordance with provisions of the license agreement, the harbormaster may unilaterally terminate the license agreement if the licensee materially breaches the agreement.
- (e) The city commission may, by resolution, create special programs for certain vessel owners, including but not limited to live-aboard vessel owners who are currently at anchorage in Sarasota Bay or who have moored within the Sarasota Bayfront Mooring Field within the twelve (12) month period prior to the effective date of this article, in order to ease their transition into the mooring field. Such programs may reduce or waive license fees and/or insurance requirements for participants for a set period of time.

(Ord. No. 12-5002, § 1, 7-16-12)

Secs. 10-39—10-49. - Reserved.

DIVISION 3. - MOORING AND ANCHORING

Sec. 10-50. - Anchorage and mooring outside mooring fields.

No person shall allow a vessel (as defined in section 10-20(o) of this Code) to anchor or moor at any location outside of a properly permitted mooring field for more than ninety (90) consecutive days. After midnight of the 90th consecutive day, the owner, operator, occupants or person in custody of the vessel shall relocate the vessel to a properly permitted mooring field or to a location outside the municipal boundaries of the city.

For purposes of this division 3, the term "properly permitted mooring field" shall mean an area designated for the mooring of vessels that has been approved and permitted for such purpose by all state and federal agencies with jurisdictional authority.

It shall not be relevant to a determination of a violation of this section that the vessel was temporarily moved from a site or location and then later returned to that same site or location or in close proximity thereto, unless the vessel shall have been absent from the site or location for a period of seventy-two (72) hours between each anchoring or mooring. Nothing in this section shall be construed to limit or restrict a vessel from being tied up to a properly permitted dock or restrict a vessel from being moored pursuant to a mooring permit issued by the Florida Department of Environmental Protection anywhere in the jurisdictional waters of the city.

(Ord. No. 12-5003, § 1, 7-16-12)

Sec. 10-51. - Anchoring and mooring on city property.

It shall be unlawful for any person to anchor, moor or tie off a vessel at, to or on any dock, seawall, piers or any real property or beaches owned by the city, except for active loading or unloading and except for tenders (such as dinghies, row boats and similar vessels) in active service to their properly anchored or moored mother vessel. The foregoing exception for tenders in active service is limited to twelve (12) continuous hours within any twenty-four (24) hour period.

(Ord. No. 12-5003, § 1, 7-16-12)

Sec. 10-52. - Anchoring and mooring within one hundred fifty feet of shoreline or sea wall.

In order to protect marine infrastructure, such as but not necessarily limited to docks, wharves, sea walls, marine railways and boat ramps, it shall be unlawful for any person to anchor or moor a vessel for a period of time in excess of twelve (12) hours in a manner which allows the vessel or any part of the vessel to be within one hundred fifty (150) feet of waterfront real property as measured from the natural shoreline or sea wall. However, the owner of privately owned submerged lands may anchor or moor a single vessel on his or her property in excess of twelve (12) hours, subject to the limitation in section 10-50. The preceding sentence shall not be construed to limit or restrict a vessel from being tied up to a properly permitted dock or restrict a vessel from being moored pursuant to a mooring permit issued by the Florida Department of Environmental Protection anywhere in the jurisdictional waters of the city.

(Ord. No. 12-5003, § 1, 7-16-12)

Sec. 10-53. - Anchoring and mooring in close proximity to properly permitted mooring fields.

It shall be unlawful for any person to anchor or moor a vessel for a period of time in excess of twelve (12) hours in a manner which allows the vessel or any part of the vessel to be within one hundred fifty (150) feet from the marked boundaries of a properly permitted mooring field.

(Ord. No. 12-5003, § 1, 7-16-12)

Sec. 10-54. - Exceptions to anchoring and mooring prohibitions.

Notwithstanding sections 10-50 through 10-53 above, vessels may remain anchored or moored for longer periods of time than provided therein in the event of a temporary mechanical breakdown or when imminent or existing extreme weather conditions would impose an unreasonable risk of harm to persons or property, in which case vessels may remain anchored or moored until the vessel is repaired, which shall occur within five (5) days, or in the event of extreme weather, until weather conditions improve.

Notwithstanding sections 10-50 and 10-53 above, vessels may remain anchored or moored for longer periods of time than provided therein when all properly permitted mooring fields in the city are full and have no space for new occupants. However, the preceding sentence shall only be construed to allow a vessel that remains anchored or moored for a longer period of time than provided in section 10-50 to do so until space becomes available in a properly permitted mooring field. It shall not be construed to allow a vessel to anchor or moor at any location outside of a properly permitted mooring field for a second consecutive ninety (90) day period.

Notwithstanding sections 10-50 through 10-53 above, the city commission may allow or permit vessels that are participants in a boat show, race, parade or other public event to anchor or moor in a location that would otherwise be prohibited by those sections, so long as the vessel owner complies with resolutions or agreements governing the public event.

Sections 10-50 through 10-53 shall not apply within the Florida Intracoastal Waterway, as that term is defined by state statutes.

(Ord. No. 12-5003, § 1, 7-16-12)

Sec. 10-55. - Determination of a violation and enforcement.

For the purpose of determining whether or not the time limitation of Section 10-50 has been violated, the initial physical observation of a vessel at a particular location outside a properly permitted mooring field shall be documented in writing and a final observation of the vessel at the same location or approximate location more than ninety (90) days later shall also be documented in writing. The initial and the final observation as described in the preceding sentence plus the physical observation of the vessel at the same location, a minimum of two (2) times, with a minimum of thirty (30) days between each observation, during the allowed ninety (90) day time period shall be deemed prima facie evidence of a violation of Section 10-50. The required observations may be made by officers, employees, agents of the city, private citizens or both. In the case of observation by private citizens, such citizen shall be required to make affidavit as to the observation.

For the purpose of determining whether or not the time limitations of sections 10-52 or 10-53 have been violated, the physical observation of a vessel at the same location or approximate location, a minimum of two (2) times during an allowed time period and one (1) time beyond the maximum authorized time period shall be deemed prima facie evidence of a violation of the aforementioned sections. The required observations may be made by officers, employees or agents of the city, private citizens or both. In the case of observation by private citizens, such citizen shall be required to make affidavit as to the observation.

The provisions of this chapter 10, article II, division 3 of the City Code shall be enforced by the city police department. However, Sarasota County Sheriff's Department and the Division of Law Enforcement of the Florida Fish and Wildlife Conservation Commission shall have concurrent jurisdiction to enforce said provisions. The law enforcement agency issuing a citation for violation of this division shall present the completed citation to the owner or occupant of the subject vessel or, in the alternative, shall mail the citation to the owner of the vessel at the mailing address shown on the title or registration of the vessel, by U.S. mail, certified, return receipt requested.

The city may prosecute a violation of this division in any manner allowed by law, specifically including but not limited to prosecution for a municipal ordinance violation in county court and an action for mandatory injunctive relief ordering that a vessel be moved from a particular location. A violation of this ordinance shall be considered a noncriminal violation and shall be punished by a fine not exceeding five hundred dollars (\$500.00), except for a first time violation which shall be punished by a fine not exceeding two hundred fifty dollars (\$250.00).

(Ord. No. 12-5003, § 1, 7-16-12)

DIVISION 4. - ABANDONED AND DERELICT VESSELS

Sec. 10-56. - Abandoned vessel prohibited.

- (a) It is unlawful for any person to abandon any vessel (live aboard or non-live aboard) in the water within the jurisdictional limits of the city or on any adjacent real property.
- (b) City police may remove and dispose of abandoned vessels pursuant to F.S. ch. 705, as may be amended. A property owner who fails to remove an abandoned vessel, after notice and within the specified period, shall be liable for all costs of removal, storage and destruction of the property, less any salvage value obtained by the city. In accordance with the Florida Statutes, any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel or any other vessel or motor vehicle until such costs have been paid.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-57. - Derelict vessel prohibited.

- (a) It is unlawful for any person to leave, store or abandon a derelict vessel (live aboard or non-live aboard) in the water within the jurisdictional limits of the city or on any adjacent real property.
- (b) City police may remove derelict vessels pursuant to F.S. § 823.11, as may be amended, when such vessels obstruct or threaten to obstruct navigation or in any way constitute a danger to the environment. All costs incurred by the city police in the removal of derelict vessels shall be recoverable against the owner. Any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel or any other vessel or motor vehicle until such costs have been paid.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-58. - Unlawfully moored, anchored, abandoned or derelict vessel a public nuisance.

Any vessel (live aboard or non-live aboard) that is moored, anchored, abandoned or in a derelict condition in violation of this chapter shall constitute a public nuisance. Enforcement of violations or abatement procedures provided for in this chapter shall be cumulative to other enforcement or abatement action provided for by law.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-59. - Penalties.

Unless otherwise required by state law, violations of this chapter shall be punishable as provided by section 1-11 of this Code.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-60. - Reserved.

ARTICLE IV. - HARBOR MANAGEMENT PLAN FOR MOORING AREA

DIVISION 1. - GENERALLY

Sec. 46-91. - Definitions.

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

Anchorage means a customary, suitable and designated harbor area in which vessels may anchor.

Anchoring means the use of a heavy device fastened to a line or chain to hold a vessel in a desired position.

Designated special anchorage areas means anchorage areas designated by the coast guard where it has been determined such an anchorage ground is necessitated due to maritime or commercial interests.

Emergency means any occurrence, or threat thereof, whether natural, technological or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Harbor means a natural or manmade anchorage and/or mooring area providing some degree of protection and security from storms.

Harbor management plan for mooring area means a plan adopted by ordinance of the city council to address the rules and regulations of anchoring, mooring, and speed limits on the river bottom owned by the city.

Harbormaster/dockmaster means a designated city employee charged with implementation of the harbor management plan for mooring area.

Houseboat/live-aboard vessel means any vessel which is used primarily as a residence for a minimum of 21 days during any 30-day period, in a county of this state, and this residential use of the vessel is to the preclusion of the use of the vessel as a means of transportation. This includes any vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence. A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

Mooring means permanent ground tackle where vessels are kept at anchor.

Mooring field means a designated area where permanent ground tackle is utilized to provide multiple vessel moorings in accordance with the harbor management plan for mooring area.

Vessel means a term synonymous with the word "boat," as referenced in section 1(b), section VII of the state constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water under the Florida Vessel Registration and Safety Law.

(Code 1991, § 9-64; Ord. No. 2999, § 2, 1-16-2001)

Cross reference— Definitions and rules of construction, § 1-2.

Sec. 46-92. - Intent.

It is the intent of the harbor management plan for mooring area to address the primary management of the managed mooring field located in the Caloosahatchee River on the Okeechobee Waterway. The harbor management plan for mooring area also addresses anchoring outside the designated anchorage and speed/wake limitations on the remainder of the city-owned river bottom. The purpose of the city yacht basin is to be boater friendly and encourage more boaters to visit downtown; therefore, there is a need to provide additional facilities to accommodate transient vessels in an anchorage or a mooring, or at a dock.

(Code 1991, § 9-60; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-93. - Purpose.

The purpose of the harbor management plan for mooring area is to establish a plan for adequate management of the managed mooring field in a manner that will reduce the potential discharge of pollutants into the water and provide boaters with maximum protection from irresponsible or unthinking actions of other boaters.

(Code 1991, § 9-61; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-94. - Target group of boaters.

The harbor management plan for mooring area is designed to accommodate the needs of operators of adequately equipped sailboats operating their vessels in a responsible manner. However, this plan also addresses possible issues that may arise from irresponsible actions of a minority group of boaters anticipated to utilize the managed mooring field. It is acknowledged that the majority of vessel operators are responsible and comply with applicable federal and state requirements.

(Code 1991, § 9-62; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-95. - Applicability; enforcement.

The harbor management plan for mooring area shall apply to all vessel(s), owner(s), crew(s), and guests entering the managed mooring field. Any vessel operator in violation of federal law(s) or regulation(s), state law(s) or regulation(s), or this Code would result in cause for eviction from the managed mooring field.

(Code 1991, § 9-63; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-96-46-120. - Reserved.

DIVISION 2. - MANAGED MOORING FIELD RULES

Sec. 46-121. - Authority of harbormaster/dockmaster.

The harbormaster/dockmaster has the right to assign berths and moorings. No vessel shall occupy any mooring berth without the approval of the harbormaster/dockmaster or his designee. Subleasing of any mooring by the lessee is prohibited. Owners wishing to transfer to a different mooring other than the one assigned must obtain the prior authorization of the harbormaster/dockmaster or his designee and complete the required forms. It may be necessary to reassign a vessel from the particular space rented to another mooring within the managed mooring field as dictated by the practical needs of the existing use of the managed mooring field and the tenants therein. The decision or interpretation of this article shall be the responsibility of the harbormaster/dockmaster.

(Code 1991, § 9-70; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-122. - Vessels allowed; toilet facilities.

- (a) Only vessels that are in compliance with the United States Coast Guard (USCG) regulations, and state statutes, particularly the operational and safety standards, shall be allowed within the managed mooring field. Only seaworthy vessels in good operating condition, capable of maneuvering under their own power or sail, possessing current registration and acceptable documentation, shall be allowed to moor or anchor within the managed mooring field. This is to ensure that all vessels are functional and operational, in the interest of public safety.
- (b) The decision of whether a vessel is considered to be in good operational condition and capable of maneuvering under its own power shall be the responsibility of the harbormaster/dockmaster, based on the United States Coast Guard and state laws and regulations concerning safety and operational requirements.
- (c) All vessels, except dinghies, without an integral source of propulsion (sail or motorized) are not allowed to remain within the managed mooring field. Examples of vessels that would not be allowed to remain within the managed mooring field are a sailboat with no motor and no sails, a motorboat with no motor, or a vessel that must be towed. This requirement does not include vessels that require minor sail or engine repairs.
- (d) Every vessel 26 feet or more in length, which has an enclosed cabin with berthing facilities, shall, while on the waters of the state, be equipped with a toilet. On a vessel, other than a houseboat, the toilet may be portable or permanently installed. Every permanently installed toilet shall be properly attached to the appropriate United States Coast Guard certified or labeled marine sanitation device.
- (e) Every houseboat shall be equipped with at least one permanently installed toilet, which shall be properly connected to a United States Coast Guard certified or labeled type III marine sanitation device. If the toilet is simultaneously connected to both a type III marine sanitation device and another approved marine sanitation device, the valve or other mechanism selecting between the two marine sanitation devices shall be set to direct all sewage to the type III marine sanitation device and, while the vessel is on the waters of the state, shall be locked or otherwise secured by the boat operator so as to prevent resetting.

(Code 1991, § 9-71; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-123. - Transportation requirements.

All vessels should have a dinghy or other small craft as a method of conveyance to enable access to the dinghy dock and the office of the harbormaster/dockmaster. The vessel owner shall report the absence of a dinghy to the harbormaster/dockmaster. The vessel owner is responsible for transportation to and from the office of the harbormaster/dockmaster for registering to rent the mooring facilities. The vessel owner can utilize his main vessel for this purpose by temporarily bringing it to the fuel dock. The lack of such a dinghy shall not be cause to refuse rental of a mooring. It is the sole responsibility of the occupants of the vessel to provide their own conveyance to the upland facilities. Under no circumstances is the city yacht basin responsible for owning, operating or maintaining a dinghy for the exclusive use of mooring patrons.

(Code 1991, § 9-72; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-124. - Commercial uses.

(a) Commercial activities or vessels engaged in commercial activities are prohibited from mooring in the managed mooring field. The site is designed as a recreational and residential site and shall be maintained as such. No advertising or soliciting shall be permitted on any vessel within the managed mooring field, except for "for sale" signs, not to exceed one square foot in size. Each vessel shall be limited to two "for sale" signs. Commercial vessels, such as day charter or sport fishing boats, will be allowed to store the boats on a mooring the same as a private vessel tenant.

(b) Minor commercial activities and vessels, such as water taxis, delivery vessels, pump-out vessels, and those performing minor repairs on mooring vessels, may extend service to the vessels in the managed mooring field. The harbormaster/dockmaster shall make the final decision on determining whether a commercial vessel is allowed in the managed mooring field.

(Code 1991, § 9-73; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-125. - Repairs.

Major repairs or refitting of vessels, including any activity that could result in a deposition of any materials into the waterway or within the managed mooring field, are strictly prohibited since a significant water quality violation would result in an adverse impact to public health. Only minor repairs or mechanical adjustments may be conducted on vessels while in the managed mooring field. The harbormaster/dockmaster office shall be notified in advance to verify compliance of any proposed activity.

(Code 1991, § 9-74; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-126. - Mooring and anchoring methods.

- (a) The method of mooring vessels in the managed mooring field shall be by tying the buoy line to the bow only. The line used to attach a vessel to the mooring buoy shall be the one furnished, which has one end permanently attached to buoy. No vessel shall be moored at the stern or be tied to more than one buoy or points on a vessel. There shall be no dropping or placement of additional anchors or anchor systems from any vessel in the managed mooring field. All vessels within the managed mooring field shall only use the established buoys and anchoring systems.
- (b) Vessels may not anchor in a manner that:
 - (1) Jeopardizes other vessels at anchor or underway;
 - (2) Might cause damage to other property or persons; and/or
 - (3) Impedes access to docks, slips or public or private property.

(Code 1991, § 9-75; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-127. - Abandonment of vessels.

If a vessel is left unattended for more than 72 continuous hours without giving prior notification to the harbormaster/dockmaster, the vessel shall be considered abandoned. If any vessel is determined to be abandoned, it may be stored in a secure location or commercial marina for 30 days, during which time the harbormaster/dockmaster shall make a reasonable, diligent effort to locate the owner of the vessel. If the vessel is not reclaimed within 30 days, the vessel shall be sold under the process prescribed by state statutes, at fair market value, which will cover the cost of unpaid rental fees, as well as any fees due for storage.

(Code 1991, § 9-76; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-128. - Drug use or possession policy.

It is the policy of the city not to tolerate any illegal drug use or possession within its boundaries, which includes the managed mooring field. Such use or possession shall subject the offender to be immediately prosecuted to the fullest extent of the provisions of all applicable laws.

(Code 1991, § 9-77; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-129. - Illegal activities prohibited.

Any illegal activity within the boundaries of the city, which includes the manned mooring field, shall be grounds for immediate prosecution under the provisions of state statutes and/or this Code. It is the intent of the city to prosecute each violation to the fullest extent of the law.

(Code 1991, § 9-78; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-130. - Liability of city.

The city assumes no liability for use of the managed mooring field by tenants or guests. Also, the city neither assumes, nor accepts any responsibility for personal possessions, vessel, dinghy, or their contents or use while said vessels are located within the managed mooring field or upland facilities. Persons using the water of the city shall assume all risk of personal injury and damage or loss to their property. The city assumes no risk due to accident, fire, theft, vandalism, or acts of God.

(Code 1991, § 9-79; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-131. - Anchoring outside designated anchorage.

- (a) Overnight anchoring south of the Intracoastal Waterway is prohibited from markers 39—58. Shortterm anchoring in this area is permitted during city permitted waterfront activities, such as band concerts and firework displays. For the purposes of this subsection, the term "short-term" means three hours before and after said event. Overnight anchoring will not be allowed.
- (b) Vessels may anchor not more than seven consecutive days out of any 28 days north of the Intracoastal Waterway from markers 39—58, but not in the managed mooring field, nor in any other location that would impede other vessels' travel to channels or docks in the area. Vessels anchored on the city-owned river bottom, but not in the designated anchorage, are not allowed to utilize any city yacht basin amenities, including the dinghy dock.

(Code 1991, § 9-80; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-132—46-150. - Reserved.

DIVISION 3. - RESPONSIBILITIES OF TENANTS

Sec. 46-151. - Safe operation of vessels.

Reckless or careless operation of any vessel, including but not limited to violation of navigation rules, when the vessel endangers or is likely to endanger life, limb, property or person, shall be grounds for immediate eviction from the managed mooring field.

(Code 1991, § 9-85; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-152. - Use of sewage pump-out facilities.

(a) Absolutely no discharge of sewage or other pollutants within the managed mooring field is allowed. Use of the pump-out facility located at the fuel dock of the city yacht basin or some other pump-out facility is required on an as needed basis. The other pump-out facility could be a floating facility, sometimes known as a "honey barge," should one be put into operation. All tenants within the managed mooring field must maintain strict compliance with 33 CFR 159 and F.S. § 327.53, as to the operation and management of marine sanitation devices to reduce discharges that would adversely impact public health. The use of the yacht basin pump-out facility is free for all tenants and the general public.

(b) Violation of this section will be reason for immediate eviction, withholding of any security deposit and prosecution to the fullest extent provided by federal, state and city laws. Enforcement of sewage discharge laws will be by the state fish and wildlife conservation commission, state marine patrol, who currently perform random boarding and inspections of anchored and docked vessels.

(Code 1991, § 9-86; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-153. - Conduct of tenants.

- (a) Tenants shall use discretion in using any sound producing devices or machinery, which may include but is not limited to televisions, radios, stereos and musical instruments, so as not to create a nuisance to other tenants. Generators, blowers or other noisy machinery shall not be operated between the hours of 8:00 p.m. and 7:00 a.m. Disorderly, boisterous or rowdy conduct by a vessel owner, crew or guest that disturbs the peace of other occupants in the managed mooring field shall be cause for a warning to the operator/tenant or eviction of the vessel from the managed mooring field.
- (b) The use of charcoal burners or any open flame equipment is prohibited on the docks or other common areas, except as provided by the city yacht basin. Swimming, diving and fishing are prohibited from yacht basin docks and bulkheads. All pets must be leashed while on the docks or in any of the common areas. Pets are permitted, provided they do not disturb other tenants. Laundry shall not be placed in public view aboard any vessel or in the common area.

(Code 1991, § 9-87; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-154. - Discharge of waste or other materials.

- (a) While within the managed mooring field, any discharge into the river of any fluids, waste or other material, regardless of the nature thereof, that would adversely impact public health, except for clean bilge or properly treated wastewater, is prohibited by state and federal law. If the harbormaster/dockmaster or any employee observes any such discharge, they will immediately notify the department of environmental protection or call the state warning point number (800-320-0519). If such a discharge occurs and is illegal, eviction from the managed mooring field shall be mandatory, once appropriate environmental enforcement action has been taken.
- (b) In the event of an accidental discharge, the vessel captain, operator, or owner shall immediately notify the harbormaster/dockmaster to ensure any action that could improve the containment of the spilled/discharged material will begin as soon as possible.

(Code 1991, § 9-88; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-155. - Boarding by law enforcement personnel.

The vessel operator is encouraged to cooperate with, and assist law enforcement personnel in, the lawful pursuit of their duties. The vessel operator shall not improperly resist or obstruct a lawful boarding or inspection conducted by a law enforcement officer.

(Code 1991, § 9-89; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-156. - Emergency repairs in absence of tenant.

The harbormaster/dockmaster shall have the authority to make necessary repairs in the event of an emergency when an unattended vessel is in immediate danger of sinking or represents a threat to other vessels. The emergency may include, but shall not be limited to, the vessel sinking or fire, breakdown of a bilge, fuel or sewage pumps or fluid leaks or broken lines. The cost of repairs, parts and labor will be assessed to the owner of the vessel and be due and payable within 48 hours of the return of the owner of the vessel or as provided by the harbormaster/dockmaster. If the vessel is deemed to be in imminent danger of sinking, fails to meet United States Coast Guard and state standards, leaks fluids or materials, or represents a threat to other vessels, the harbormaster/dockmaster will require repairs to be made within a reasonable, but specific time frame. If the repairs are not adequately accomplished, the vessel may be evicted from the managed mooring field.

(Code 1991, § 9-90; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-157. - Departure of vessels with delinquent dockage accounts.

It is unlawful for the vessel owner to vacate a mooring without the permission of the harbormaster/dockmaster when said vessel has a delinquent dockage account. Additionally, as part of the lease agreement, the city clerk will be authorized to place a lien on the vessel for the cost of the unpaid fees or charges assessed by the harbormaster/dockmaster.

(Code 1991, § 9-91; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-158—46-180. - Reserved.

DIVISION 4. - AMENITIES AND SERVICES

Sec. 46-181. - Damage of amenities and property.

Misuse of any amenity or property is grounds for eviction. If any tenant, crew or guest damages any property or equipment of the amenities, due to neglect, misuse, vandalism or failure to follow stated instructions, they shall be held responsible for the cost of repair and replacement, as well as any civil or criminal charges for the activity.

(Code 1991, § 9-95; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-182. - Use of parking spaces.

- (a) Use of city yacht basin parking spaces is limited to customers who have a monthly lease agreement for a specified numbered parking space. Vehicles parked in the city yacht basin numbered parking spaces must at all times display an authorized parking pass on the dash or on the back of the rear view mirror. The pass must reflect the same number as the parking space.
- (b) Parking spaces are leased on an as available basis only. Parking spaces, when available, will only be leased to slip holders or tenants with managed mooring field leases.

(Code 1991, § 9-96; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-183. - Use of dinghy docks.

- (a) Registered managed mooring field tenants shall have free use of the dinghy docks located at floating dock D, slips D34—D40, at the city yacht basin. Dockage is limited to a single dinghy at any one time, with a maximum length of ten feet overall. Dinghies must be kept in the water and secured by a single line of good quality from the bow to a cleat or ring on the dock.
- (b) Use of the dinghy docks by vessels anchored in designated anchorage is included in the anchorage amenity package. The same restrictions apply as to vessels in the managed mooring field.

(Code 1991, § 9-97; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-184. - Use of sewage pump-out facility.

The city yacht basin pump-out facility, located on the riverside of the fuel dock, shall be open and in operation from 8:00 a.m. to 5:30 p.m., seven days a week, with the exception of Thanksgiving Day and Christmas Day. There is no fee for the use of this facility. All vessels in the managed mooring field must use the pump-out facility on an as required basis.

(Code 1991, § 9-98; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-185—46-200. - Reserved.

DIVISION 5. - LEASING REQUIREMENTS

Sec. 46-201. - Lease agreement.

- (a) Tenancy in the managed mooring field shall fall into three categories defined as follows:
 - (1) *Transient:* Overnight to less than one month;
 - (2) *Monthly:* One to 11 months;
 - (3) Annually: Twelve months or longer.
- (b) All vessels with the intention of utilizing the managed mooring field must make prior reservations with the office of the harbormaster/dockmaster, regardless of the planned length of stay. Arrangements for transient stays are on a space available basis and can be made upon arrival utilizing a very high frequency (VHF) radio on channel 16. Arrangements for any other length of stay shall be made prior to arrival, in person or via telephone.
- (c) The tenants, upon taking residence within the managed mooring field, shall execute acknowledgement of the rules of the harbor management plan for mooring area, as well as the operational requirements of the managed mooring field. The lease agreement shall contain reasonable language, as deemed necessary, to enforce compliance with the provisions of this article.
- (d) A description of the requirements of the tenants, based on the terms of their anticipated stay, shall be as follows:
 - (1) Transient tenant (one day to less than one month) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required daily fee in advance. There will be no assessment of a security deposit for transient tenants.
 - (2) Monthly tenant (one month to less than 12 months) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required monthly fee(s) in advance. A tenant may pay in advance for multimonth mooring; however, there will be no

refunds. It is the responsibility of the tenant for payment of the monthly fee at the beginning of each rental period. There will be no assessment of a security deposit for monthly tenants.

(3) Annual tenants (12 months or longer) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section of the acknowledgement of the rules and operational requirements within the managed mooring field. A security deposit equal to two months' mooring fee will be paid at the beginning of the lease. The security deposit will be returned after the final bill is paid in full. The monthly mooring fee will be billed the first of each month for the preceding month or partial month. Partial months will be pro rated.

(Code 1991, § 9-101; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-202. - Tenant information required.

- (a) The owner/vessel operator shall provide the following information for the lease/dockage agreement for the managed mooring field:
 - (1) Owner's name;
 - (2) Owner's home address, including city and state;
 - (3) Owner's telephone number;
 - (4) Emergency number (monthly and annual agreements);
 - (5) Length overall (LOA);
 - (6) Beam;
 - (7) Draft;
 - (8) Type of vessel;
 - (9) Mooring assignment;
 - (10) Vessel name;
 - (11) Registration or document number.
- (b) The tenant shall be responsible to inform the harbormaster/dockmaster of any changes in the preceding required lease information.

(Code 1991, § 9-102; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-203. - Vacation of moorings.

Monthly and annual managed mooring field leaseholders are required to notify the office of the harbormaster/dockmaster whenever they plan to vacate the mooring for greater than 24 hours. A date of departure and planned time of return must be provided, if the vessel operator wants to maintain the right of tenancy. The harbormaster/dockmaster reserves the right to rent any unoccupied mooring space when an assigned vessel is absent for 24 hours or more, without any compensation to the mooring field leaseholder.

(Code 1991, § 9-103; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-204—46-220. - Reserved.

DIVISION 6. - SPEED LIMITS

Sec. 46-221. - Outside Intracoastal Waterway.

The speed limit in the water bounded by the southbound Edison Bridge on the east, the Caloosahatchee Bridge on the west, a line drawn between the bridges through the southern end of Lofton's Island (Pleasure Key) on the north, and the southern edge of the Caloosahatchee River on the south shall be idle speed/no wake. The speed limit between the bridges north of the above-mentioned line to the north shore of the Caloosahatchee River shall be slow speed, minimum wake.

(Code 1991, § 9-110; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-222-46-240. - Reserved.

DIVISION 7. - SEVERE STORM OR HURRICANE PLAN^[3]

Footnotes:

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Cross reference— Civil emergencies, ch. 22; emergency services, ch. 34.

Sec. 46-241. - Established.

The office of the harbormaster/dockmaster shall, if possible, warn the managed mooring field tenants to exercise prudent and appropriate judgment in the event that a severe storm or hurricane threatens the area. The tenants shall be advised that the mooring equipment provided in the managed mooring field may not be able to withstand a hurricane or tropical storm and/or the associated wind and tidal surges. Evacuation of the managed mooring field will not be mandatory; however, it may be recommended.

(Code 1991, § 9-115; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-242-46-260. - Reserved.

DIVISION 8. - PLANS FOR FUTURE EXPANSION

Sec. 46-261. - Expansion of mooring field.

It may become necessary or desirable to expand the managed mooring field to address additional mooring requirements.

(Code 1991, § 9-120; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-262-46-280. - Reserved.

DIVISION 9. - MANAGED MOORING AREA

Sec. 46-281. - General description.

The 24.3-acre managed mooring area is located northwest of Pleasure Key (Lofton's Island) and provides for 49 moorings with a radius of 75 feet. The current plan is to install 25 moorings initially in every other mooring spot to secure the entire area as a managed mooring field, allowing for the

installation of the additional 25 moorings when expansion is required. The mooring anchor points will be 150 feet apart, which will provide for a 75-foot radius. Under normal wind and current conditions, with the full complement of 49 moorings, the vessels will be kept 75 feet apart. Initially, with every other mooring installed, the distance will double to 150 feet, allowing experience to be gained in how the vessels lie in all wind and current conditions.

(Code 1991, § 9-125; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-282. - Physical moorings.

The moorings, manufactured by Force 5 Mooring Systems, Inc., consist of a ten and one-half-foot long galvanized three-quarter-inch diameter steel rod with an eye at one end. Each mooring will have two or four two-inch by three-inch steel U-channels that are 12 inches long and located near the bottom of the rod and hinged to a flat section of the rod. It is water jetted to its full length and then pulled upward. The upward pull extends the U-channels and locks the mooring in the river bottom. Units that have four U-channels are rated by the manufacturer for 60-foot vessels in class 3 hurricanes (120-mile per hour winds). Units with two U-channels are rated by the manufacturer for 40-foot vessels in class 3 hurricanes. The eye of the mooring rod is connected to a surface buoy by a three-quarter-inch polypropylene line. The surface fiberglass buoys are 16 inches high and 24 inches in diameter. A mooring pennant will connect the mooring buoy to the moored vessel.

(Code 1991, § 9-126; Ord. No. 2999, § 2, 1-16-2001)

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(Code 1991, § 9-126; Ord. No. 2999, § 2, 1-16-2001)



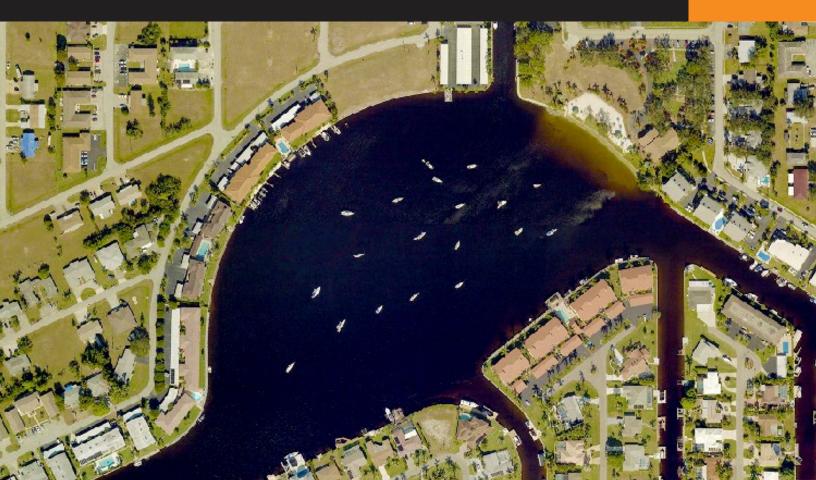


Mooring Field Ordinance

Mooring Field Vessel & Example Ordinances, and Use Schedule & Accident Report

City of Cape Coral, Florida

April 20, 2018 Deliverable #2



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Appendix - City of Cape Coral Incident Reports

Mooring Field

Proposed Mooring Field Location & Boundary

Stantec staff have reviewed the geographic data in and around Bimini Basin and collaborated with the City of Cape Coral staff and public stakeholders to receive input to determine what mooring field layout would be best suitable for Bimini Basin, local residents and the surrounding waterfront communities. Stantec Staff conducted a public outreach meeting on April 3, 2018 with the purpose of gathering adjacent resident's opinions, suggestions and goals for the proposed mooring field project. The resulting outcome of the public meeting was a resounding agreement to pursue the creation of an organized and regulated mooring field within Bimini Basin (Figure 1). The information gathered from City of Cape Coral staff and public input has allowed Stantec to develop and propose two feasible options that address the goals of the City and meet the needs of local residents.



Figure 1: Bimini Basin



Figure 2: Mooring Field Area

Mooring Field Vessels

Mooring Field Use Schedule and Layout Options

Stantec staff reviewed parcel data provided by Lee County to help determine the best options for the mooring field boundary limits. The boundary of the mooring field was delineated by offsetting the bulkhead line around the basin 150 feet. By doing so, this created an ample fairway for vessels arriving and departing the basin, which allows for safe passing and/or docking on any of the surrounding docks. With the boundary line of the proposed mooring field established, Stantec staff propose the following two options best meet the goals and objectives for the basin:

Option 1:

Mooring Field Option 1 (Figure 3) will provide for 18 mooring installed to provide safe mooring to vessels up to 35 feet length overall (LOA). All mooring stations will have a bounding radius of 70 feet. This gives the moored vessel the necessary room required for the mooring system to maneuver during storm events and tidal shifts without colliding with neighboring moored vessels or other structures inside the basin.



Figure 3: Option 1 - Proposed Mooring Field Layout with Moorings for Vessels up to 35 Feet in Overall Length

Option 2:

Mooring Field Option 2 (Figure 4) will provide 15 moorings. 12 moorings will be designated for vessels up to 35 feet length overall (LOA) and 3 mooring buoys for vessels up to 45 feet length over all (LOA). Mooring stations for vessels up to 35 feet length over all (LOA) will have a bounding radius of 70 feet. Mooring stations for vessels up to 45 feet length overall (LOA) will have a bounding radius of 85 feet. This gives the moored vessel the necessary room required for the mooring system to maneuver during storm events and tidal shifts without colliding with neighboring moored vessels or other structures inside the basin.



Figure 4: Option 2 - Proposed Mooring Field Layout with Moorings for Vessels up to 35 Feet (12) and 45 (3) Feet in Overall Length

Mooring Field Use Schedule

Maximum Number of Vessels

Using Option 1 and 2 as base guidelines, approximately 18 boats could be moored at any one time within the mooring field. Naturally, a reduction in the size of boats permitted or introducing smaller sized boat limitations could increase the number of moorings available.

Length of Stay

With the configuration of either proposed mooring field option, the length of stay for each vessel is a critical factor to implementation and management of the mooring field. Based on community feedback, other local mooring field plans, and the City of Cape Coral goals, it is proposed that 5-1-5 day system be used for mooring field occupancy within a 30-day period. This means that a boater can only stay at the mooring field for 5 consecutive days, then must leave for a 1-day period, before returning for another 5 consecutive days. No boater may stay within the basin for more than 10 days within a 30-day period. This approach has been very successful at other managed mooring fields, including the City of Naples.

With the length of stay established in the mooring field to 5-days, this will give the opportunity for the City of Cape Coral to manage special events. Since boaters can only stay for a shortened period of time, the City can block out a window of time for cardboard boat races and other winter parades, by not allowing any moorings during these events.

Projects Required to Support a Mooring Field

With the creation of the Bimini Basin Mooring Field ordinance, there will be various additional capital projects associated with the implementation and operation of the mooring field. While reviewing other mooring field plans and ordinances, additional implementation costs which go beyond the initial establishment of the mooring field ordinance must be considered:

- 1. State/Federal permitting
- 2. Mooring ball system installation
- 3. Pump-out systems
- 4. Upland facilities (ie, restrooms, showers, trash receptacles, parking, dockage, laundry, etc.)

Permitting:

The first step in establishing a managed municipal mooring field is to permit the boundary and number of proposed mooring stations. This permit will also include mooring stations, proposed sewage pump-out facility and any upland structures associated with the creation of Bimini Basin Mooring Field. Permits must be issued by the Florida Department of Environmental Protection (FDEP) and the United States Army Corps of Engineers (USACE).

Mooring System Installation

As discussed with the City of Cape Coral, the end goal is to install permanent mooring systems within Bimini Basin. There are several options for mooring systems used nationwide. There are several mooring field systems that will function well within the mooring field. Once a system is finalized, construction plans to present to marine contractors for the installation of the mooring systems shall be developed. State and federal permits will also dictate that the installation of uniform waterway markers to demarcate the mooring field boundary.

TABLE 1. COMPARISON OF BREAKOUT FORCE FOR MOORING ANCHORS											
Test	BoatU.S.	Vineyard Haven	Vineyard Haven	BoatU.S.	Sarasota Sailing Squadron	BoatU.S.	Vineyard Haven	Vineyard Haven	BoatU.S.	BoatU.S. Vineyard Haven Sarasota Sailing Squadron	
Anchor dry weight	8,000 lbs.	6,000 lbs.	3,000 lbs.	2,000 lbs.	1,500 lbs.	500 lbs.	500 lbs.	350 lbs.	650 lbs.	Various sizes	
Breakout force	4,000 lbs.	3,200 lbs.	2,100 lbs.	800 lbs.	800 lbs.	1,200 lbs.	1,700 lbs.	2,000 lbs.	4,500 lbs.	10,000 - 20,800 lbs.	
Holding Ratio*	0.5	0.5	0.7	0.4	0.5	2.4	3.4	5.7	6.9		

BoatU.S. - 1995 BoatU.S. Insurance pull-test conducted by BoatU.S., MIT, and Cruising World in Newport, RI

Vineyard Haven - Test performed at Vineyard Haven, MA by Helix Moorings with harbormasters, marine writers, and BoatU.S. in attendance Sarasota Sailing Squadron - 2007 Practical Sailor test conducted at the Sarasota Sailing Squadron

'Holding ratio is defined as breakout force/anchor dry weight and represents the breakout pounds per pound of anchor dry weight.

Figure 5: Anchoring Systems

Pump-out Requirements:

Based on stakeholder input, it is anticipated that the transient vessels utilizing the mooring field will be producing grey water and sewage.

This will require the mooring field to have the proper means to remove the waste water from these vessels. The two common options would be to either provide a pump out vessel to directly pump out a moored vessel (Figure 6) or to have a pump out system installed at an upland location. (Figure 7). If the decision is to acquire a pump out vessel, there will be a need for a treatment system to dispose of the waste. If the choice is to have a pump out system installed at a nearby docking facility, the best location for boat docking for easy access for the tenant to operate the pumpout system 24/7.

Either option typically comes with operation and maintenance costs for equipment and staffing. These costs must also be factored into the overall project plan and implementation.

Install Upland Facilities

With every active mooring field there is a need to have supporting upland structures. The city-owned Four Freedoms Park may be an ideal location to install a permanent or floating dinghy dock for boaters to access the parks facilities. This dock can also be used as a pump out docking facility (if applicable). Additional facilities can make for a more desirable mooring destination include laundry rooms, restroom/showering facilities and waste receptacles.

Additional Considerations

Based on review of other communities mooring fields, the City of Cape Coral managed mooring field plan may also require the City to:

- Enforce the provisions of a sovereignty submerged lands lease (if required) and state/federal permits issued
- Provide administration for the operation, maintenance, safety, and security of the mooring field and shore side amenities
- Assign moorings
- Prepare records and reports as they relate to management of the mooring field
- Maintain the mooring field, anchoring systems, and dockmaster facilities
- Ensure that all mooring field patrons execute a mooring field use agreement during normal business hours, or for those vessels arriving after normal business hours, at the start of business the following day



Figure 6: Pump-out Vessel



Figure 7: Pump-out System

Existing Accident Reports

Stantec reviewed documents of incident reports provided by the City of Cape Coral. The documents are dated from January of 2013 to February of 2018. The majority of the police reports indicate that there were no major accidents. These majority of these reports consist of noise complaints, vessels losing anchor becoming adrift and vessels being tampered with by someone other than the owners. Once the ordinance is in place and the mooring field is established, the City of Cape Coral will be able to curb such activity by ensuring every mooring field tenant abides by the ordinance and rules within the City of Cape Coral. The incident reports received from the City of Cape Coral are included as Appendix A for reference.

Analysis of Similar Communities

Goals and Objectives:

Over the last decade in Florida, many communities have found themselves having to create local ordinances to regulate and enforce activities in areas where boaters typically anchor for long periods of time. This is good news for the City of Cape Coral, as the lessons learned during their development, can be used to enhance and strengthen the City's proposed mooring field ordinance for Bimini Basin. Some other communities that have created their own mooring field ordinances include:

- City of Naples
- Fort Myers
- Fort Myers Beach
- Key West
- Marathon Boot Key
- Punta Gorda
- Sarasota
- Stuart
- Vero Beach

After an analysis of the mooring field ordinances from these communities, the proposed mooring field ordinance for the city should include the following items in their ordinance:

General Conditions:

- Definitions
- Intent
- Purpose
- Target group of boaters
- · Applicability and enforcement

Managed Mooring Field Rules:

- Authority of the harbormaster/dockmaster
- Vessels allowed
- · Toilet facilities and pump-out requirements
- Transportation requirements
- Commercial uses
- Repairs
- Mooring and anchoring methods
- Abandonment of vessels
- Drug use or possession policy
- Illegal activities prohibited
- Noise
- · Liability of the city
- · Anchoring outside of designated area
- Mooring rental rates

Responsibilities of Tenants:

- Safe operation of vessels
- Use of sewage pump-out facilities
- Conduct of tenants
- · Discharge of waste or other materials
- Boarding by law enforcement personnel
- Emergency repairs in absence of tenant
- · Departure of vessels with delinquent dockage accounts

Amenities and Services:

- · Damage of amenities and property
- Use of parking spaces
- Use of dinghy docks
- Use of sewage pump-out facility

Leasing Requirements:

- Lease agreement
- Tenant information required
- Vacation of mooring

Speed Limits:

• Outside of the mooring field

Severe Storm & Hurricane Plan:

Established plan

Plan for Future Expansion:

• Expansion of mooring field

Managed Mooring Area:

- General description
- Signage

The proposed list of items above can serve as the framework of items to be included in the draft ordinance for the City of Cape Coral.

Accident Report

Existing Accident Reports

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Appendix



Item 10.A. Number: 10.A. Meeting 6/4/2018 Date: UNFINISHED

Item Type: BUSINESS

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE: Water Quality - Update

REQUESTED ACTION:

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment?
- 2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS: Water Quality Memo

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description

Water Quality Memo

Type Backup Material

MEMORANDUM

CITY OF CAPE CORAL PUBLIC WORKS DEPARTMENT

TO: John Szerlag, City Manager

FROM: Paul Clinghan, Public Works Director PRL Maya Robert, Environmental Resources Manager MR

DATE: June 1, 2018

SUBJECT: Lake Okeechobee Level and Release Information

Following historic rain across the region since the middle of May; causing Lake Okeechobee to rise more than a foot; the U.S. Army Corps of Engineers will start releasing water beginning Friday June 1st. The Lake today is above the stage when Irma struck last year in September. Their target flow for the Caloosahatchee Estuary is 4,000 cfs as measured at lock S-77.

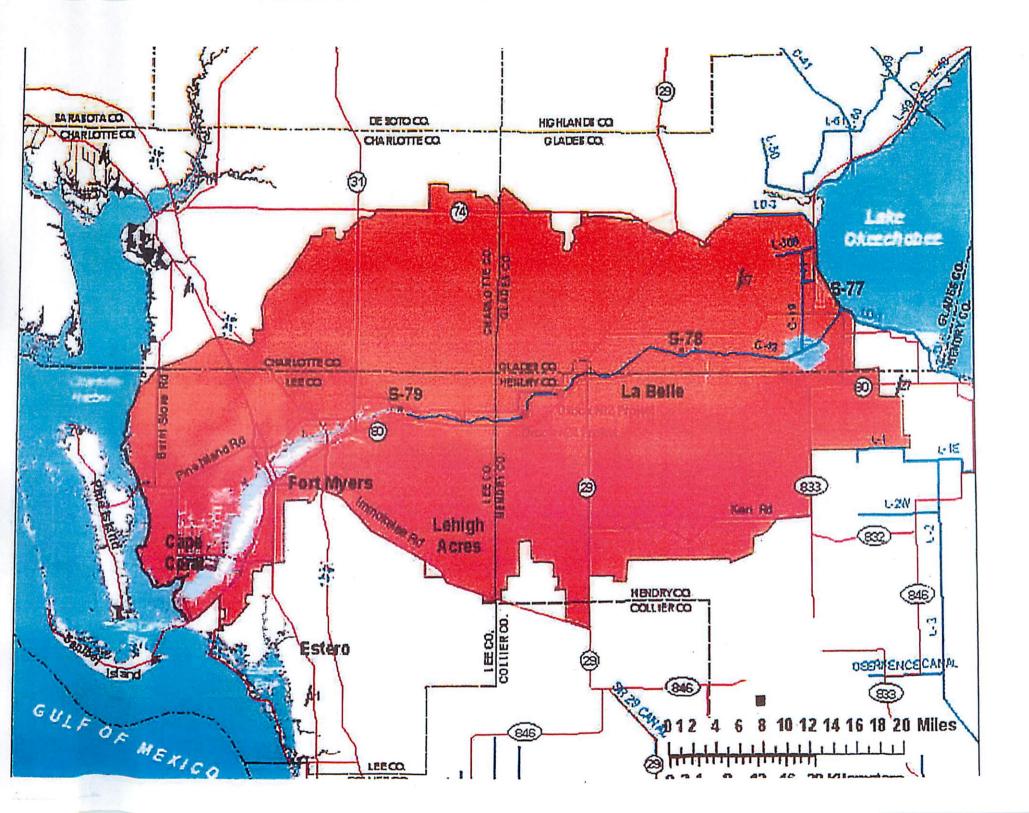
As of Friday, June 1st, 2018, the elevation of the lake was 14.14 feet. Inflows into the lake were 7,292 cfs while total structural outflows were 0 cfs. Flows at river locks S-77 and S-79 were 0 cfs, and 3,227 cfs, respectively. Salinities dropped to 2 PSU in the river near Fort Myers and was 29 PSU at Shell Point.

While the Red tide bloom persists in Southwest Florida, the concentrations have dropped and there have been les reports of Fish kills and respiratory irritations.

In the Lee County weekly check, there was no visible algae in any of the five sites upstream and downstream of the Franklin Lock.

Attached is a map showing the position of the Caloosahatchee River Locks.

PC/MR: oI (Weekly Lake Okeechobee Level and Release Information) Attachment; Caloosahatchee River Locks map



Item Number: 11.A. Meeting Date: 6/4/2018 Item Type: NEW BUSINESS

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Commercial Recycling - Youth Council Recommendation to Council- Carsyn Baxter

REQUESTED ACTION:

Informational

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment? No
- 2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below. If No, will it harm the intent or success of the Strategic Plan?

ELEMENT D: IMPROVE THE CITY'S IMAGE WITH THE PURPOSE OF BUILDING LASTING RELATIONSHIPS WITH OUR RESIDENTS AND VALUABLE PARTNERSHIPS WITH OTHER ORGANIZATIONS, AND CONTINUALLY PROVIDE A WELL-BALANCED AND POSITIVE WORKPLACE FOR OUR INTERNAL STAKEHOLDERS.

Yes

ELEMENT G: WORK TOWARD EFFICIENT AND COST-EFFECTIVE SOLUTIONS TO PROTECT AND CONSERVE NATURAL RESOURCES, WHILE PROMOTING ENVIRONMENTAL AWARENESS AND SUSTAINABILITY IN THE COMMUNITY.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS: Youth Council Presentation Additional power point presentation

PREPARED BY:

PT Division- Department-Council Offices

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description

Туре

Youth Council Presentation

Additional power point presentation

Backup Material Backup Material

4/27/2018

Recommendation to the Cape Coral City Council:

The Cape Coral Youth Council,

<u>Emphasizes</u> the need for our growing community to more strongly recognize our role in affecting the environment on a local and global scale especially in regards to areas where we can mitigate our environmental impact such as:

- a. Increasing recycling at city sponsored events
- b. Increasing compliance of recycling in commercial businesses;

<u>Recognizes</u> the proven benefits of recycling in reducing communities greenhouse gas emissions, limiting loss of land and decrease of property value as result of recycling, and reducing costs to businesses actively recycling;

<u>Calls upon</u> the City of Cape Coral to act as a leader and example in the community by assuring that at there are always recycling containers present at city events and by encouraging the public to utilize them;

<u>Urges</u> the Cape Coral City Council to create a mandatory commercial recycling program for new businesses that would:

- a. Be similar to the terms set forth in Lee County Ordinance No. 07-25 and would mandate that,
 - i. New businesses would be required to obtain and utilize a recycling container,
 - ii. A mechanism of enforcement of the ordinance would be created, possibly in partnership with Lee County and Waste Pro
- b. Already existing businesses would be exempt from commercial recycling mandate, but it is strongly recommended that the City Council research and adopt measures that would incentivise existing non-complying businesses to recycling without highly negatively impacting them.

Commercial Recycling in Cape Coral

City of Cape Coral Youth Council June 4th, 2018

Why the issue is important to the Youth Council

- Success for Lee County
- Possible Income for City
- Desired goal of making Cape Coral a greener city

Successes for Lee County

- Ordinance 07-25
 - Businesses must recycle what they produce the most of (cardboard, glass, paper, etc)
- 99% compliance within one year (2007-2008)
 - \$250 monthly fee for non-compliance, nobody cited
 - People just want to recycle

Successes for Lee County

- New businesses have 14 days to establish means of recycling
 - Lee County has been lenient and wants to help
- Many businesses and County gain revenue from recycling, as cardboard can be sold and County makes money per-ton
- Approximately 9,000 businesses with 99% compliance

Possible Income for City

- Reduce price of garbage pick up, in return for cheaper recycling pick up
 - Benefits City and businesses
- In 2017, CoCC received about \$554,000 from County from recycling
 - Increased tonnage could increase income for CoCC

A Greener Cape Coral

- Goal of the Youth to make Cape Coral greener, safer, and cleaner
- Conversations with peers
- Long-term sustainability

Item Number: 11.B. Meeting Date: 6/4/2018 Item Type: NEW BUSINESS

AGENDA REQUEST FORM

CITY OF CAPE CORAL



TITLE:

Park Project at Oasis Elementary School - Janet Altini, Oasis Elementary

REQUESTED ACTION:

Staff Direction

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

Janet Altini's fourth grade class at Oasis Elementary School would like to make improvements to the school's playground area. This plan was designed and researched by students. Hurricane Irma last fall caused our play structure to become damaged. Instead of just replacing the structure, they want to recreate the play area to make it an ecologically friendly environment for all students to use. Chapter 26 states improvements to the school grounds must be approved by City Council. Our Governing Board has already approved their plan. The funding for the improvements will be generated solely by grants and private donations.

LEGAL REVIEW:

EXHIBITS:

City Council Proposal Oasis Eco-Park Oasis Concept

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Jacquelin Collins Superintendent - Charter School Superintendent 1-239-424-2100

ATTACHMENTS:

Description

- City Council Proposal
- Oasis Eco-Park
- Oasis Concept

Туре

Backup Material Backup Material Backup Material Proposal for Oasis-Ensite Outdoor Educational Plan

Janet Altini

4th Grade Teacher, Oasis Elementary

May 1, 2018

Summary:

Environmental Education (EE) is often lauded by educators as an ideal way to integrate academic disciplines, stimulate the academic and social growth of young people, and promote conservation of the natural environment. EE has proven to greatly benefit students and the learning process. The conceptualization and development of the Oasis-Ensite Outdoor Learning Plan is based on the tenets of EE and proposes to enhance the school environment as well as provide opportunities for growth in the learning experience.

Place-Based Education and Oasis Ensite Outdoor Learning Plan:

The idea to create an outdoor learning park on the Oasis Elementary Campus came to fruition due to the devastating impact that Hurricane Irma had on our playground. The students in my 4th grade class wanted to do something to enhance our playground and improve the environment at the same time. Embedded in this problem-solving attempt is the concept of Place-Based Education (Soebel, D., 2004). Place-based education promotes a more authentic learning experience for students and offers them endless opportunities to enhance their education. Through academic research, practical applications, and step-by-step strategies drawn from classrooms, teachers can maximize the connection of school, community and environment.

Proposed Improvements to Oasis Elementary Campus:

The concept design (created by Brian Smith, Ensite) is attached for your viewing. What I would like to ask the Council is to approve this plan that involves improvements to the existing area that is currently the playground area utilized by the Oasis Elementary students grades 2-5. The following improvements will take place:

- Existing playground structure will be improved, expanded and additional play structures (that were voted on by over 400 surveyed) will be installed.
- Installation of concrete seats, walls, sidewalks, and boardwalks.
- Installation of landscaping along with any irrigation changes.
- Installation of rubberized, eco-friendly surfacing throughout playground.
- Installation of an outdoor learning center, science center, art and music center, outdoor auditorium, butterfly house, and other miscellaneous items.

Proposed Budget for Improvements:

Outlined below are the costs for preparing the existing property for the proposed improvements:

- Estimate permits to be obtained-General building, electrical, and possibly land elevation and drainage permit. **\$25,000**
- Grading \$25,000
 Irrigation and drainage \$15,000
 Dumpsters and or dump trucks \$10,000
 Contractor, Sub-contractor fees \$35,000

Estimated Time of Completion:

After permitting the time-line is estimated at 3 to 4 months.

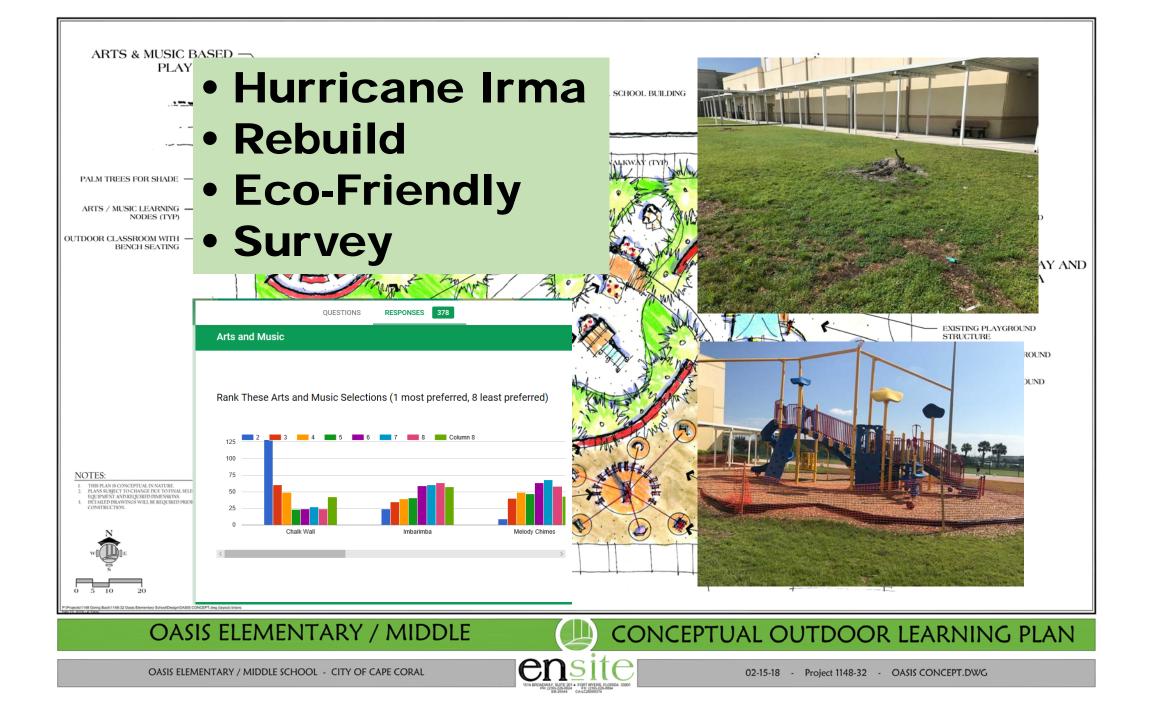
Attachments:

- Concept Design
- Pictures of existing playground as is
- Pictures of suggested improvements

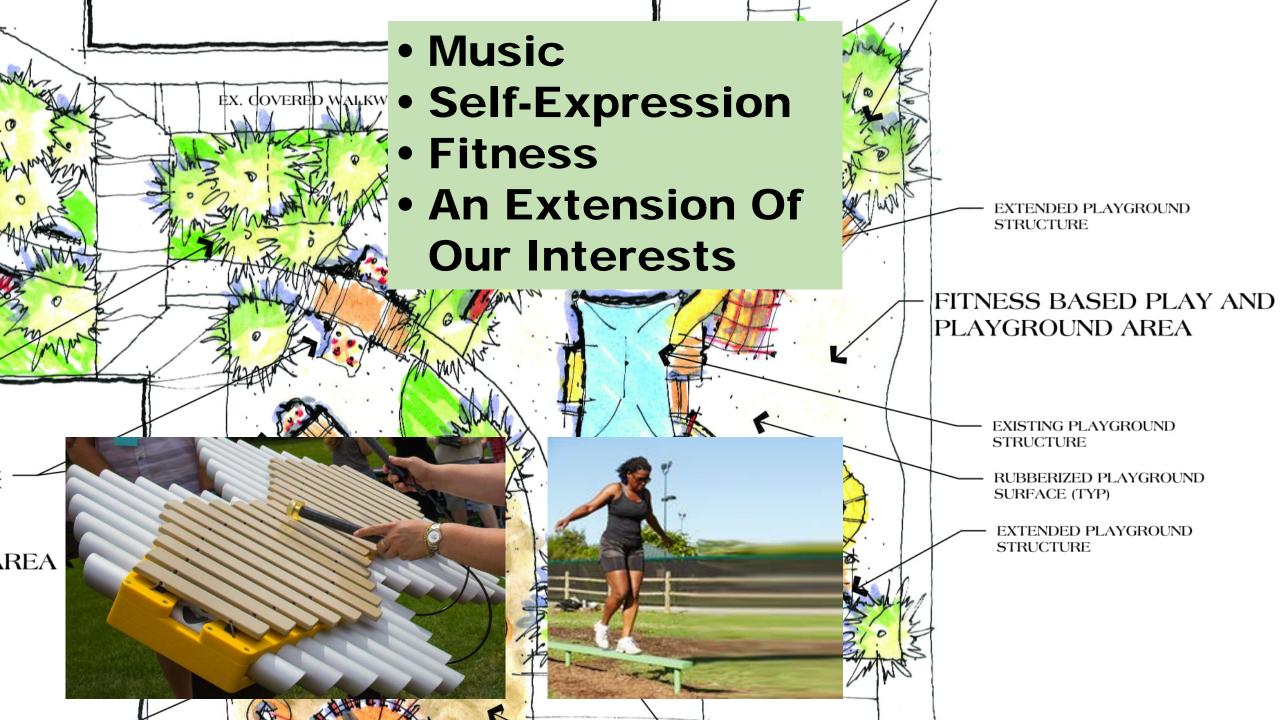


OASIS ELEMENTARY / MIDDLE SCHOOL - CITY OF CAPE CORAL

02-15-18 - Project 1148-32 - OASIS CONCEPT.DWG







Native Floridians

F P

- Discover
- Attract
 - Butterflies

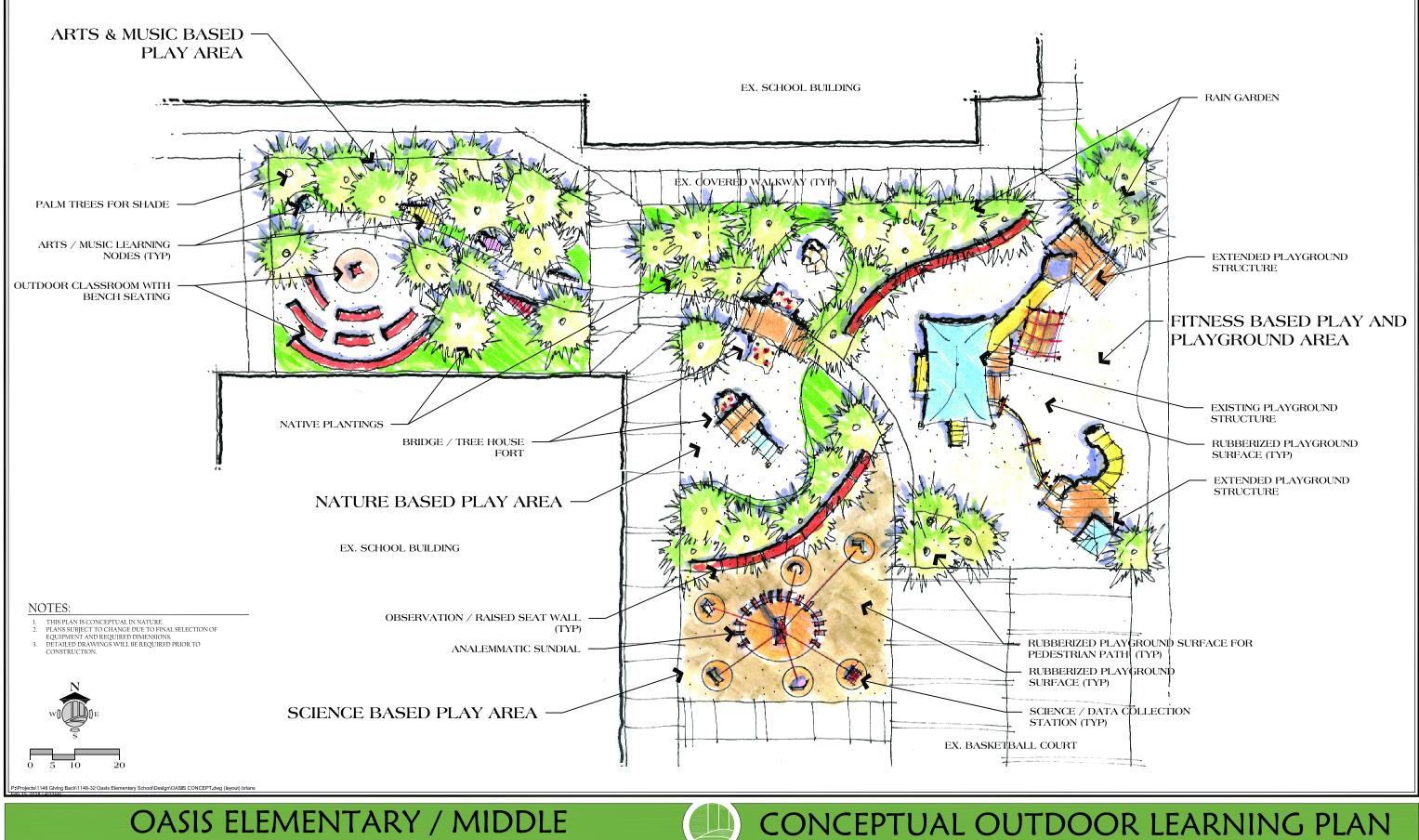
NATURE BASED PLAY AREA -





OASIS ELEMENTARY / MIDDLE SCHOOL - CITY OF CAPE CORAL

02-15-18 - Project 1148-32 - OASIS CONCEPT.DWG



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OASIS ELEMENTARY / MIDDLE

OASIS ELEMENTARY / MIDDLE SCHOOL - CITY OF CAPE CORAL

02-15-18 - Project 1148-32 - OASIS CONCEPT.DWG