



SPIKOWSKI PLANNING ASSOCIATES

MEMORANDUM

TO: Town Council, Town of Fort Myers Beach
FROM: Bill Spikowski
DATE: March 28, 2018
SUBJECT: Addendum to Report on TPI-FMB Rezoning Request

This memorandum is an addendum to the 85-page report on the TPI-FMB Commercial Planned Development rezoning request that was released on January 26, 2018.

I prepared that report as a consultant to the Town, with considerable assistance from staff and other consultants to the Town. The recommendations in that report were identified as “staff recommendations” because at that time we didn’t anticipate there being a separate staff report. In a few matters, the January 26th report provides opinions and recommendations that differ from supplemental staff reports that were released later; in those cases, the opinions and recommendations in the January 26th report are mine alone.

This addendum modifies the January 26 report, as described below.

— UPDATES TO APPLICATION SUMMARY & NARRATIVE —

PAGE 2: STRAP numbers were listed on page 2 for all lots affected by this application:

One lot in Parcel 1 was listed incorrectly: ~~24-46-23-W3-00205.0060~~

The correct STRAP number for this lot is : 24-46-23-W3-00206.0050

PAGES 34–37: These pages discussed the Traffic Impact Statement (TIS) submitted by the applicant on January 23, 2018. In response to technical comments from the Town’s engineering consultant Tetra Tech, the applicant submitted an amended TIS on March 5, 2018.

These amendments resulted in minor changes to most of the traffic numbers reported on pages 34 to 37. As an example, the anticipated increases in traffic at Donora Boulevard during peak periods had been estimated at 0.4% to 2.0% of total traffic (see page 37); the amended TIS estimates the increases in traffic there at 0.4% to 2.5%.

Tetra Tech’s latest memo of March 16 disputes some of the analytical methods in the TIS and suggests that the traffic increases would be higher if Tetra Tech’s methods were used.

— **UPDATES TO PROPOSED CONDITIONS** —

CONDITION 6 (pages 46 and 61–62): Condition 6 contains the schedule of uses. Two changes are suggested to Condition 6 in order to clarify public use of the beach club and to eliminate the final paragraph regarding “Parcel 2B.”

The applicant has committed to limiting public use of the beach club to 225 people per day. The schedule of uses should reflect that limitation; wording is suggested below.

Parcel 2B is 0.33 acres that is currently zoned EC (Environmentally Critical) and is separated from the main beach by an existing seawall. The landward boundary of the EC zoning district (and of the “Recreation” category on the Future Land Use Map) follows the 1978 Coastal Construction Control Line. The seawall was constructed much earlier; the wall itself, and the 0.33 acres of higher ground it protects, jut into the EC district and Recreation category.

The applicant requested that Parcel 2B be included in the CPD rezoning and be shown on the Master Concept Plan. All existing structures and pavement would be removed and the land would become part of the beach club; no new structures or paving would be allowed.

The current wording in Condition 6 would approve the applicant’s request but would regulate Parcel 2B the same as if it were still zoned EC.

To avoid creating a precedent for rezoning EC (and Recreation) land to any other zoning district, I am now recommending that Parcel 2B be excluded from the CPD and retain its current EC zoning. Parcel 2B would still be shown on the Master Concept Plan to illustrate its proposed use as a completely unpaved portion of the beach club.

Here is the wording that would make these two changes to **Condition 6**:

GULF SIDE (Parcel 2)

RETAIL

Recreation Facilities, Commercial (limited to 225 people per day who are not staying at the hotel)

~~**PARCEL 2B:** Uses on Parcel 2B shall be limited in the same manner as would be provided by the “Environmentally Critical” zoning district. The LDC contains other regulations that will apply here, such as restrictions on minor structures in 6-366, on beach furniture in 14-5, on lighting in 14-76 and 14-79, on personal watercraft and parasailing in chapter 27, on signs in 30-93, on zoning in 34-652, on alcoholic beverages in 34-1264, on dunes in 34-1575, and on equipment rentals in 34-3151.~~

In addition to the change to Condition 6, this approach would require certain other changes to the plan sheets, beginning with modifying the boundary sketch and legal description on sheet X-103-BNDY.

CONDITION 7 (page 62): During the LPA public hearing, the accuracy of the opening sentence of Condition 7 was questioned; it refers to “**4.78 acres** landward of the 1978 coastal construction line.” That acreage total was derived from figures on page 2 of the report as follows:

- Parcel 1: 2.79 acres (Parcel 1)
- Parcel 2: 1.74 acres (Parcel 2, less 0.33 acres for Parcel 2B)
- Parcel 3: 0.21 acres (Parcel 3)
- Right-of way: 0.04 acres (5.11 CPD acres, including bridges, less 5.07 project acres)
4.78 acres

The 4.78-acre figure in Condition 7 is correct; it excluded the 0.33 acres in Parcel 2B, which was to be part of the CPD but is not “landward of the 1978 coastal construction control line.”

The changes to Condition 6 that would delete Parcel 2B from this rezoning do not require any changes to Condition 7.

CONDITION 8 (pages 63–64): Condition 8 contains general language about the effect of rezoning to CPD and then lists all the plan sheets that would be included in the CPD approval.

Certain plan sheets are being excluded by not appearing on this list, such one sheet that shows proposed signs and another sheet that shows existing and proposed beach furniture rentals, parasailing, and personal watercraft rentals.

Many of the sheets would need to be revised before final approval to reflect a smaller CPD boundary due to the deletion of Parcel 2B and to reflect any other changes the Town Council determines appropriate at its first public hearing. The actual wording of **Condition 8** does not need to be changed at this time except to delete the final two lines:

~~*underlined sheets have been or are being modified to update sheets submitted in November 2017*~~

Immediately after the first public hearing, Town staff and consultants would identify exactly which changes are needed and would later review the adjusted plan sheets prior to scheduling the final public hearing. At the final public hearing, the Town Council would review the entire package and adopt an ordinance that would include its final decisions on the rezoning, on the conditions of approval, and on the content of the plan sheets that would be approved with the CPD.

CONDITION 10 (pages 32 and 64–65): Condition 10 addresses the proposed vacations of portions of Canal Street and Crescent Street and the applicant’s offer to donate and improve a new pedestrian beach access and a new beach parking lot.

Since this condition was drafted, town staff has requested design review over the pedestrian access and has indicated a clear preference for the beach parking lot to be an actual street that would include sidewalks as well as public parking spaces. Adding sidewalks would require a rectangular parcel with 80 feet of frontage on Estero Boulevard, which is larger than the parking lot shown on the Master Concept Plan and would reduce the size of the beach club slightly.

Condition 10 would be clearer if the language after the first bullet were reworded as follows:

- *As shown on Sheet X-105, the landowner intends to request the vacation of a narrow right-of-way at the end of Crescent Street, plus the first 185 feet of Canal Street south of Estero Boulevard which is part of town-maintained Beach Access #36. Understanding that the town's Comprehensive Plan strictly limits vacations of rights-of-way in order to preserve future access to the water, the landowner has agreed to provide a net increase in public access by donating an expanded Parcel 2C to the town after constructing a new beach access plus a new public parking lot that contains at least 23 parking spaces and meets all LDC requirements including buffers and landscaping, or that contains a new public street on 80 feet of new right-of-way beginning at Estero Boulevard on the same land, at the Town Council's option; and by constructing and donating a new perpetual pedestrian beach access just west of Crescent Street that meets ADA accessibility requirements and the Town Manager's specifications as to surfacing.*

CONDITION 11 (pages 33 and 65): Condition 11 provides details about the proposed beach club. The LPA motion included a change to the second bullet regarding the fence along Estero Boulevard; the applicant concurs with this change. Thus the second bullet in **Condition 11** should be worded as follows:

- *Any perimeter fence on the beach side of Estero Boulevard must be at least ~~80%~~ 20% transparent, must be placed within a landscaped planting area at least 5 feet wide, and may not exceed 3 feet in height. If the Florida Building Code requires a taller fence at this location, the fence height may be increased accordingly ~~provided the increased height is at least 80% transparent~~.*

CONDITION 17 (pages 52 and 67): Condition 17 would accept the applicant's proposals for consumption of premises, which are shown on sheets X-506 and X-507 of the proposed Master Concept Plan. These proposals would allow alcohol service as follows:

On Parcel 1, alcohol would be served in a lobby bar in the main resort building, at two outdoor locations on the elevated courtyard, and in the rooftop event space.

On Parcel 2, alcohol would be served in the beach-side restaurant and outdoors at the pool bar in the beach club. Alcohol would not be served on the beach below the seawall.

Alcohol would be served in the meeting area on the third story of Parcel 3.

If the Town Council approves CPD rezoning, it may choose (but is not required) to approve locations for the sale of alcohol at this time. The Town Council has several options:

Condition 17 and sheets X-506 and X-507 could be approved as proposed.

Condition 17 and both sheets could be modified, for instance to delay a decision any location where the Town Council is unable to achieve a consensus, or to modify the condition or plan sheets regarding the sale of alcohol at particular locations.

Condition 17 and both sheets could be deleted from the CPD approval.

If the Town Council deletes Condition 17 and both sheets, future decisions on consumption on premises would be handled according to standards in the LDC. The LDC allows some approvals to be granted administratively, such as alcohol sales in hotels and restaurants. Other approvals would require a special exception, such as outdoor seating that is not part of a restaurant; this special exception requirement would apply to the rooftop event space and might apply to the beach club.

If the Town Council chooses to approve **Condition 17** and sheets X-506 and X-507, please note two recommended clarifications to the fourth bullet:

On-premises consumption of alcoholic beverages is approved at the locations shown on Sheets X-506-COP.01 and X-507-COP.02 of the Master Concept Plan, subject to these limitations:

- *Alcoholic beverages in the outdoor rooftop event space are limited to special events scheduled through the resort. Permanent structures are not permitted in the rooftop event space.*
- *Outdoor seating is permitted on the second story outdoor deck provided it remains in substantial compliance with the COP diagrams on Sheets X-506-COP.01 and X-507-COP.02.*
- *Alcoholic beverages in the beach club are limited to the hours of operation of the beach club (7 am to 9pm or one hour after sunset). Alcoholic beverages are not approved on the sandy beach below the seawall, which retained its EC zoning.*
- *Alcoholic beverages may be served at locations other than those shown on the Master Concept Plan only if approved by special exception or by administrative approval, as provided in 34-1264 of the LDC.*

CPD Acreage: 5.11 acres (including pedestrian bridges)

Project Acreage: 5.07 acres (excluding pedestrian bridges)

Sub-parcels:

Parcel 1: 2.79 acres bounded by Crescent Street, Fifth Street, and Estero Boulevard (excluding county land on the north side of Estero Boulevard)
 24-46-23-W3-00006.0000 24-46-23-W3-00206.0060
 24-46-23-W3-00205.0060

Parcel 2: 2.07 acres between Estero Boulevard and the Gulf of Mexico (between the Salty Crab and the Beacon Motel)
 24-46-23-W3-00009.0000 19-46-24-W4-0140B.0070
 19-46-24-W4-0140B.0020 19-46-24-W4-0140B.0010
 19-46-24-W4-0140B.0040 19-46-24-W4-0140B.0050
 19-46-24-W4-0140A.0030

Parcel 3: 0.21 acres between Fifth Street and the Sky Bridge (at the intersection, just west of Lighthouse Resort)
 24-46-23-W3-00205.0070

Pedestrian Bridges: 0.04 acres, crossing Estero Boulevard to connect Parcels 1 and 2 and crossing Fifth Street to connect Parcels 1 and 3

Future Land Use Map:

Parcel 1:
Pedestrian Commercial (2.79 acres)

Parcel 2:
Pedestrian Commercial (1.74 acres)
Recreation (0.33 acres) (Parcel 2B, a portion of Parcel 2 lying seaward of the 1978 coastal construction control line but landward of the retaining wall)

Parcel 3:
Pedestrian Commercial (0.21 acres)

Current Zoning & Uses:

Parcel 1:
CPD (vacated MCP): parking lot, offices, stores, rentals
DOWNTOWN: Ocean Jewels building

Parcel 2:
DOWNTOWN: Pierview Hotel, Cigar Bar, Mermaid Lounge, beach vendors
EC: part of Pierview Hotel, including surface parking spaces, part of an outdoor swimming pool, and a corner of the hotel building

Parcel 3:
CPD (vacated MCP): parking lot

Physical Address: New street addresses haven't been assigned.

Adjacent zoning & uses: Map on next page shows existing zoning and adjacent uses.

Map of subject property, with existing zoning and adjacent uses



II. FORMAT OF THIS REPORT

To respond to the complexity of the requested rezoning, the remainder of this report is organized as follows:

- III. Project Summary** — physical aspects of the proposed project
- IV. Background** — brief history of prior town actions affecting this property
- V. CPD Issues and Recommendations** — discussion of specific issues:
 - A. Number of Hotel Rooms** *(including Deviation #1)*
 - B. Building Height** *(including Deviation #2)*
 - C. Floor Area Ratio** *(including Deviation #3)*
 - D. Streetscape around Parcels 1 and 3** *(including Deviation #4)*
 - E. Pedestrian Bridges**
 - F. Future Land Use Map**
 - G. Gulf-Side Beach Club and Beach Access Points**
 - H. Traffic**
 - I. Property Development Regulations**
 - J. Density Transfer**
 - K. Schedule of Uses**
 - L. Parking, Circulation, and Loading**
 - M. Rental of Beach Furniture; Personal Watercraft; Parasailing**
 - N. Signs**
 - O. Consumption on Premises**
 - P. Stormwater Management**
 - Q. Concurrency**
- VI. Draft Special Conditions of Approval** — these conditions, as modified by the Town Council, would become a binding part of this CPD if it is approved
- VII. Process** — description of the rezoning process from submittal of the application through follow-up actions that would be required if this CPD is approved
- VIII. Exhibits**
 - A. Property Development Regulations** (prepared by staff)
 - B. Opinion on Changes to Floodplain Maps**
 - C. Photographs of Pedestrian Bridges**
 - D. Comprehensive Plan Policies**

The LPA and Town Council will need to deliberate on at least five complex issues in this proposal: the number of hotel rooms being requested, maximum building heights, maximum floor area ratio, proposed streetscape plan, and the two pedestrian bridges that are integral to this proposal. Decisions on each of these issues are guided by provisions of the Comprehensive Plan and Land Development Code (LDC), but none of these decisions are pre-determined by those documents.

This rezoning request is being presented through the Commercial Planned Development zoning process, which allows the Town Council to review a detailed site plan and to consider four deviations from regulations that would be required for the applicant to build this project as currently proposed. Those LDC regulations apply to all development that is allowed “by right,” meaning without obtaining any special approval from the Town Council such as a variance or a formal deviation that might be granted as part of a Planned Development rezoning.

Assuming the Town Council makes the findings necessary to approve the requested deviations (or some lesser deviations), the CPD approval would be consistent with all provisions of the Comprehensive Plan. The site plan (part of the Master Concept Plan) would become an integral part of the CPD approval, requiring the applicant to develop this site only as shown on the Master Concept Plan and as may be further limited by special conditions of approval that are imposed by the Town Council (see Section VI below).

Section V of this report identifies factors to be considered on those five issues and discusses many other issues where the staff supports the applicant’s proposals either as originally submitted or as revised during the staff review process.

If the Town Council approves rezoning to CPD, the draft special conditions that are discussed throughout this report (and presented in full in Section VI) will need to be adjusted to reflect the Town Council’s decisions on specific issues and to reflect any other changes to the special conditions and/or the Master Concept Plan.

III. PROJECT SUMMARY

This development proposal includes three major parcels that are separated by Estero Boulevard and Fifth Street, as shown on the map below.



Most of the resort would be on Parcel 1 in a single building that faces all three surrounding streets. The ground story of this building would be a valet-only parking lot. The second story would have the hotel lobby, common areas, a large elevated courtyard, and hotel rooms. The third and fourth stories would be dedicated to hotel rooms. This building would have a total of 260 hotel rooms. A seating area for special events would be provided on the roof. Sidewalks and street trees would be installed along all perimeter streets.

The beach-side property (Parcel 2) would have a new building with a restaurant on the second story and 30 hotel rooms on the third and fourth stories. This building would connect to the main building with a pedestrian bridge. Two beach accesses would be provided, one with public parking spaces. Most of the rest of Parcel 2 would be a private beach club.

At the foot of the Sky Bridge, Parcel 3 would have a three-story building with parking on the ground story and two stories above containing meeting rooms or other resort amenities. A second pedestrian bridge would cross Fifth Street to link this building with the main resort building. The CPD application refers to Parcels 1 and 3 as bay-side properties.

The applicant has provided LPA and Town Council members with extensive details about the character of the proposed buildings and grounds and also about the resort amenities that would be provided.

IV. PLANNING BACKGROUND

A. Comprehensive Plan

The town adopted its first Comprehensive Plan in 1999, replacing Lee County's plan which was still in effect until that time.

The new plan created the "Pedestrian Commercial" category, a primarily commercial category for intense activity around Times Square and Old San Carlos Boulevard that also included Crescent Street and the nearby portions of Estero Boulevard.

The new plan also created the "Recreation" category for the sandy beach. Density on the beach was reduced from 6 units per acre to 1 unit per 20 acres.

Hotel intensities were set at a multiple of residential density (the pre-1994 county rules had allowed up to 50 hotel rooms per acre). The new plan also established stricter limits on the height and bulk of buildings, as discussed later in this report.

B. Old San Carlos Boulevard / Crescent Street Master Plan

In 1999 the town adopted the Old San Carlos Boulevard / Crescent Street Master Plan. The new streetscape for Old San Carlos was first presented in that plan. The "park-once" concept was developed there as a fundamental necessity for a compact walkable environment.

Another focus was on the Helmerich Plaza site. Two redevelopment concepts were presented, a moderate infill plan and a more intense infill plan. The moderate plan was later implemented through the DOWNTOWN zoning district in the Land Development Code. The more intense plan could only be implemented through Planning Development zoning process where LDC deviations can be considered.

C. Existing Zoning & Development Agreement

In 2002 the town rezoned much of the subject property (plus the Seafarer's Mall site) to CPD for "Seafarer's Plaza," a proposed hotel and entertainment complex. At the same time, the town entered into a development agreement that guaranteed the CPD zoning for ten years in exchange for certain commitments from the prospective developer, including the donation of sidewalk easements.

The CPD zoning would have allowed phased construction of a 65-room hotel and up to 90,455 square feet of commercial space, contingent on providing sufficient parking. An internal parking garage that would include some parking spaces for the general public had been proposed by the applicant, but was withdrawn and never resubmitted. With surface parking only, the amount of commercial space would have been severely limited by terms of the CPD approval.

The Seafarer's Plaza site changed hands several times during the life of the development agreement. Lee County purchased the portion with Seafarer's Mall and demolished that building; future plans for that site are unknown. The remainder of the site was later acquired by the current applicant, along with property on the beach side of Estero Boulevard between the new park and the Beacon Motel.

The 2002 development agreement expired in 2012. The zoning remains CPD, but due to the extended inactivity, the Master Concept Plan has been deemed “vacated” by the LDC (see 34-220). If the current CPD request is approved, the prior CPD will apply only to the county’s vacant site where the Seafarer’s Mall once stood.

D. Land Development Code

The town adopted its first Land Development Code (LDC) in 2004, replacing Lee County’s code.

New zoning districts were created to match the categories created in the Comprehensive Plan. The DOWNTOWN zoning district was applied to most of “Pedestrian Commercial,” and EC (Environmentally Critical) was applied to the sandy beach in the “Recreation” category.

The new code contained detailed design standards that apply to commercial and mixed-use buildings in the Downtown and CPD zoning districts.

The new code provided details about how the Town Council could consider development at levels above the “by right” standards in the LDC by using the Planned Development and deviations processes. Those processes can never allow development at levels above the strict caps in the Comprehensive Plan.

E. Evaluation & Appraisal of Comprehensive Plan

In 2007 the town adopted its first Evaluation/Appraisal Report. This planning effort, which began in 2005, included a formal evaluation of the Comprehensive Plan plus detailed attention to issues that were pressing at that time, such as improving Estero Boulevard for all users and creating a second beachfront park (which became Crescent Beach Family Park).

That report also considered the community value of the town’s many motels, some of which were being converted to condominiums during that period. The loss of lodging accommodations could diminish many related amenities that were valued by town residents.

Building on the prior work in the Old San Carlos / Crescent plan, several alternative development concepts were created that included much of the subject property. Technical analyses were conducted on ten possible street and intersection patterns in the immediate area, including realigning Estero Boulevard, building a short parallel street just the north, one-way traffic, pedestrian overpasses or underpasses, and adding roundabouts at the foot of the Sky Bridge and at Crescent Street.

The Comprehensive Plan was amended in 2009 to incorporate most of the recommendations from the Evaluation/Appraisal report.

V. CPD ISSUES AND RECOMMENDATIONS

A. Number of Hotel Rooms *(including Deviation #1)*

Perhaps the most contentious issue in evaluating this CPD request will be the number of hotel rooms being requested (290 rooms; see Deviation #1). To fit this number of rooms on this site, the applicant is also requesting Deviation #2 to allow a fourth story and Deviation #3 to increase the allowable floor area of the buildings.

Of the 290 rooms being requested, 260 would be on the second, third, and fourth stories of the main resort building on the bay side (north side) of Estero Boulevard. The remaining 30 rooms would be above the beach-side restaurant, on the third and fourth stories of the larger building on the beach side (south side) of Estero Boulevard.

Hotel/Motel Equivalency Factors in the LDC

To determine the maximum intensity of a hotel or resort, the LDC provides equivalency factors that range from 1.0 to 3.0 hotel/motel rooms (“guest units”) for each allowable dwelling unit. In a zoning district that allows a hotel or motel, the allowable residential density for that site is multiplied by the equivalency factor; a landowner may construct a hotel or motel with that number of rooms “by right,” meaning in this context without asking the Town Council to rezone the land to CPD and grant a deviation to increase the equivalency factor.

The equivalency factors change based on two variables: room size and Future Land Use Map category. These factors are highest in the “Pedestrian Commercial” category:

- Rooms smaller than 450 square feet qualify for the maximum factor of 3.0.
- Rooms between 450 and 750 square feet have an equivalency factor of 2.5.
- All equivalency factors are provided in LDC 34-1803(a)(1).

84 hotel rooms would be allowed “by right” on the subject property, provided all rooms would be smaller than 450 square feet. This cap was computed by multiplying the 3.0 equivalency factor times the allowable 28 dwelling units. (28 units would be allowed because 4.74 acres of the subject property is designated “Pedestrian Commercial” on the Future Land Use Map, which allows up to 6 dwelling units per acre; see LDC 34-632(1).)

The LDC clearly allows an equivalency factor higher than 3.0 to be considered by the Town Council as a deviation during the CPD process:

LDC 34-1803(a)(2): Guests units exceeding these equivalency factors or exceeding 1,000 square feet each may be allowed under exceptional circumstances as described in the Comprehensive Plan if approved as a deviation through a planned development rezoning. Before approving such a deviation, the town council must find that:

- a. All other aspects of the development (height, traffic, intensity of use, etc.) are compatible with the surrounding area;*
- b. The proposal clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan; and*

- c. *In no case can equivalency factor increases exceed the maximum intensities allowed by the Fort Myers Beach Comprehensive Plan.*

The three mandatory findings, (2)a, (2)b, and (2)c, are discussed further below.

Deviation #1 (request to increase the equivalency factor)

12 of the requested 290 rooms would be larger than 450 square feet. Assuming those rooms would not exceed 750 square feet, the equivalency factor would be 2.5, and those 12 rooms would consume 4.8 of the 28 allowable dwelling units.

The other 278 rooms would be smaller than 450 square feet and would qualify for the 3.0 equivalency factor. With 23.2 dwelling units remaining, those 278 rooms would require an equivalency factor of 12.0, which is being requested in Deviation #1.

The applicant had requested a deviation to approve the 290 rooms by abandoning the town's equivalency-factor method. That approach, however, would conceal the extent of this deviation from the public and town officials and would make it difficult for the town to evaluate lesser deviations from the 3.0 equivalency factor. Thus Deviation #1 has been reworded and advertised to maintain the equivalency-factor method and to request that the equivalency factor for this project be increased from 3.0 to 12.0 to allow the 278 rooms that would be smaller than 450 square feet. (The 12 larger rooms would use the LDC's equivalency factor; no deviation would be required.)

Relationship of Deviation #1 with Deviations #2 and #3

The Town Council's decision on Deviation #1 (number of rooms) is interwoven with Deviation #2 (building height) and Deviation #3 (total floor area):

- For instance, if the Town Council were to reject Deviation #2, thus limiting the height of the two buildings with hotel rooms to 3 stories instead of the requested 4 stories, the loss of the 4th stories would eliminate about 113 hotel rooms, leaving only 177 rooms if the current design were otherwise retained. 177 rooms would equate to an equivalency factor of about 6.8 for rooms smaller than 450 square feet.
- Or, if the Town Council approved Deviation #2 for height but reduced Deviation #3 to, for example, a floor area ratio of 1.4 (instead of the requested 1.6), the total floor area of the buildings would have to be reduced by 32,220 square feet. That reduction could be accomplished by eliminating 60% of the 4th story of the main resort building, leaving perhaps a total of 240 rooms, which would equate to an equivalency factor of 9.5.

Considerations Regarding Deviation #1

The most difficult evaluation when considering a deviation to raise the equivalency factor may be LDC 34-1803(a)(2)(a) which contains a subjective compatibility standard. Neither the LDC nor the Comprehensive Plan specify the “exceptional circumstances” mentioned in the opening sentence of (a)(2), but relevant planning policies are found throughout the Community Design and Future Land Use Elements; many of these policies are presented in Exhibit D at the end of this report.

In addition to Comprehensive Plan policies and the compatibility standard, it should be noted that this CPD offers many positive aspects that the Town Council may decide would justify some or all of extra hotel rooms being proposed; several are summarized here. (These same considerations may inform the Town Council’s decision on Deviations #2 and #3.)

- The subject property includes some of the most blighted parcels in town, presenting a poor impression to residents and visitors as they arrive. These parcels that have always attracted developers, but no developer to date has identified the right combination of opportunity, planning, and financing to move beyond the concept stage.
- The proposed resort would provide a very significant economic boost to the town and would increase the diversity of visitor accommodations by adding a luxury beachfront resort in the core of Fort Myers Beach.
- The extra hotel rooms that are being requested through Deviation #1 would be concentrated on the north side of Estero Boulevard. This arrangement would allow most of the beachfront to be free of buildings that would block the public’s view of the Gulf of Mexico, as is the case today along most of Estero Boulevard.
- The developer has offered to dedicate to the town a fully constructed beach parking lot on the east end of this development, immediately west of the Beacon Motel (contingent on the town vacating Canal Street between Estero Boulevard and the Gulf of Mexico). See discussion below in Section V.G.
- All parking would be on-site, mostly in a single valet-only lot located under the main resort building and under its elevated courtyard. At full occupancy, vehicles will be parked in tandem (end-to-end) or stacked one over another using mechanical lifts. With these techniques, the parking area can be much smaller, greatly diminishing the visual impact that would be presented by a large surface parking lot or a conventional parking garage. This valet arrangement would also have the effect of encouraging guests to leave their cars in the resort lot and either using other resort facilities or moving around the town on foot, bicycle, trolley, or taxi.
- Habitable space in these buildings would be elevated at least 1.6 feet higher than FEMA’s minimum “base flood elevation.” This elevation would provide a additional measure of flood protection for the buildings and for any occupants during hurricanes.

However, this CPD also has a number of aspects that the Town Council may conclude would justify limiting the number of extra hotel rooms being proposed, or rejecting increases entirely; several are summarized here. (These same considerations may inform the Town Council's decision on Deviations #2 and #3.)

- In order to accommodate 290 hotel rooms, resort amenities, and on-site parking, the two largest buildings would have to be 4 stories tall (3 regular stories over 1 very tall story of parking). The longest face of the main resort building – over 500 feet long – would be directly across Crescent Street from a collection of shorter canal-front buildings, and just one block from homes across the canal on Primo Drive. If constructed, the height and bulk of the main building would be most alarming from this direction.
- The main resort building would be about 370 feet long facing Fifth Street. The Lighthouse Resort is directly across Fifth Street; one recent building at the Lighthouse Resort is the same height (4 stories) and the other two are 3 stories. The first and second stories at the Lighthouse Resort are considerably shorter than the proposed ground story in the main resort building (which would be 14 feet tall) and the proposed second story (16 feet). Despite these differences, the new buildings are unlikely to be incompatible with buildings on Fifth Street or further north.
- In addition to the entire main building being tall and bulky (especially apparent on the Crescent Street side), the ground story would be very tall and would be used only for parked cars. The cars would be separated from the sidewalk and street only by a trellis, consisting of latticework and climbing vegetation, as discussed below in Section V.D.
- The additional hotel rooms being requested would add to the traffic entering and leaving this resort, as discussed below in Section V.H.
- The design of this resort achieves some but not all of the benefits of promising redevelopment concepts for this immediate area that were prepared for the town and summarized in the Evaluation/Appraisal Report which reviewed the Comprehensive Plan in 2007. The current CPD design conceals all parking areas, an important but difficult goal that was proposed in 2007. However, the CPD plan does not provide the proposed new east-west street parallel to Estero Boulevard that could have provided a parallel street in the most congested part of the town. The CPD plan does not include sidewalk-level businesses anywhere on the property. The CPD plan also does not include a roundabout at the foot of Sky Bridge; however nothing in the CPD plan would preclude a roundabout from being constructed in the future by Lee County or Florida DOT.

Conclusions about Required Finding (2)a: To grant the requested deviations for the number of hotel rooms (or a lesser deviation), the Town Council must find that “all other aspects of the development (height, traffic, intensity of use, etc.) are compatible with the surrounding area.” This is an exercise in judgment that must be made after considering the factors in this report, evidence presented by the applicant and staff at the public hearing, comments and testimony from the public, recommendations from the LPA, and the Town Council’s deliberations during the public hearings.

Conclusions about Required Finding (2)b: This finding requires the Town council to conclude that “the proposal clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.” Since every approval must meet the standards of the Comprehensive Plan, the only difference here is the “clearly exceed” language, which may suggest that the intent and spirit as well as the letter of the law must be met.

Conclusions about Required Finding (2)c: This finding requires the Town Council to conclude that “in no case can equivalency factor increases exceed the maximum intensities allowed by the Fort Myers Beach Comprehensive Plan.” Since the Comprehensive Plan does not contain any “maximum intensities” that any requested deviation would exceed (provided the Town Council concludes that the Deviation #1 meets the first two criteria), the Town Council can make the third finding affirmatively.

Conclusions about Other Required Findings: In addition to these three special findings for deviations to equivalency factors, the LDC requires four other affirmative findings before any deviation may be approved. All seven findings are provided after Condition 1.

Condition 1 should document the Town Council’s decision on the number of hotel rooms and on Deviation #1. Three alternatives are provided for consideration:

- 1-A Deviation #1 is approved to allow up to 290 hotel rooms by increasing the equivalency factor for rooms that are smaller than 450 square feet from 3.0 to 12.0.*
- 1-B Deviation #1 is partially approved to allow up to ___ hotel rooms, by increasing the equivalency factor for rooms that are smaller than 450 square feet from 3.0 to ___.*
- 1-C Deviation #1 is denied; the number of hotel rooms is limited by the strict application of the equivalency factors in 34-1803(a)(1) of the LDC.*

Suggested findings for approval or partial approval of Deviation #1 are provided here. Affirmative findings (a) through (c) are required by 34-1803(a)(2) of the LDC; findings (d) through (g) are required by 34-216 of the LDC.

- (a) All aspects of the development, as modified by this deviation, including height, traffic, and intensity of use, are compatible with the surrounding area.*
- (b) The proposed development, as modified by this deviation, clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.*
- (c) The proposed development, with the deviation being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.*
- (d) Granting this deviation will enhance the achievement of the objectives of this CPD.*
- (e) The general intent of the LDC to protect the public health, safety, and welfare will be preserved and promoted.*
- (f) This deviation operates to the benefit, or at least not to the detriment, of the public interest.*
- (g) This deviation is consistent with the Fort Myers Beach Comprehensive Plan.*

(Section VI near the end of this report contains all proposed special conditions.)

B. Building Height (including Deviation #2)

Maximum building heights in the DOWNTOWN zoning district are set separately for three small areas:

- (1) The shortest buildings face the Times Square and Bayfront pedestrian plazas:
 - Up to 2 stories and up to 30 feet tall (see LDC 34-675(b)(1))
- (2) Taller buildings are allowed north of Estero Boulevard east of the Sky Bridge:
 - If elevated, up to 3 stories and up to 30 feet tall (see LDC 34-675(b)(2))
- (3) Tallest buildings are allowed on the beach side of Estero east of the crosswalk:
 - If elevated, up to 3 stories and up to 40 feet tall (see LDC 34-675(b)(3))

The LDC's measurement in stories includes the ground story even if it is used only for parking or storage. The LDC's measurement in feet begins at the 'base flood elevation' as established in Chapter 6 of the LDC (plus up to 3 additional feet if a building is voluntarily elevated further, as is proposed in this CPD). Details and diagrams for height measurements are found in LDC 34-631.

If approved, Deviation #2 would allow the main resort building (which fronts on Estero Boulevard, Crescent Street, and Fifth Street) to be 4 stories and 40 feet tall, and other buildings to be at the lesser heights as shown on Sheet X-110-MCP.05 of the Master Concept Plan.

Deviation #2 is unquestionably required to allow the 4th story. The LDC limits elevated buildings in the DOWNTOWN zoning district to 3 stories (see 34-675(b)) unless a deviation is granted. The Comprehensive Plan allows the Town Council to consider that extra story only because of this site's location in the Times Square redevelopment area; in most other parts of the town, building heights are absolutely capped at 3 stories by Policy 4-C-4 (which uses the older terminology "two stories above flood elevation" to describe what the LDC defines as 3 stories):

POLICY 4-C-4 BUILDING HEIGHTS: *The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.*

There is some ambiguity in the LDC as to whether a portion of the main resort building (on Parcel 1) requires a deviation to allow it to be 40 feet tall.

Through a minor glitch in the LDC, heights in feet aren't specifically listed for a building on Parcel 1 that faces Estero Boulevard *but doesn't also face either Crescent Street or Fifth Street*. Buildings on Parcel 1 that face Crescent and Fifth are clearly limited to 30 feet; and buildings across Estero boulevard are clearly limited to 40 feet. The LDC did not contemplate a single building on Parcel 1 that faces Estero Boulevard and also faces Crescent Street and Fifth Street.

When ambiguities occur, the LDC allows the Town Council to interpret the code (see LDC 34-265). The applicant is aware of this authority of the Town Council but was hesitant to ask the council to make that interpretation without the council being able to see the full on-the-ground ramifications. At staff's suggestion, the applicant then added Deviation #2 to allow the proposed 40-foot building, in the event the council interprets the LDC to mean 30 feet but the council is willing to approve 40 feet for this particular building (or parts of it) as part of the overall CPD request.

It would seem logical to conclude that the north side of Estero Boulevard had been intended to have the same height limit (30 feet) that applies to property on this same block that faces Crescent Street and Fifth Street instead of Estero Boulevard.

Other factors complicate that interpretation, however. Property directly across Estero Boulevard (beachfront property on the south side) is allowed 40 feet in height to reflect the extra elevation requirements that apply in all FEMA "velocity zones." Years after the LDC's height limits were adopted, FEMA moved the velocity zone boundary further inland to include the north side of Estero Boulevard, so it would also seem logical to now allow 40 feet on the north side, regardless of the LDC's original intent.

Since most of the main building faces Crescent Street and Fifth Street, where the height limit is 30 feet, Deviation #2 is clearly required for most of the building to be 40 feet tall. While considering the larger portion of the deviation request, the Town Council can also consider the LDC's ambiguity regarding the small portion of the building that faces Estero Boulevard.

The Town Council may interpret the LDC to require a 30-foot limit on the north side of Estero while either granting or denying Deviation #2's request for 40 feet; or the council could interpret the code to mean 40 feet so no deviation would be required for a building up to 40 feet tall. This decision would be comparable to an LDC interpretation; by using this format, the interpretation can be made with full awareness of its practical effects while the council is also balancing other factors about this CPD proposal.

Note that the LDC allows certain architectural features above the highest allowable story to exceed the height limit as measured in feet, provided those features qualify under LDC 34-631(b). The following features in the proposed CPD may exceed the height limit as measured in feet:

- Roof structures that don't enclose habitable space.
- Parapets (short wall extensions) that conceal rooftop mechanical equipment.
- Architectural features less than 250 square feet each.

- Mechanical and structural appurtenances such as air-conditioning equipment and elevator/stairwell enclosures.

Roof decks may not exceed the height limit in feet. This CPD proposal indicates a paved but unroofed seating area on the roof for use during special events; this area would be considered a roof deck and must meet the height limit in feet, whether that limit is determined to be 30 feet or 40 feet.

Condition 2 should document the Town Council's decision on building heights and on Deviation #2. Two alternatives are provided for consideration:

2-A *Deviation #2 is approved to allow building heights as follows, with these heights measured in accordance with 34-631 of the LDC:*

- *The main resort building on Parcel 1 may be up to 4 stories and 40 feet tall.*
- *The larger building on Parcel 2 may be up to 4 stories. Approved building heights for all buildings on Parcel 2 are shown in feet on Sheet X-110-MCP.05 of the Master Concept Plan; those heights comply with current LDC limitations in feet.*
- *The building on Parcel 3 may be up to 3 stories and 40 feet tall.*

2-B *Deviation #2 is denied. Building heights are limited as follows, with these heights measured in accordance with 34-631 of the LDC:*

- *The main resort building on Parcel 1 may not exceed 3 stories and 30 feet tall.*
- *The larger building on Parcel 2 may not exceed 3 stories and 40 feet. Approved building heights for the other buildings on Parcel 2 are shown on Sheet X-110-MCP.05 of the Master Concept Plan; those heights comply with current LDC limitations.*
- *The building on Parcel 3 is limited to 3 stories and 30 feet tall.*

Suggested findings for approval or partial approval of Deviation #2 are provided here. These affirmative findings are required by 34-216 of the LDC:

- (a)** *Granting this deviation will enhance the achievement of the objectives of this CPD.*
- (b)** *The general intent of the LDC to protect the public health, safety, and welfare will be preserved and promoted.*
- (c)** *This deviation operates to the benefit, or at least not to the detriment, of the public interest.*
- (d)** *This deviation is consistent with the Fort Myers Beach Comprehensive Plan.*

(Section VI near the end of this report contains all proposed special conditions.)

C. Floor Area Ratio (including Deviation #3)

In addition to density and building height, the LDC includes a third method of regulating the bulk of the proposed buildings. That method is called “floor area ratio” (FAR), which is calculated by adding up the floor area of all stories of all buildings and dividing that sum by the size of the parcel being developed.

The LDC uses FAR sparingly because it is a highly abstract measure of a building’s physical bulk; it cannot be used to visualize a comparison to other known buildings in the same way as building height, or even the number of dwellings or hotel rooms. FAR is also very complex to calculate and is prone to manipulation by redefining what “floor area” means, or what constitutes the parcel’s size. The main reason it is used in the town’s LDC is that the state planning agency insisted on some objective measure for the intensity of commercial uses that cannot be regulated by residential density (unlike hotels, whose intensity is a multiple of residential density).

Despite the limited usefulness of FAR in regulating urban form, the LDC does contain mandatory limitations on FAR for all “by right” development on the subject property. These limitations apply unless a higher floor area ratio is approved by the Town Council through a formal deviation. The following caps on floor area ratio are provided in LDC 34-676(c):

- **1.4** for properties fronting on Estero Boulevard.
- **1.0** for all other properties in the Downtown zoning district.

The Master Concept Plan provides the following data for calculating FAR:

USES	FLOOR AREA (square feet)	LAND AREA (square feet)	FLOOR AREA RATIO
PARCELS 1 and 3 (bay side):			
Parking	102,318		
Guest Units	96,538		
Guest Unit Accessory	77,517		
Ancillary Retail	2,301		
SUBTOTAL	278,674	130,680	2.13
PARCEL 2 (beach side):			
Restaurant	16,029		
Indoor Storage	2,020		
Outdoor Restrooms	2,534		
Restaurant, Private	3,825		
Admin. Offices	1,818		
Guest Units	11,444		
Guest Unit Accessory	4,667		
SUBTOTAL	42,337	75,794	0.56

USES	FLOOR AREA (square feet)	LAND AREA (square feet)	FLOOR AREA RATIO
PEDESTRIAN BRIDGES:			
Pedestrian Access	2,711	1,742	1.56
ALL LAND IN CPD:			
TOTALS	323,722	208,216	1.55

The applicant has provided an extensive justification for Deviation #3, primarily based on the floodplain rules requiring elevated buildings at this location. However, those same conditions apply throughout the VE (wave velocity) zones, and to a slightly lesser extent the rest of the town. The FAR caps in the LDC were established with full knowledge of the town being located entirely within a floodplain.

However, if the Town Council approves all or most of the additional hotel rooms requested in Deviation #1, it should not be surprising that the building will be larger than anticipated by the LDC and that other regulations might need to be adjusted to accommodate the larger building. The only such regulation identified by the applicant, other than building height, is that the FAR is expected to exceed the LDC caps of 1.4 and 1.0.

If Deviation #1 is approved to allow the 290 hotel rooms that are being requested, then Deviation #3 should also be approved, which would allow a FAR of 1.6 (which is slightly higher than the computed FAR of 1.55). If a smaller number of hotel rooms is approved, then Deviation #3 should be adjusted to reflect the reduced size of the buildings on this site. Both approvals would be within the absolute cap of 2.5 that is established in the Comprehensive Plan for "Pedestrian Commercial" land (see Policy 4-C-2). Note that a FAR of 1.6 is lower than the highest FAR allowed by the LDC without a deviation, which is 1.8 for properties fronting on Old San Carlos between Fifth and First Streets and fronting on the Times Square pedestrian plaza.

The Town Council's approval of Deviation #3 should be based on the same reasoning that supported Deviation #1, without reference to the applicant's arguments regarding elevated buildings or the floodplain.

Condition 3 should document the Town Council's decision on floor area ratios and on Deviation #3. Three alternatives are provided for consideration:

- 3-A** *Deviation #3 is approved to allow a floor area ratio of 1.6 for the entire CPD, measured in accordance with 34-633 of the LDC.*
- 3-B** *Deviation #3 is partially approved to allow floor area ratios as follows, measured in accordance with 34-633 of the LDC:*
 - *The floor area ratio on Parcels 1 and 2 is limited to ___.*
 - *The floor area ratio on Parcel 3 is limited to ___.*

3-C *Deviation #3 is denied. Floor area ratios are limited by the strict application of the ratios in the LDC, measured in accordance with 34-633 of the LDC:*

- *The floor area ratio on Parcels 1 and 2 is limited to 1.4.*
- *The floor area ratio on Parcel 3 is limited to 1.0.*

Suggested findings for approval or partial approval of Deviation #3 are provided here. These affirmative findings are required by 34-216 of the LDC:

- (a)** *Granting this deviation will enhance the achievement of the objectives of this CPD.*
- (b)** *The general intent of the LDC to protect the public health, safety, and welfare will be preserved and promoted.*
- (c)** *This deviation operates to the benefit, or at least not to the detriment, of the public interest.*
- (d)** *This deviation is consistent with the Fort Myers Beach Comprehensive Plan.*

(Section VI near the end of this report contains all proposed conditions.)

D. Streetscape around Parcels 1 and 3 (including Deviation #4)

The main resort building (on Parcel 1) would abut the north side of Estero Boulevard. The design of the building, especially its ground story, will have a major impact on the town's numerous efforts to revitalize the surrounding area. Even before Seafarer's Mall was demolished and McDonalds moved out, the north side of this block suffered from the dilapidated Helmerich Plaza, whose driveway and dismal appearance seemed to repel pedestrians. The situation deteriorated further after the demolition of Seafarer's Mall.

All previous proposals for redeveloping this property, including those by the applicant, would have provided continuous shopfronts on the ground story along Estero Boulevard.

However, the potential for conventional shopfronts at this location has been nearly extinguished. FEMA's changes to the floodplain maps for Fort Myers Beach in 2008 badly eroded the town's ability to continue improving its original pedestrian-oriented spine along Estero Boulevard. The most significant change was moving landward the line that separates the VE zones (where new buildings have to be elevated much higher to resist wave velocity) from the AE zones which apply to the rest of the town. In AE zones, it is still possible to build ground-story retail shops and restaurants, although they have to be "dry floodproofed." In VE zones, the ground story of new buildings can be used for parking and storage but little else. If typical doors and windows were provided along the ground story, they would be useless or purely decorative.

The 2008 changes moved the dividing line from just seaward of Estero Boulevard to just landward. The original FEMA proposal would have moved the line much further landward; the town's formal intervention and engineering input was enough to considerably reduce the amount of land being changed, but not enough to keep the north side of Estero Boulevard out of a VE zone.

FEMA offers landowners a continuing opportunity to challenge the floodplain boundaries on their land. Given proper engineering justification, FEMA will immediately revise the floodplain maps. Two landowners near the subject property have recently obtained such revisions for their land: 150 Old San Carlos (Winds building) and 1028 Fifth Street (Teeki Hut building). Both properties were removed from the VE zone and placed back into an AE zone.

Staff had hoped that the same logic and data that supported those revisions would support a similar revision that would move the VE zone boundary back to Estero Boulevard in front of this development, which could allow this CPD application to place pedestrian-oriented uses along the sidewalk on the north side of Estero Boulevard. However, the engineering firm that acquired the two recent revisions (and also assisted the town in the 2008 negotiations) has explained why the engineering logic that supported the other two decisions would not apply here: there are no physical obstructions, not even other buildings, that might slow wave action. Staff accepts the opinion provided in Exhibit B as credible and now concurs that absent the previously proposed coastal protection structure that might have loosened FEMA restrictions for the entire Times Square area, there is little prospect for revising this site's FEMA boundaries at this time.

As a result, staff efforts have been concentrated on seeking the best approach to a ground-story facade that would meet current FEMA rules without totally deadening this block of Estero Boulevard for pedestrians. The evolution of that process is described below.

ORIGINAL PROPOSAL: The original CPD proposal would have separated parked cars from the sidewalk and street with a continuous vertical plane of latticework that would be covered with vines or other climbing vegetation. A criss-cross grid of latticework would have been placed on the columns that support the building and would span between the columns. Climbing vegetation on the lattice would screen the parked vehicles from view. The entire trellis (lattice and climbing vegetation) would have been about 14 feet tall along the entire perimeter of the main resort building and as close as 5 feet to the right-of-way.

In areas of the town where parking is allowed to abut a street, the LDC requires parking to be separated with a 15-foot buffer strip planted with a hedge and trees. The applicant originally requested a deviation to reduce that buffer strip to 5 feet with palms and shrubs that would supplement the trellis vegetation. The trellis and additional vegetation might have concealed parked vehicles, but it would not be a satisfactory facade when placed right up to sidewalks in the heart of Fort Myers Beach, and even more problematic because parts of the extra 5-foot buffer would have displaced planned sidewalks.

CURRENT PROPOSAL: Alternative approaches were discussed during the staff review process, including moving the columns and trellis out of the sidewalk easement, staggering the trellis, or constructing a pergola overhead that would visually break up the tall trellis and could even provide shaded space for food trucks and outdoor seating.

The proposal in the current application still uses climbing vegetation to screen the parked cars, but it would be part of a more attractive and varied ground-story facade that includes a complete system of sidewalks and street trees around the entire project. The new sidewalks, curbs, and street trees would be constructed at the applicant's expense as shown on sheets X-502 through X-504 of the Master Concept Plan, with this approach substituting for the 15-foot buffer the LDC normally requires around parking lots (if approved through Deviation #4).

Each segment of the current proposal is described below.

ALONG ESTERO BOULEVARD: A previous owner of this site donated a 5-foot sidewalk easement just outside the 50-foot Estero Boulevard right-of-way. With that easement, the public sidewalk could be up to 14.5 feet wide (much wider than the 9.5-foot sidewalks the county recently built east of Crescent Street within the existing right-of-way). The added width would allow the sidewalk to be as wide as the new sidewalks along Old San Carlos Boulevard, including room for a row of street trees between the sidewalk and the curb.

The latest proposal has these improved features:

- The trellis would now be set back behind the face of the columns, thus breaking up the continuous trellis into individual panels between columns, allowed panels to have different latticework designs. The

intention is to feature various species of bougainvillea, a hardy and colorful woody vine.

- The trellis would be not quite as tall, now about 12 feet above the sidewalk. (The floor of the second story would be about 14 feet above the sidewalk.)
- Additional palm trees would be placed in tree wells in a single row in the middle of the sidewalk, definitely not ideal for pedestrians. Design constraints include an underground exfiltration trench which discharges stormwater from Estero Boulevard, plus Lee County's past insistence on leaving 4 feet of clear space between the curb and tree trunks on all arterial roads. That county standard is based on an obsolete FDOT standard that FDOT now rejects wherever travel speeds are 35 miles per hour or lower.
- A revised plan prepared on January 4 would make the entire sidewalk easement a public sidewalk, and would move the street trees closer to the curb if Lee County agrees to follow the new FDOT standards.

ALONG CRESCENT STREET: Most of the Crescent Street right-of-way is 50 feet wide, the same as Estero Boulevard. A previous owner of this site donated a 7-foot sidewalk easement along the west side of Crescent Street to allow a wider sidewalk than would have been possible within the existing right-of-way. The current proposal has these improved features:

- The trellis would be moved toward the back of the columns, providing the same benefits as along Estero Boulevard.
- The entire sidewalk easement would become a sidewalk.
- The space between the new sidewalk and the curb would become a tree yard (a grassed planting strip) with a row of street trees.
- The building and its columns would be moved back and staggered slightly, allowing a planting area at least 5 feet wide at the base of the trellis (for shrubs) without occupying any portion of the sidewalk easement.
- Balconies with varied sizes and designs would extend from the building over the planting area and partly over the sidewalk.

The combination of these features and the improved architectural detailing shown on new renderings would relieve some of the visual impact of this tall and long building, especially at street level, and would add shaded public space along Crescent Street from Estero Boulevard almost to Fifth Street.

ALONG FIFTH STREET: The alignment of Fifth Street varies considerably, as does the right-of-way width which in some places is only 50 feet wide. No sidewalk easement currently exists, but the applicant has offered to dedicate a 7-foot sidewalk easement on the south side where the right-of-way is the narrowest. The current proposal has these improved features:

- The trellis would be moved toward the back of the columns, providing the same benefits as along Estero Boulevard and Crescent Street.

- The applicant would construct a 5-foot sidewalk along the new building on the north side and a 7-foot sidewalk along the length of Fifth Street between the base of the Sky Bridge and Crescent Street. At the narrowest point of Fifth Street, the sidewalk would be placed in the sidewalk easement.
- The space between the new sidewalk and the curb would become tree yards on both sides of Fifth Street, each with a row of street trees. The tree yards would be 6 feet wide on the north side and 9 feet wide on the south side.
- Planting areas would be placed between the new sidewalks and the resort buildings (for shrubs).
- Balconies would extend over parts of the planting areas on the south side.

Staff supports Deviation #4 as making the best of a very difficult situation that is not of the applicant's making. The current proposal provides a varied and more attractive and functional separation between the sidewalk and the parked cars, plus a very high-quality streetscape with continuous sidewalks and street trees. A potential future benefit to the system of latticework and vegetation is that it may be possible to move one or more trellis segments further from the sidewalk, for instance along Estero Boulevard where space could then be provided for food trucks and some outdoor seating.

Condition 4 should document the Town Council's decisions on streetscaping and buffer issues and on Deviation #4. The following condition is proposed by staff:

- 4** *Deviation #4 is approved to replace the Type D buffer required by 10-416(d)(2) of the LDC with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on Sheets X-502-RW.00 through X-504-RW.02 of the Master Concept Plan as revised through January 4, 2018, subject to the following requirements:*
- *Prior to obtaining any development orders on this site, the landowner will donate to the town a perpetual sidewalk easement on the south side of Fifth Street where the proposed sidewalk is shown on private land.*
 - *The landowner will construct the sidewalks, curbs, and tree yards and will plant the lawn and street trees, as shown on the Master Concept Plan before certificates of occupancy are granted for adjoining buildings. These improvements must meet technical specifications of the Town of Fort Myers Beach along Fifth Street and Crescent Street and of Lee County along Estero Boulevard. The landowner will maintain the tree yards and street trees as long as the resort is in operation.*
 - *The street trees shown along Estero Boulevard will be moved closer to the curb if Lee County accepts the new 1.5-foot lateral offset standard of the Florida Department of Transportation.*
 - *The landowner will seek approval from Lee County to route stormwater from the existing drainage inlet on Estero Boulevard into the resort's*

stormwater system so that roots from street trees on this block cannot interfere with the underground exfiltration trench.

- *No buffer vegetation may be planted in any public right-of-way or any sidewalk easement.*
- *The materials, technical specifications, and minimum opacity of the latticework around the ground story are subject to approval of the Town Manager or designee, as required by 34-992(c) of the LDC.*
- *If the climbing vegetation being planted on the latticework does not visually screen activities in the ground story, the Town Manager will require corrective actions, which could include different vegetation, different management techniques, supplemental screening behind the latticework, etc.*

Suggested findings for approval or partial approval of Deviation #4 are provided here. These affirmative findings are required by 34-216 of the LDC:

- (a)** *Granting this deviation will enhance the achievement of the objectives of this CPD.*
- (b)** *The general intent of the LDC to protect the public health, safety, and welfare will be preserved and promoted.*
- (c)** *This deviation operates to the benefit, or at least not to the detriment, of the public interest.*
- (d)** *This deviation is consistent with the Fort Myers Beach Comprehensive Plan.*

(Section VI near the end of this report contains all proposed special conditions.)

E. Pedestrian Bridges

This rezoning application proposes two pedestrian bridges that would allow guests of the resort to move from block to block without waiting for or interfering with traffic.

A fairly elaborate bridge would cross Estero Boulevard to connect the main stories (second stories) of buildings on both sides of the street. The main resort building on Parcel 1 is on the north end of this bridge. On the south end, the building on Parcel 2 would be much smaller but almost as tall; it would contain storage and beach equipment in the ground story, bar and restaurant seating areas and a full kitchen on the second story, and 30 hotel rooms on the third and fourth stories.

The other bridge is more utilitarian; it would cross Fifth Street to connect the main building with a freestanding building across Fifth Street on Parcel 3. That building would contain parking on the ground story and two stories above containing meeting rooms or other resort amenities.

The public would have the right to use both bridges, reaching them via stairs or an elevator at each end.

The most common problems with pedestrian bridges are their high initial cost and the unwillingness of most people to use them on a regular basis if there is any other way to cross the street. However, in this case both bridges would be privately funded; even if the public rarely used these bridges, they would certainly be used by resort guests.

There are various issues with pedestrian bridges that need to be considered:

- The most important is the visual impact of the bridge over Estero Boulevard. On the positive side, the renderings show an attractive structure with a somewhat open design, which would encourage the public to use it at least once for the vista it would provide. This bridge would connect two buildings that are extremely large for Fort Myers Beach and would be built very close to Estero Boulevard at its narrowest point; together they would create an imposing gateway effect for people approaching from both directions. It is difficult to anticipate how this bridge would be perceived by people with no interest in the resort.

There are a number of pedestrian bridges around the state that also connect two parts of a resort, mostly on the east coast but one in St. Petersburg Beach at the Don Cesar resort. The historic Don Cesar building is large and close to the beach side of Gulf Boulevard; the other side of that wide street is a surface parking lot. Another pedestrian bridge is at Ocean Walk in Daytona Beach; a tall hotel is close to the beach side of Atlantic Avenue and the other side of that wide street has smaller buildings and a large parking garage. Photos of both bridges are provided in Exhibit C.

- Because the Estero Boulevard bridge would cross a county right-of-way, the county would have to give permission for that bridge. The applicant has confirmed at least one discussion with the county and is confident enough about being able to obtain approval from the county that they are willing to proceed through the rezoning process and accept the risk of approval delays, or even rejection, by the county. County issues would undoubtedly include structural integrity, clearance above the street, safety, insurance, liability, etc. These same issues would be addressed by the town for the bridge over Fifth Street.

Lee County has no precedent for a situation where zoning would be granted by a municipality for a private overpass over a county road. One private overpass has been approved by the county, in a remote industrial area where the zoning was also granted by the county; that overpass moves raw limerock on a conveyor system to a gravel processing plant on the other side of Alico Road.

- The town would likely want control over the initial design of both bridges and over future changes, such as proposals to enclose the bridges or change their appearance. Continuing public access to the bridges would be another issue; also technical issues such as how the stairs and elevator on each end would relate to existing and future sidewalks.

The Comprehensive Plan's Transportation Element contains this discussion of pedestrian bridges:

Sidewalks encourage people to walk parallel to roads, but crossing major roads such as Estero Boulevard remains a problem. Pedestrian overpasses are sometimes built at major crossing points, especially over freeways or wide arterial roads. However, pedestrians are not likely to use these overpasses unless it is obvious that they are easier or safer than trying to cross at ground level. As long as Estero Boulevard is no wider than three lanes, conventional pedestrian overpasses are unlikely to attract many users. More users would be attracted if the ramps were replaced by glass-faced elevators and the overpass itself provided exceptional views. [appendix A, page 7-A-16]

Condition 9 should document the Town Council's decisions on the proposed pedestrian bridges. The following condition is proposed by staff:

- 9 *Two pedestrian bridges are shown on the Master Concept Plan. Conceptual approval of these bridges is subject to these requirements for their design, approval, and operation:*
 - *The pedestrian bridges will be constructed simultaneously with the buildings they connect.*
 - *A publicly accessible stairwell and elevator on Parcel 3 must connect the sidewalk on the north side of Fifth Street to the Fifth Street pedestrian bridge.*

- *The elevated courtyard on the second story of the main resort building on Parcel 1 must include a publicly accessible route between the two pedestrian bridges.*
- *Publicly accessible stairwells and elevators on both sides of Estero Boulevard must connect the sidewalks to each end of the Estero Boulevard pedestrian bridge. Bicycle racks for public use will be provided under the restaurant building on Parcel 2. The stairwell on Parcel 2 must provide access to publicly accessible restrooms in the restaurant building.*
- *Before constructing the bridge over Fifth Street, the landowner must enter into a formal agreement with the Town of Fort Myers Beach regarding design, maintenance, liability, operations, future changes, and other relevant other details.*
- *Before constructing the bridge over Estero Boulevard, the landowner must obtain approval from Lee County and must enter into a formal agreement with the Town of Fort Myers Beach regarding design, maintenance, liability, operations, future changes, and other relevant details.*
- *In order to guarantee the general public's permanent right to use both bridges and the adjoining stairways, the landowner must execute an instrument to guarantee this access in a form suitable to the Town Attorney.*

(Section VI near the end of this report contains all proposed special conditions.)

F. Future Land Use Map

About 93.5% of the subject property is in the “Pedestrian Commercial” category on the Future Land Use Map. All uses being proposed are consistent with this category (Earlier portions of Section V discussed comprehensive plan issues regarding the number of hotel rooms being requested and the height and bulk of the buildings.)

The remaining 6.5% of the property included in this CPD application is in the “Recreation” category on the Future Land Use Map. The applicant owns additional beachfront land in the “Recreation” category (also zoned “Environmentally Critical”) but removed it from the CPD application at staff’s request.

The only “Recreation” land remaining in the CPD is 0.33 acres that lies landward of the existing concrete retaining wall at the Pierview Hotel. This land is identified by the applicant as Parcel 2B and is currently used for paved parking spaces, part of an outdoor swimming pool, and a corner of the Pierview Hotel. All of those improvements will be removed from the 0.33 acres, and this land area is not being used for computations of allowable density, intensity, floor area ratio, or building coverage requirements in the LDC, as required by LDC 34-632–634.

Future uses on Parcel 2B under the CPD should mirror the uses currently allowed in the “Environmentally Critical” zoning district (passive recreation activities, resort accessory uses that are performed outdoors, active recreation activities that require no permanent structures or alteration of the natural landscape etc.). The full list can be found in LDC 34-652(d)–(e).

Allowable uses for the entire CPD are discussed in Section V.K below, which includes proposed **Condition 6**, the staff proposal for the schedule of uses for this CPD. Uses on Parcel 2B would be defined in Condition 6, essentially maintaining Parcel 2B as open space, with uses limited in the same manner as would be provided by the “Environmentally Critical” zoning district. The LDC contains other regulations that would apply here, such as restrictions on minor structures in 6-366, on beach furniture in 14-5, on lighting in 14-76 and 14-79, on personal watercraft and parasailing in chapter 27, on signs in 30-93, on zoning in 34-652, on alcoholic beverages in 34-1264, on dunes in 34-1575, and on equipment rentals in 34-3151.

(Section VI near the end of this report contains all proposed special conditions.)

G. Gulf-Side Beach Club and Beach Access Points

An outdoor beach club is proposed on Parcel 2 (between Estero Boulevard and the beach). The beach club would be a major amenity to resort guests and would provide visually pleasing waterfront open space to the general public.

This beach club would be privately owned and maintained and would be available for use only by resort guests and additional paying patrons. The applicant identifies the capacity of the beach club as 950 guests at one time, up to 225 of which may not be staying at the resort.

Access and Fencing

The applicant has explained access to the beach club as follows:

...the proposed facility will be a private, commercial operation with controlled access points adjacent to the public pedestrian beach access. Patrons of the outdoor recreational facility must pass through a single supervised entry point...

The proposed public pedestrian beach access and entry point to the beach club are shown on sheet X-105 of the Master Concept Plan. Patrons would reach the entry point from Estero Boulevard or from the beach by using new public beach access, which would be next to the larger new building closest to Crescent Beach Family Park. This building would contain a restaurant and bar that would be open to the public; the pedestrian bridge would connect this building to the main resort building.

A smaller new building on Parcel 2 would contain a commercial kitchen on the second story, an open bar and seating area at ground level, and administrative offices on the third story. This building would be inside the beach club and would provide food and beverages to paying guests only.

A third building on Parcel 2 would be the adaptive re-use of the distinctive stucco Cigar Hut building at 1172 Estero Boulevard for restrooms for the beach club. The potential historic significance of that building was identified in Lee County's 1986 Historic Sites Survey. Another building identified by the town's Historic Preservation Board (now the Salty Crab, at 1154 Estero Boulevard) would not be affected; that parcel is owned by the applicant but is not part of this CPD request.

The beach club would be surrounded by a low fence. The LDC allows a perimeter fence or wall up to 42 inches tall as close as 3 feet to the right-of-way (but no chain-link or wire fences along the street); see LDC 34-1741-44. The LDC does not have a requirement for partial transparency, such as a fence with spaced wood pickets or metal bars. In this case, the beach club is being promoted as providing two wide view corridors for the general public, so a solid fence at the maximum height allowed by the LDC wouldn't be appropriate. Renderings provided by the applicant show a fairly low rustic fence with bamboo poles that would be set back from the sidewalk, allowing room for densely planted vegetation in front of the fence. However, this fence may need to be taller than 42 inches to meet Florida Building Code requirements for enclosing a swimming pool.

Vacation of 185 feet of Canal Street

The proposed CPD contemplates the town vacating the first 185 feet of Canal Street from Estero Boulevard toward the beach. This 30-foot right-of way is now part of Beach Access #36, maintained by the town.

To offset that loss, the applicant is offering to enlarge and reconstruct what is now a private parking lot about 120 feet to the east (next to the Beacon Hotel) and donate it to the town for use as a replacement public beach access. The applicant identifies this donation as Parcel 2C. Drawings submitted with the application show that Parcel 2C could provide 23 to 26 metered public parking spaces; however that number of spaces would not fit once the drawings are modified to meet LDC requirements for parking lots, which require a landscaped islands in the parking lot and a buffer strip along Estero Boulevard. This new public parking lot would also provide a replacement pedestrian access to the beach using the gulf end of Canal Street, which would not be vacated.

The Comprehensive Plan offers the following guidance when considering requests to vacate rights-of-way:

OBJECTIVE 7-J PROTECTING PUBLIC ACCESS *Although no future right-of-way needs have been identified, some existing town and county rights-of-way are substandard and few are wider than needed. The town shall not vacate or acquiesce in the vacation of existing rights-of-way except where no public purpose would be served by retaining the right-of-way.*

POLICY 7-J-1 RIGHTS-OF-WAY *Town and county rights-of-way are needed for the undergrounding of utilities; for the expansion of sidewalks and bike paths; for water accesses; for on-street parking; for public transit and road improvements; and for other public purposes. The town shall strictly limit vacations of rights-of-way and easements to preserve future access for these purposes.*

The Comprehensive Plan is clearly wary about requests to vacate rights-of-way. The Town Council should approve this request only if it deems it to be in the public's interest and only if maintains or improves public access to the beach. In this case, the new public beach access and parking lot (Parcel 2C) is very close by and contains 0.23 acres, significantly larger than the portion of Canal Street that would be vacated (0.13 acres). The existing view corridor along Canal Street would be lost, but the existing view corridor across Parcel 2C would be expanded and made public and permanent. To make the new arrangement better than the current situation, the town definitely needs to accept the applicant's offer to improve and donate the new access and parking lot to the town – not merely make it available to the public as a private venture. Ideally Parcel 2C would be expanded slightly so that it could meet LDC requirements for parking lots without reducing the number of parking spaces.

The proposed vacation of part of Canal Street and donation of Parcel 2C for beach access and public parking are reflected on the Master Concept Plan and thus would be preliminarily approved with this CPD. CPD approval should contain special conditions clearly spelling out the mitigation being offered by the applicant and then requiring that the formal vacation and donation of Parcel 2C be completed together at a later date; the Town Attorney could arrange for those actions to take place simultaneously.

Until both actions are completed, no development orders or other permits would be issued for site work for new buildings or for demolition of existing buildings.

Vacation of Narrow Right-of-Way at Beach End of Crescent Street

The applicant also proposes to vacate a 12-foot-wide right-of-way at the end of Crescent Street, which runs alongside the existing Pierview Hotel but does not extend to the beach. It does however provide a narrow view corridor to the water. A new public pedestrian beach access would be provided through the beach club on Parcel 2, replacing the existing view corridor and adding a public path all the way to the beach. Both are shown on the Master Concept Plan and again would require separate legal actions vacating the 12-foot right-of-way and accepting a perpetual easement for the new public beach access. The process and criteria for approval would be the same as for Canal Street.

The terms of the new access are critical; beach accesses are often subject to pressure to limit public access in various ways or to conceal the existence of the access. The public access commitment needs to be legally guaranteed and perpetual in nature, not merely a condition of zoning approval.

Conditions 10 and 11 should document Town Council decisions on the site plan for the beach-side properties (Parcel 2). The following conditions are proposed by staff:

10 *Sheet X-105 of the Master Concept Plan identifies certain important features on Parcel 2 (the beach-side parcels) that will require separate critical actions by the town and by the landowner at a later date. This sheet is being included in the Master Concept Plan with these understandings:*

- *As shown on Sheet X-105, the landowner intends to request the vacation of a narrow right-of-way at the end of Crescent Street, plus the first 185 feet of Canal Street south of Estero Boulevard which is part of town-maintained Beach Access #36. Understanding that the town's Comprehensive Plan strictly limits vacations of rights-of-way in order to preserve future access to the water, the landowner has agreed to provide a net increase in public access by donating an expanded Parcel 2C to the town after constructing a new beach access plus a new public parking lot that contains at least 23 parking spaces and meets all LDC requirements including buffers and landscaping, or that contains a new public street on the same land, at the Town Council's option; and by constructing and donating a new perpetual pedestrian beach access just west of Crescent Street that meets ADA accessibility requirements.*
- *The landowner will execute instruments to complete both donations in a form suitable to the Town Attorney and will provide them to the Town Attorney, who will not record either instrument unless the Town Council formally vacates the two existing rights-of-way shown on Sheet X-105.*
- *The town will not issue development orders for demolition, site work, or new buildings within this CPD (except on Parcel 2C), unless the town agrees to vacate both rights-of-way.*

- 11** *The beach club on Parcel 2 must meet these additional requirements:*
- *To allow the reduced building frontage on the south side of Estero Boulevard (see LDC 34-675), development order plans must demonstrate two view corridors from Estero Boulevard to the beach that total at least 324 feet along Estero Boulevard.*
 - *Any perimeter fence on the beach side of Estero Boulevard must be at least 20% transparent, must be placed within a landscaped planting area at least 5 feet wide, and may not exceed 3 feet in height. If the Florida Building Code requires a taller fence at this location, the fence height may be increased accordingly provided the increased height is at least 80% transparent.*
 - *A detailed lighting plan, including any lit signage, must be provided with the development order application for the beach club; this plan must comply with LDC requirements in 10-154(8) and 14-76 for sea turtle conservation.*
 - *A detailed landscaping plan showing the location and type of beach plantings to be provided adjacent to the existing retaining wall must be provided with the development order application for the beach club.*
 - *Directional signage shall be erected along Estero Boulevard that advises the public of both new public beach accesses.*
 - *The beach club and its ancillary uses may operate only from 7am to 8pm or one hour after sunset.*

(Section VI near the end of this report contains all proposed special conditions.)

H. Traffic

The LDC requires rezoning applicants to submit a traffic impact statement (TIS) to “survey current and anticipated traffic conditions and public transportation in order to identify potential traffic problems posed by the proposed development” (see LDC 10-286(a)). The analysis below is based on the second revision to the TIS, which was submitted on January 23, 2018. References below to page and exhibit numbers are based on this latest TIS revision.

TIS Findings and Conclusions

The applicant’s TIS addresses many important technical matters such as anticipated traffic conditions at driveways into the resort and at nearby intersections.

A significant conclusion of the TIS is that the proposed development would not cause traffic levels on Estero Boulevard to exceed the town’s adopted level-of-service (LOS) standard (which is discussed in more detail in Section V.Q of this staff report). The Comprehensive Plan clearly forbids any development that would cause the adopted LOS standard for Estero Boulevard to be exceeded. However, meeting the LOS standard does not imply an absence of traffic impacts. When more drivers try to use Estero Boulevard than can physically be accepted, approaching cars simply stack up, as is obvious during busy hours in the tourist season.

Another conclusion of the TIS is that during the busiest hour, only 17 additional vehicles will enter or leave the site, compared to conditions today. The computations leading to this conclusion are shown on pages 5 and 6 of the TIS, where it becomes apparent that the figure of 17 additional vehicles is for the *afternoon* peak hour only:

- **17** additional vehicles will enter or leave during the afternoon peak hour (133 proposed trips minus 116 existing trips).
- **56** additional vehicles will enter or leave during the morning peak hour (134 proposed trips minus 78 existing trips).
- **853** additional vehicles will enter or leave during an entire weekday (1,690 proposed minus 837 existing).

Summary of TIS Analysis

The following discussion provides a summary of the TIS analysis of current and anticipated traffic conditions and considers potential effects of vehicle trips that would be added to the street system, plus other important factors that should be considered during the review of this rezoning request.

Although not cited in its conclusions, the TIS identifies current traffic conditions on public streets, the amount of traffic generated from the site as it exists today, and the amount of traffic from this site if the proposed CPD replaces current uses:

Current traffic conditions are based on 2016 traffic counts taken by Lee County on Estero Boulevard at Donora Boulevard. The county has a permanent count station at that location which records traffic data around the clock and all year. The town’s LOS standard is measured at this location because of the reliability of the county’s data.

Traffic from this site today is described in the TIS as “**Existing (Occupied) Development with Current Zoning.**” Some portions of the site have been vacated in anticipation of redevelopment; at the town’s request, only the currently occupied portions were included here:

The TIS assumed the following levels of existing development: 70 hotel rooms, 186 paid parking spaces, 2,900 square feet for the beach-side bar, 5,840 sq. feet for bay-side retail, and 3,100 sq. feet for beach-side retail.

The paid parking spaces accounted for 2/3 of the trips generated each day.

The total number of trips each day was reduced from 1,811 to 837 to reflect non-auto trips, ‘internal capture’ where one trip served two purposes, and trip-reduction where a vehicle passing by entered instead of driving further to a different business. The final figure of 837 trips is the estimated number of trips entering and leaving the site each day. A summary of this analysis is included on page 5 of the TIS; its Exhibit 3 contains full details.

Traffic from this site if redeveloped is described as “**Proposed Development with Rezoning.**” These traffic estimates reflect approval of the entire CPD proposal, including all requested deviations:

The TIS assumed the following levels of proposed development: 290 hotel rooms; 19,750 square feet for the beach-side restaurant, 1,960 sq. feet for the beach-side bar, and 1,800 sq. feet for bay-side retail.

The total number of trips each day was reduced from 4,623 to 1,690 to reflect the same factors: non-auto trips, internal capture, and pass-by trips. A summary of this analysis is included on page 6 of the TIS; its Exhibit 4 contains full details.

The TIS contains an analysis of current and anticipated vehicle trips to and from this site, which shows that the proposed CPD, compared to existing conditions, would generate 14.7% and 101.9% more vehicle trips for the PM peak hour and weekday, respectively, and 71.8% more trips in the AM peak hour. The number of auto trips leaving the site for each condition are presented on pages 5 and 6 of the TIS and are repeated here with an additional line showing the percentage added:

Vehicle Trips Generated From Existing and Proposed Development			
	AM Peak Hour	PM Peak Hour	Weekday Trips
Existing Development	78	116	837
Proposed Development	134	133	1,690
TRIPS ADDED:	+ 56	+ 17	+ 853
PERCENT ADDED:	+71.8%	+14.7%	+101.9%

These traffic increases are smaller than might be imagined given the size of the proposed development. One reason, as documented in the TIS, is the large amount of existing traffic attributable to the paid parking lot. About 2/3 of current trips to and from this site are using the 186 paid parking spaces; 558 vehicles pay for a space each day according to observations by parking maintenance agents on the site.

The traffic increase shown for the AM peak hour (71.8%) is substantial. Because traffic congestion doesn't typically occur in Fort Myers Beach until after 10:00 AM, a large increase earlier than that could be accommodated by the street network, whereas a large increase after 10:00 AM would be problematic. The TIS assumes the AM peak hour for this site would occur between 8:00 and 9:00 AM, a peak time for employees traveling to work (and fortunately earlier than peak traffic at Fort Myers Beach).

The number of trips for the entire day would be doubled, a very substantial increase. However, the key factor at Fort Myers Beach is traffic during the congested hours between 10:00 AM and 5:00 PM. During that period, the highest projected hourly increase (14.7%) would occur between 4:00 to 5:00. During that hour, traffic is much higher at the existing paid parking lot than it would be at the new resort; the result is a lower percentage increase than might be expected.

The TIS assumes that the vehicle trips to and from this site would travel as follows, as shown on TIS Exhibit 5:

- 5% of all trips would use Crescent Street and Old San Carlos Boulevard, possibly then traveling to and from the north end of Fort Myers Beach.
- 30% would use Estero Boulevard to and from destinations in the other direction, either further south within Fort Myers Beach or crossing the bridge over Big Carlos Pass.
- 65% would use the Sky Bridge to immediately enter or leave Fort Myers Beach.

To assess traffic conditions on public streets beyond the development, these percentages can be applied to the number of trips generated on the site to determine the number of trips traveling in each direction. If the site had previously been vacant, the number of new trips traveling each direction would simply be added to the existing traffic levels on the corresponding street segments. In the case of redevelopment, the proper analytical focus is on the number of **additional trips** that are anticipated after redevelopment.

The latest TIS provides data for a credible comparison between traffic levels under current conditions and under anticipated conditions on Estero Boulevard at Donora Boulevard (TIS Exhibit 6b).

This comparison is summarized here, with columns added to display the number and percentage of additional vehicles that would be traveling to or from the proposed CPD after redevelopment. The first chart is the AM peak hour; the second chart is for the PM peak hour.

Average Trips From 8:00 to 9:00 AM During Peak Months				
MONTH	Current Traffic	Anticipated Traffic	Anticipated Increase in Trips	Anticipated Percentage Increase
January	879	897	18	2.0%
February	870	888	18	2.0%
March	887	905	18	2.0%
April	912	930	18	2.0%

Average Trips From 4:00 to 5:00 PM During Peak Months				
MONTH	Current Traffic	Anticipated Traffic	Anticipated Increase in Trips	Anticipated Percentage Increase
January	965	971	6	0.6%
February	956	961	5	0.5%
March	974	979	5	0.5%
April	1001	1005	4	0.4%

The anticipated increase in traffic at Donora Boulevard during busy hours in the busiest months averages ranges from 0.4% to 2.0% of total traffic. These figures are much lower than the 14.7% increase in total trips to and from the CPD site for the following reasons:

- Only 30% of the trips are assumed to travel toward Donora Boulevard.
- During the critical PM peak hour, the existing development is creating 35 trips at this location (30% of 116 total trips = 35 trips)
- The proposed development would be creating 40 trips at this location (30% of 133 total trips = 40 trips).
- The difference, 5 trips, is about 0.5% of the total traffic at that point on Estero Boulevard during the critical PM peak hour.

A similar analysis is presented in the TIS for a combination of all traffic flowing on all streets near Times Square (TIS Exhibit 11). The resulting percentages were similar, averaging a 1.5% increase from 8–9 AM and a 0.4% increase from 4–5 PM.

When evaluating any of these figures, note the inherent assumption that trips to and from existing or previous development on a site would be removed from the street network and replaced by the number of trips to and from the new development.

That methodology is generally reasonable, but trips to and from some previous uses are not removed from the street network after a site is cleared. That is true in this case, where for instance guests who would have returned to the Pierview Hotel may seek another hotel in Fort Myers Beach rather than staying at the more expensive new resort. A much larger actual impact will be from the drivers who had been using the 186 paid parking spaces now on this site. Those drivers accounted for 2/3 of the

trips generated from the existing development; the town should assume that most will be looking for another place to park, with resulting impacts on traffic flow and on the already limited supply of paid parking spaces.

TIS Analyses To Be Disregarded

The TIS states that this development will not have a significant impact on Estero Boulevard (see pages 7 and 8 of the TIS). That conclusion is based on Lee County's use of the term "significant impact" in its Administrative Code AC-13-17, which the county published in 1992 for its rezoning process. That code defined "significant impact" as "10% or more of the total peak hour intersection volume (the summation of all four approaches) and 10% of the LOS "C" service volumes for the links at build out."

With the congested and constrained road system at Fort Myers Beach, traffic less than 10% can still be "significant" by any reasonable definition of that term. Data presented in the revised TIS shows that traffic from this development would be 3.3% of the total traffic on Estero Boulevard in the year 2020.

Earlier drafts of the TIS contained two additional scenarios under which the proposed development would generate less traffic than the proposed CPD. Both scenarios had serious internal flaws and were deleted from the final TIS:

One scenario analyzed "*Pre-Demolition Development (Pre-Hurricane Charley) with Current Zoning.*" This scenario included traffic from existing development on the site but also added traffic from since-demolished beachfront hotels and from Seafarer's Mall as they existed before Hurricane Charley. Lee County purchased those sites to create Crescent Beach Family Park; the future of the Seafarer's Mall site is unknown.

The other scenario analyzed "*Build Per Code Development (Maximum Allowable Development with Current Zoning)*", which the TIS defined as the "maximum intensity of retail commercial use that is allowed under the current zoning." That intensity was assumed to be 175,000 square feet of retail space, which is about the size of the Target building at Kelly Road which fills a 13.4-acre site.

Other Traffic Factors To Be Considered

In addition to considering the relevant traffic analysis from the TIS and the cautionary note about drivers who would still be seeking a parking space, it must be acknowledged that the proposed CPD includes an impressive variety of features that would reduce existing impediments to traffic flow and would minimize traffic impacts from this site if it is redeveloped as proposed, including:

- All existing access points to the resort on Estero Boulevard would be closed, which will reduce delays caused by turning vehicles. (The proposed public parking lot next to the Beacon Motel would retain its access point.)
- Significant traffic to the resort would be in the morning as employees arrive for work. The street network is rarely congested before 10:00 AM, so those early trips should be easily absorbed.

- Traffic leaving the resort from the Fifth Street exit would be able to turn right onto the Sky Bridge and never use any part of Estero Boulevard.
- An extensive network of pedestrian routes would be provided – some on the second story that are primarily for resort guests, and many others on a greatly improved sidewalk network around the resort.
- Extensive on-site amenities would be provided for resort guests, reducing the need for guests to use their vehicles during their stay.
- On-site parking would be in an all-valet lot; benefits of that approach are discussed in Section V.A above.
- Employees would be compensated for using the Lee Tran park-and-ride facility instead of driving to the resort; and employee parking could be moved off-site during heaviest parking demand. (The TIS assumes that all employees will drive to and from the resort each day.)

Although not directly relevant at this time, if a roundabout were constructed at the foot of the Sky Bridge, traffic entering the resort from the mainland could use Fifth Street instead of Estero Boulevard to reach the main entrance on Crescent Street.

It is worth noting that the town's prior analysis of a roundabout at the foot of the bridge concluded that its full benefits would require a second roundabout at Crescent Street and Estero Boulevard. It has not been determined if a second roundabout could be placed there within the existing right-of-way; or if more right-of-way were needed, whether the buildings proposed in this CPD would interfere.

The intersection of Crescent Street and Estero Boulevard will be continuously stressed by the proposed CPD if a roundabout is never constructed at the foot of the bridge. All traffic entering the resort from the Sky Bridge will be turning left from Estero Boulevard onto Crescent Street, which can slow traffic coming onto the island. The TIS includes this comment:

The left-turn movements at this intersection are expected to experience delay under existing and future conditions. However, gaps within the traffic stream along Estero Boulevard are often created due to the slow-moving vehicles (and driver courtesy) that would allow left-turning vehicles to either enter or exit Crescent Street from Estero Boulevard without excessive delay.

30% of the traffic **leaving** the resort is expected to use Crescent Street to turn left on Estero Boulevard, which is also a difficult maneuver. Roundabouts are often considered in situations such as this where left turns are difficult but unavoidable, especially when those turns interfere with the flow of other vehicles.

Conditions 12 should document Town Council decisions on transportation issues. The following condition is proposed by staff:

12 *The following transportation and access features are shown on the Master Concept Plan are an integral part of this approval:*

- *All existing vehicular access points on Estero Boulevard shall be closed except the access to the public parking lot on Parcel 2C.*

- *The only access point on Crescent Street will be an entrance-only driveway near Fifth Street, which will be the main entrance for resort guests.*
- *Access points on Fifth Street are limited to the main exit for resort guests and a separate entrance and exit for service vehicles on Parcel 2, plus a driveway to the valet parking and service area on Parcel 3.*

I. Property Development Regulations

The LDC requires that property development regulations for hotels in a CPD zoning district be the same as for the CR (Commercial Resort) zoning district, unless the CPD zoning approval specifies otherwise (LDC 34-953). The applicant has requested to base its property development regulations on the DOWNTOWN zoning district instead of CR, which is a good choice because the DOWNTOWN zoning district was designed expressly for use in the “Pedestrian Commercial” area on the Future Land Use Map where the subject property is located.

The LDC provides property development regulations for each zoning district that control building placement, size, design, and many other factors.

- The CR zoning district is best suited for a freestanding hotel or motel on a single lot where most guests use their car to move around during their stay. The CR property development regulations are mostly dimensional: minimum setbacks and lot sizes, and maximum building heights, building coverage, and floor area ratios. The inherent assumption is that buildings should be centered on their lots to minimize impacts on adjoining property.
- In contrast, the DOWNTOWN zoning district anticipates a more compact and intense mix of uses that can be navigated on foot. The property development regulations that accomplish those goals are considerably more complex and they vary considerably across the DOWNTOWN district, sometimes block by block. The inherent assumption is that all buildings should work together to create a highly walkable neighborhood.

The applicant has provided three types of proposed property development regulations for this CPD. One is on Sheet X-110 of the Master Concept Plan; that sheet is titled “Property Development Regulations” but includes only maximum building heights and proposed view-corridor percentages. That sheet should be retitled as “Building Heights and View Corridors” to avoid future confusion.

In November 2017 the applicant submitted a more detailed chart that addresses seven property development regulations, including minimum lot size/width/depth, build-to and setback lines, and building heights. This chart was accompanied by a comparison between those seven regulations in the CR and DOWNTOWN zoning districts, which demonstrated that neither district would allow all buildings as proposed, but that the DOWNTOWN district was a closer fit.

The applicant also submitted proposed special conditions for this CPD that included a list of “site development regulations,” including build-to lines, building frontage percentages, maximum building heights, and minimum lot dimensions. Like the other submissions, this list of regulations omits important DOWNTOWN property development regulations, including the commercial design standards and the outdoor display regulations that apply to all other landowners in the DOWNTOWN zoning district. If a special condition on this CPD declared any of the applicant’s lists to become this resort’s property development regulations, the legal status of all other DOWNTOWN regulations would be unclear at best.

In place of any of the applicant's proposals, staff is recommending the property development regulations that provided by staff in Exhibit A of this staff report. Exhibit A follows the exact format of the DOWNTOWN zoning district and addresses each property development regulation in the current LDC, either maintaining regulations as they currently exist or adjusting them when they are being modified through this CPD approval. (Numerous DOWNTOWN regulations that apply only to properties outside this CPD have been excluded from Exhibit A due to their irrelevance in this context.)

Condition 5 should document the Town Council's decision on property development regulations. The following condition is proposed by staff:

- 5 The approved property development regulations for this CPD are presented in Exhibit A, which will be attached to the CPD approval. Exhibit A will be substituted during the permitting process for the property development regulations that the LDC provides for the DOWNTOWN zoning district. The applicant will rename Sheet X-110 of the Master Concept Plan from "property development regulations" to "building heights and view corridors" to avoid confusion.*

(Section VI near the end of this report contains all proposed special conditions.)

I. Density Transfer

If Deviation #1 is approved, the extra hotel rooms would be concentrated on the bay side of Estero Boulevard rather than spread across the larger site. Much of the beachfront would become a beach club, which would provide wide view corridors for the public.

This arrangement is similar to a density transfer, which has been encouraged by the town under similar circumstances (for instance in the town's 2007 Evaluation/Appraisal Report).

Density transfers must comply with Policy 4-C-8 of the Comprehensive Plan; these requirements are mirrored in LDC 34-632(6):

POLICY 4-C-8 DENSITY TRANSFERS: The Town Council may, at its discretion, permit the transfer of residential and hotel/motel development rights from one parcel to another if the following conditions are met:

- i. the transfer is clearly in the public interest, as determined by the Town Council;*
- ii. the parcels affected by the transfer are in close proximity to each other;*
- iii. the density of residential or hotel/motel units being transferred is based upon allowable density levels in the category from which the density is being transferred;*
- iv. the transfer is approved through the planned development rezoning process; and*
- v. binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.*

The fifth item requires that “binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.” That requirement was imposed after subsequent owners of the Bay Beach golf course claimed rights to use density that had previously been transferred by the original developer to tracts surrounding the golf course.

Limiting the hotel rooms allowed by Deviation #1 to the bay-side parcels is not a classic density transfer but the concept is very similar. If this limitation is not made perpetual, as it would be through a formal density transfer, the Town could find itself in a situation at some future date like it encountered with the Bay Beach golf course.

To ensure the concentration concept proposed in this CPD is not forgotten or ignored in the future, staff suggests that the density transfer requirements of the Comprehensive Plan be followed here. The form of the “binding permanent restrictions” isn't specified by the Comprehensive Plan; staff suggests that a perpetual conservation easement be granted to the town on the beach-side properties being rezoned, acknowledging that all allowable density and intensity on the beach side would be consumed by the CPD plan and that no further development rights remain on Parcel 2. This can be required through a special condition placed on the CPD.

Condition 13 should document the Town Council's decision on this matter. The following condition is proposed by staff:

- 13** *Prior to the town issuing any development orders for demolition, site work, or new buildings on Parcel 2 (except on Parcel 2C), the landowner must execute and record a restrictive covenant in favor of and enforceable by the Town that acknowledges that this CPD approval has consumed all allowable density and intensity on this parcel and that no additional development may occur beyond that which is approved by this CPD. Within 60 days of completion of construction on Parcel 2 (but not later than 36 months after commencing construction), the landowner must convey to the Town a perpetual conservation easement in a form acceptable to the Town Attorney, which after acceptance will be recorded in the Public Records of Lee County, over those portions of Parcel 2 (excluding Parcel 2C) on which structures are not constructed or proposed to be constructed under the Master Concept Plan adopted as part of this CPD. The intent of this condition is to limit in perpetuity the density and intensity of Parcel 2 to that which is approved by this CPD and to maintain all areas on which buildings are not constructed in a similar manner as shown on the Master Concept Plan, allowing an outdoor recreation area but specifically excluding future parking facilities, buildings, and similar structures.*

(Section VI near the end of this report contains all proposed special conditions.)

K. Schedule of Uses

The applicant proposes to identify allowable uses separately for the bay-side properties (Parcels 1 and 3) and the gulf-side properties (Parcel 2).

The applicant’s proposed schedule of uses is shown on Sheet X-109 of the Master Concept Plan, using the same terminology as in the Land Development Code. These uses do not exceed those that would be allowed in the “Downtown” zoning district. However, they do not address the special restrictions on Parcel 2B as discussed in Section V.F of this report, or uses on the adjoining sandy beach as discussed in Section V.M.

The applicant’s proposed schedule of uses is reproduced here:

BAY SIDE	GULF SIDE
<p><u>LODGING</u></p> <p>Hotel/Motel</p> <p>Uses Accessory to Hotel:</p> <p>ATM</p> <p>Administrative Offices</p> <p>Bar</p> <p>Commercial Accessory Uses</p> <p>Essential Services</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets X-506-COP.01 & X-507-COP.02</p> <p>Personal Services</p> <p>Restaurant</p> <p>Retail Store, Small</p> <p>Subordinate Commercial Uses</p> <p>Temporary Uses</p>	<p><u>LODGING</u></p> <p>Hotel/Motel</p> <p><u>RETAIL</u></p> <p>Recreation Facilities, Commercial Restaurant</p> <p>Accessory Uses:</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets X-506-COP.01 & X-507-COP.02</p>

Uses on Parcel 2B, which is in the “Recreation” category but above the seawall, should be spelled out on the approved schedule of uses, mirroring the town’s rules for the “Environmentally Critical” zoning district.

The sandy beach below the seawall has been deleted from this CPD proposal at the request of staff. However, some uses on the sandy beach are tied to the adjoining upland property, such as rental of beach furniture, personal watercraft, and parasailing as discussed in Section V.M. To address this overlap, minor adjustments should be made to this schedule of uses.

Condition 6 should document the Town Council’s decision on allowable uses in this CPD, with added attention to Parcel 2B and to activities on the sandy beach. The following condition is proposed by staff:

- 6 The approved schedule of uses for this CPD is as follows: (The applicant will substitute this schedule for their proposed schedule of uses on Sheet X-109 of the Master Concept Plan, and will clearly identify Parcels 1, 2, 2B, 2C, and 3 on that sheet.)

BAY SIDE (Parcels 1 & 3)	GULF SIDE (Parcel 2)
<p><u>LODGING</u></p> <p>Hotel</p> <p>Uses Accessory to Hotel:</p> <p>ATM</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets X-506-COP.01 & X-507-COP.02</p> <p>Parking Lot, Accessory</p> <p>Subordinate Commercial Uses</p> <p>Temporary Uses, if permitted by Chapter 34</p>	<p><u>LODGING</u></p> <p>Hotel</p> <p><u>RETAIL</u></p> <p>Permanent Shared Parking Lot (on Parcel 2C only)</p> <p>Recreation Facilities, Commercial</p> <p>Restaurant</p> <p>Commercial Accessory Uses:</p> <p>ATM</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets X-506-COP.01 & X-507-COP.02</p> <p>Subordinate Commercial Uses</p> <p>Water-oriented Rentals</p> <p><u>MARINE</u> (if permitted by Chapter 27)</p> <p>Parasailing Operations Office</p> <p>Personal Watercraft Operations Office</p> <p><u>PARCEL 2B:</u> Uses on Parcel 2B shall be limited in the same manner as would be provided by the “Environmentally Critical” zoning district. The LDC contains other regulations that will apply here, such as restrictions on minor structures in 6-366, on beach furniture in 14-5, on lighting in 14-76 and 14-79, on personal watercraft and parasailing in chapter 27, on signs in 30-93, on zoning in 34-652, on alcoholic beverages in 34-1264, on dunes in 34-1575, and on equipment rentals in 34-3151.</p>

(Section VI near the end of this report contains all proposed special conditions.)

L. Parking, Circulation, and Loading

Parking at Fort Myers Beach is provided in at least three ways (see LDC 34-2011):

- **On-street parking:** individual spaces that are usually metered and managed by the town or county.
- **Shared parking lots:** available to the public for a fee that fluctuates seasonally, in parking lots that are privately owned and managed.
- **Single-purpose parking lots:** serving an individual building or group of buildings, usually on the same site and always privately owned and managed.

The LDC requires most development to provide a single-purpose parking lot on the same site. The size of that lot is determined by minimum parking standards in LDC 34-2018(d), adjusted by a 67% reduction factor if in the DOWNTOWN zoning district to reflect the “park-once” concept described in LDC 34-676(a).

The applicant intends to provide the number of parking spaces required by the LDC in two under-building parking lots. A small lot would be provided on the ground story of the three-story building that will replace the existing parking lot on the north side of Fifth Street just west of the Lighthouse Resort. The main parking lot would be a valet-only lot located under the main resort building and under its elevated courtyard.

Here are the LDC requirements if located outside the DOWNTOWN zoning district:

DEVELOPMENT TYPE	QUANTITY	LDC RATE*	SPACES
Hotel rooms <450 S.F	278 rooms	1.2 per room	334
Hotel rooms >450 S.F.	12 rooms	1.5 per room	18
Beach restaurant	16,059 S.F.	8 per 1,000 S.F.	129
Outdoor seating in beach restaurant	1,364 S.F.	8 per 1,000 S.F.	7
Bar in beach restaurant	1,514 S.F.	5 per 1,000 S.F.	8
Beach club	225 non-guests	1 per 4 seats	57
*LDC 34-2020(d) TOTAL:			553

When the 67% DOWNTOWN reduction factor is applied to 553 spaces, the final LDC requirement becomes 371 parking spaces. The final number of spaces required may be slightly higher or lower, depending on the exact size of the beach restaurant.

Vehicles in the main parking lot would be “stacked” in two different ways. In some areas, vehicles would be stacked horizontally (one behind the other). This arrangement is permitted for valet lots (see 34-2015(5)).

In other areas, vehicles would be stacked vertically (one over the other) using mechanical lifts. Each lift would raise one car high enough to park another below it. Vertical stacking wasn’t anticipated by the LDC, but there is no prohibition against it.

These two stacking methods would greatly reduce the amount of space needed to park a large number of cars; they are practical in a resort setting where most visitors need won’t need their cars on a daily basis.

A preliminary parking plan shows 366 parking spaces on Parcels 1 and 3. This is 5 spaces less than would be required for the amount of development listed above.

PARCEL NUMBER	STACKED HORIZONTALLY	STACKED VERTICALLY	SINGLE SPACES	ALL SPACES
Parcel 1	112	218	13	343
Parcel 3	0	22	1	23
TOTALS:	112	240	14	366

This parking plan is shown on Sheet X-A100-A of the Master Concept Plan. Some adjustments may be needed to the parking plan when the final location of building columns has been determined. Additional parking spaces could be provided by converting some horizontally stacked spaces into vertical stacking and using the saved area for additional vertically stacked spaces.

Guests would enter the main parking lot from the entrance on Crescent Street near Fifth Street. After retrieving their cars, guests would exit the lot on Fifth Street just around the corner from the entrance. If leaving the island, they would proceed directly to the Sky Bridge; otherwise they would travel north or south on Crescent Street toward their destination.

Service vehicles that supply and maintain the resort, including trucks that would remove and return trash compactors, would follow a different path into the main resort building. These vehicles would follow Crescent Street to Fifth Street and then use a service-only entrance from Fifth Street. This entrance would lead to a service vehicle loading area on the ground story that would be screened from public view in the same manner as the parking areas. These vehicles would use a special exit near the Ocean Jewels building, which would allow them to move directly onto the Sky Bridge.

A special condition placed on the CPD should be clear that the required number of parking spaces must be provided to obtain development orders to proceed with the development. If the town's final count remains at 371 spaces (5 more than the 366 currently shown), the parking plan on Sheet X-A100-A will have to be modified to show how the additional parking spaces can be provided within the area now identified for parking.

Condition 14 should document the Town Council's decision on this matter. The following condition is proposed by staff:

- 14** *Development order plans must identify the number and location of all parking spaces required by the LDC within the area now identified for parking. The public parking spaces to be constructed on Parcel 2C cannot be used to meet LDC requirements for resort parking.*

(Section VI near the end of this report contains all proposed special conditions.)

M. Rental of Beach Furniture; Personal Watercraft; Parasailing

The rental of beach furniture and equipment is regulated by the LDC irrespective of a property's zoning district (see 14-5).

The applicant has indicated that parasailing and personal watercraft rentals already exist on this site and would like these uses to continue in the same manner after approval of the CPD. The LDC allows existing licenses for those activities to be transferred under certain conditions (see Article IV of Chapter 27). The status of those licenses might affect the future operation of these businesses including signage, hours of operation, structures on the beach, storage locations, etc.

Complicating both issues, the beach is already extremely narrow at this location and is narrowed further by the existing concrete wall that extends from 10 to 55 feet onto the sandy beach. Continued erosion is likely; the nearly adjacent beach at Crescent Beach Family Park recently had to undergo an emergency sand replenishment to repair damage from Hurricane Irma.

Beach Furniture and Equipment

The proposed Master Concept Plan shows an arrangement for beach furniture on sheet X-508. When in use, most equipment would be placed on the sand between the concrete wall and the water; this would include beach umbrellas, lounge chairs, etc.

When not in use, all equipment would be stored on the sand at the foot of the existing wall. Between 9:00 PM and 7:00 AM, the LDC requires beach furniture and equipment to be moved off narrow beaches to a location landward of any seawall; it authorizes the Town Manager to designate a different storage location in cases of "undue hardship."

If the Town Council wants to retain direct authority over equipment storage at this location, that decision could be reflected in a special condition to the CPD approval.

Personal Watercraft

The same sheet in the proposed Master Concept Plan (X-508) shows an arrangement for personal watercraft rentals. When in use, personal watercraft would be moored in the water; a desk/table for the operator would be placed on the sandy beach.

The LDC requires an operations office at a land-based site that has direct access to the beach; all business transactions must take place at the operations office. The desk/table on the beach for the operator as shown on sheet X-508 does not comply with this requirement, which is in LDC 27-49(1). There is no reason that business transactions could not be conducted landward of the seawall from a location along the new beach access path.

When not in use, personal watercraft and the desk/table would be moved to the foot of the existing retaining wall along with the beach furniture and equipment. The same rules apply to off-hours storage of personal watercraft as to beach furniture and equipment, also allowing the Town Manager to designate different locations in cases of "undue hardship." The weight of personal watercraft is more likely to cause a storage hardship than for beach furniture.

If the Town Council wants to retain direct authority over personal watercraft at this location, that decision could be reflected in a special condition to the CPD approval.

Parasailing

Sheet X-508 of the proposed Master Concept Plan does not mention parasailing, but presumably that operation would share the desk/table on the beach that would be used for personal watercraft rentals, which would not comply with LDC 27-50.

The LDC requires that access from the beach to the boat must use a marked buoy lane for the first 500 feet from water's edge. This lane can be from 15 to 75 feet wide.

Condition 15 should document the Town Council's decisions on the rental of beach furniture, personal watercraft, and parasailing. The following condition is proposed by staff:

- 15** *Conceptual locations of storage and operations for the rental of beach furniture, personal watercraft, and parasailing had been proposed on Sheet X-508 of the Master Concept Plan. Sheet X-508 is not part of this approval; decisions on the rental of beach furniture, personal watercraft, and parasailing will be made in accordance with town codes.*

(Section VI near the end of this report contains all proposed special conditions.)

N. Signs

CPD applications are not required by the LDC to identify the location and size of signs, but as is frequent practice, sheet X-505 of the proposed Master Concept Plan does so.

That sheet identifies six types of “exempt” signs (which the LDC allows without requiring individual sign permits) and three types of “permitted signs” (which require individual permits): wall signs, directional signs, and monument signs.

Those signs would be placed at 13 locations on Parcel 1, 41 locations on Parcel 2, and 4 locations on Parcel 3. There is no indication on that sheet that this sign proposal would exceed the LDC’s allowable dimensions or number of signs.

There seems little advantage to the applicant to commit at this time to such a specific and complex sign proposal; and equally little to the town to accept it without a detailed review of each proposed sign. In addition, the town’s sign code in Chapter 30 of the LDC needs to be updated to comply with the 2015 Supreme Court decision in the Reed v. Gilbert case.

Condition 16 should document the Town Council’s decision regarding on-site signs. The following condition is proposed by staff:

- 16** *An early concept for the location and type of signs throughout the CPD was submitted as Sheet X-505 of the Master Concept Plan; that sheet is not included in the approved Master Concept Plan. Individual signs may be placed on this site during and after development as may be allowed by the LDC regulations that are in effect at that time.*

(Section VI near the end of this report contains all proposed special conditions.)

O. Consumption on Premises

CPD applications are not required by the LDC to identify the location where alcohol is intended to be consumed on the premises, but as is frequent practice, sheets X-506 and X-507 of the proposed Master Concept Plan do identify those locations, as follows:

- On Parcel 1, alcohol would be served in a lobby bar in the main resort building, at two outdoor locations on the elevated courtyard, and in the rooftop event space.
- On Parcel 2, alcohol would be served in the beach-side restaurant and outdoors at the pool bar in the beach club. Alcohol would not be served on the sandy beach, which would retain its EC zoning.
- Alcohol would be served in the meeting area on the third story of Parcel 3.

The LDC limits on-premises consumption within 500 feet of parks. Crescent Beach Family Park is within 500 feet of Parcels 1 and 3; however the LDC exempts the following from the 500-foot rule:

- Full-service restaurants that comply with 34-1264(b)(2)a.
- Hotels/motels with at least 100 rooms that comply with 34-1264(b)(2)b.

Condition 17 should document any Town Council decision regarding consumption on premises. The following condition is proposed by staff:

- 17** *On-premises consumption of alcoholic beverages is approved at the locations shown on Sheets X-506-COP.01 and X-507-COP.02 of the Master Concept Plan, subject to these limitations:*
- *Alcoholic beverages in the outdoor rooftop event space are limited to special events scheduled through the resort. Permanent structures are not permitted in the rooftop event space.*
 - *Outdoor seating is permitted on the second story outdoor deck provided it remains in substantial compliance with the COP diagrams on Sheets X-506-COP.01 and X-507-COP.02.*
 - *Alcoholic beverages are not approved on the sandy beach, which retained its EC zoning.*
 - *Alcoholic beverages may be served at locations other than those shown on the Master Concept Plan only if approved by special exception or by administrative approval, as provided in 34-1264 of the LDC.*

(Section VI near the end of this report contains all proposed special conditions.)

P. Stormwater Management

CPD applications must identify the general location of stormwater management areas. This application indicates that all stormwater management will be placed underground, below the parking lot under the main resort building. Detaining stormwater underground is expensive; it is warranted for a developer where land values are very high, and is beneficial to the public in pedestrian-oriented areas where proximity between activities is an important value which is hindered by large surface parking lots and stormwater management areas.

The South Florida Water Management District (SFWMD) must approve the proposed stormwater management system. That agency has the expertise to evaluate specific proposals of this type; smaller local governments typically defer to SFWMD on such matters.

The applicant has indicated a willingness to create additional stormwater capacity to resolve existing flooding conditions in the immediate area; that offer has not been evaluated by the town beyond one existing drainage inlet on Estero Boulevard, as addressed in Condition 4.

Condition 18 should identify the required timing of SFWMD approval and the potential for additional stormwater capacity. The following condition is proposed by staff:

- 18** *Prior to applying for a permit for the stormwater management system from the SFWMD, the landowner will consult with the town's stormwater consultant to assess the feasibility of routing stormwater from Crescent Street and Fifth Street through the project's stormwater system. In order to be considered feasible, any routing of stormwater from Crescent and Fifth Streets must accommodate the project's design as approved by this CPD. The landowner will provide copies of the SFWMD permit application, and all subsequent responses to requests for additional information, to the Town's stormwater consultant for review concurrent with filing with the SFWMD.*

(Section VI near the end of this report contains all proposed special conditions.)

Q. Concurrency

The town's "concurrency" rules are mandated by the state to ensure that new development doesn't outstrip essential public facilities. A proposed development is said to "meet concurrency" if adequate public facilities will be available to serve it.

The Comprehensive Plan defines minimum "levels of service" for seven public facilities and services. The LDC's concurrency management system describes how those levels of service are applied during the development review process.

Concurrency is not evaluated by the town at the rezoning stage unless the rezoning would authorize a specific plan for development (see LDC 2-46(b)). Given the very specific plan of development proposed in this CPD, concurrency is being evaluated at this stage so that any potential problems will be apparent prior to a decision.

The following analyses indicate that all levels of service will be maintained if the proposed CPD is approved and constructed. Specific concurrency requirements for six public facilities and services are provided in the LDC, as described below.

1. Potable Water.

Adopted minimum level of service: Available supply, treatment, and delivery capacity of 260 gallons per day per equivalent residential connection (ERC), and delivery of potable water at a minimum pressure of 20 pounds per square inch (psi) at the meter anywhere in the system.

How service level is to be measured: Available capacity is based on the difference between the total permitted plant design capacity of the [former] Florida Cities Water Company's water system south of the Caloosahatchee and the peak daily flow through this system during the previous calendar year. This difference, measured in gallons per day, is available to serve new development in the service area (LDC 2-48(a)(1)).

Actual level of service: Potable water is provided by Lee County Utilities, a branch of Lee County government. Lee County's annual concurrency report for 2017 states that system's current total capacity is at least 310 gallons per day, exceeding the town's minimum standard of 260. The only pressure problems in the distribution systems took place immediately after Hurricane Charley in August 2004.

The total capacity is a regional figure that includes the output of five separate water plants operated by Lee County Utilities. Water produced by each plant now enters an interconnected distribution system. The LDC's measurement method, adopted over ten years ago, refers to the "Florida Cities Water Company water system south of the Caloosahatchee." The Florida Cities water plant is now owned by Lee County and called the Green Meadows plant; its treated water can now be distributed anywhere in the county's potable water service area. The Green Meadows plant currently has the capacity to produce 9.000 million gallons per day; its actual production during the busiest month of 2016 was 6.060 million gallons per day. The difference is 2.940 million gallons per day, which is the capacity the plant has available to serve new development.

2. Sanitary Sewer.

Adopted minimum level of service: Available capacity to collect, treat, and dispose of wastewater of 175 gallons per day per equivalent residential connection (ERC).

How service level is to be measured: Available capacity is based on the difference between the total permitted plant design capacity of the Lee County Utilities' Fort Myers Beach/Iona-McGregor service area and the peak month's flow during the previous calendar year (divided by the number of days in that month). This difference, measured in gallons per day, is available to serve new development in the service area (LDC § 2-48(a)(2)).

Actual level of service: Sanitary sewer service is provided by Lee County Utilities. Lee County's annual concurrency report for 2017 states that system's current capacity is at least 257 gallons per day, exceeding the town's minimum standard of 175.

Lee County Utilities now operates a regional sewer system. The total capacity of 257 gallons per day includes the capacity of all treatment plants in the regional system.

The treatment plant serving Fort Myers Beach was expanded in 1989 to its current capacity of 6.000 million gallons per day. During its busiest month in 2016, this plant treated 5.040 million gallons per day. The difference is 0.960 million gallons per day, which is the capacity the plant has available to serve new development in its collection area.

The proposed CPD would have 290 guest rooms, replacing the 70 guest rooms on the site today. The 220 additional rooms may generate 200 gallons per day each, or about 0.044 million gallons per day of additional sewage. The proposed restaurant may generate 60 gallons per day per seat, which could amount to another 0.026 million gallons per day. Together, these 0.070 million gallons would consume 7.3% of the remaining capacity of the treatment plant serving Fort Myers Beach.

3. Solid Waste.

Adopted minimum level of service: Ability to collect and manage 7 pounds of municipal solid waste per person per day.

How service level is to be measured: Available capacity is based on the difference between the current capacity of Lee County's waste-to-energy plant and current peak usage of that facility. This difference, measured in tons per day, is available to serve new development county-wide (LDC § 2-48(a)(3)).

Actual level of service: Solid waste treatment and disposal is provided by Lee County. Lee County's annual concurrency report for 2017 states that system's current treatment and disposal capacity is 8.6 pounds per day for the entire population of Lee and Hendry Counties. This capacity exceeds the town's minimum standard of 7.0 pounds per day. The difference is 1.6

pounds per day, which is the capacity available to serve new development county-wide. This is ample capacity to service additional development throughout the county.

Lee County does not pick up or remove solid waste from businesses; businesses contract directly with a county-franchised hauler for pick-up and removal.

4. **Stormwater Management.**

Adopted minimum level of service: Until completion of the evaluation under Stormwater Management Element Policy 9-F-1 to 6, interim levels of service are hereby established for protection from flooding to be provided by stormwater and roadway facilities:

- i. During a 3-day rainfall accumulation of 13.7 inches or less (3-day, 100-year storm as defined by SFWMD), one lane of evacuation routes should remain passable (defined as less than 6 inches of standing water over the crown). Emergency shelters and essential services should not be flooded.
- ii. During a 3-day rainfall accumulation of 11.7 inches or less (3-day, 25-year storm as defined by SFWMD), all lanes of evacuation routes should remain passable. Emergency shelters and essential services should not be flooded.
- iii. During coastal flooding of up to 4.0 feet above mean sea level, all lanes of evacuation routes should remain passable. Emergency shelters should not be flooded.

How service level is to be measured: Available capacity is based on the reported depth that evacuation routes, emergency shelters, and essential services were flooded during or after storms of varying intensities. Depths of flooding shall be as reported by emergency services personnel, town, or county officials, or other reliable sources. Adequacy of a surface water management system shall be conclusively demonstrated upon the issuance of a SFWMD surface water construction permit, or if a project is exempted from SFWMD permits, equivalent approval under ch. 10 of this code. (LDC § 2-48(a)(4) and § 2-49(b)(2))

Actual level of service: Condition 18 on this CPD requires a SFWMD permit for the stormwater management system prior to obtaining development orders. With that requirement, the stormwater management concurrency requirement in LDC § 2-49(b)(2) is met.

5. **Recreation.**

Adopted minimum level of service: For each 7,500 permanent residents: 1 centrally located recreation complex that includes 2 ballfields, 2 tennis courts, outdoor basketball courts, play equipment, an indoor gymnasium, and community meeting spaces. Programming shall address all age groups and encompass active recreation, physical improvement, and social, educational, and cultural activities.

How service level is to be measured: Available capacity is based on the existence of specified park facilities, including a recreation complex, ballfields, tennis courts, basketball courts, play equipment, gymnasium, community meeting spaces, and programming of activities (LDC § 2-48(a)(5)).

Actual level of service: The town's 2017 permanent population is 6,328, well below the 7,500 figure in the adopted level of service. All of the required facilities and services for a population of 7,500 are being provided at this time.

6. Transportation.

Adopted minimum level of service: The peak capacity of Estero Boulevard's congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 AM to 5:00 PM during each month do not exceed that level for more than four calendar months in any continuous twelve-month period. Measurements from the permanent count station at Donora Boulevard shall be used for this standard.

How service level is to be measured: Available capacity is based on actual traffic counts from Lee County's permanent count station on Estero Boulevard near Donora Boulevard. The total counts in both directions for the seven hours between 10:00 AM and 5:00 PM shall be summed for all days in each month. These sums shall be divided by seven and by the number of days in that month, yielding an average traffic flow (measured in vehicles per hour) during the peak period for that month. The amount that each month's average is below the level-of-service standard of 1,300 vehicles per hour is the amount of capacity available to serve additional demand (LDC § 2-48(a)(6)).

Actual level of service: The applicant's Traffic Impact Statement was based on summary data from Lee County's permanent count station on Estero Boulevard near Donora Boulevard. The TIS analysis of that data can be used to anticipate concurrency problems. The busiest hour of the busiest month (10:00 AM to 11 AM in April) would see 1,059 vehicles on Estero Boulevard at the permanent count station when traffic from the proposed CPD is added. That estimate is well below the 1,300 cap in the adopted level of service.

A seventh level of service, for public schools, was added into the Comprehensive Plan in 2009; it is not reflected yet in the LDC. The resort proposed in this CPD wouldn't contribute any students to the public school system (children of employees are counted where they live). The level of service for public schools does not apply to any type of commercial or industrial development; see Policy 16-C-2.

A final concurrency determination for this CPD would be made when development orders and building permits are ready to be issued. The LDC allows the Town Council to consider the probable concurrency impacts of a proposed development if the proposal contains a specific plan of development, as is the case with this CPD request.

The analysis provided here indicates that adequate levels of service will be available for the proposed CPD at its development order and building permit stages.

The LDC does not have a concurrency requirement for fire or emergency medical services. The Fort Myers Beach Fire District had advised the town that this development would increase the district's population by at least 1% and the district is reserving the right to identify impacts on its services and facilities at a later date, exercising its authority under the state fire code. The district also advised the town that it is reserving the right to order a fire and emergency concurrency evaluation at a later date; if the district has such authority, it is unrelated to the town because there is no such concurrency requirement in the LDC.

VI. DRAFT SPECIAL CONDITIONS OF APPROVAL

1 *Three alternatives are provided for consideration for Condition 1:*

- 1-A** Deviation #1 is approved to allow up to 290 hotel rooms by increasing the equivalency factor for rooms that are smaller than 450 square feet from 3.0 to 12.0.
- 1-B** Deviation #1 is partially approved to allow up to ___ hotel rooms, by increasing the equivalency factor for rooms that are smaller than 450 square feet from 3.0 to ___.
- 1-C** Deviation #1 is denied; the number of hotel rooms is limited by the strict application of the equivalency factors in 34-1803(a)(1) of the LDC.

2 *Two alternatives are provided for consideration for Condition 2:*

- 2-A** Deviation #2 is approved to allow building heights as follows, with these heights measured in accordance with 34-631 of the LDC:
 - The main resort building on Parcel 1 may be up to 4 stories and 40 feet tall.
 - The larger building on Parcel 2 may be up to 4 stories. Approved building heights for all buildings on Parcel 2 are shown in feet on Sheet X-110-MCP.05 of the Master Concept Plan; those heights comply with current LDC limitations in feet.
 - The building on Parcel 3 may be up to 3 stories and 40 feet tall.
- 2-B** Deviation #2 is denied. Building heights are limited as follows, with these heights measured in accordance with 34-631 of the LDC:
 - The main resort building on Parcel 1 may not exceed 3 stories and 30 feet tall.
 - The larger building on Parcel 2 may not exceed 3 stories and 40 feet. Approved building heights for the other buildings on Parcel 2 are shown on Sheet X-110-MCP.05 of the Master Concept Plan; those heights comply with current LDC limitations.
 - The building on Parcel 3 is limited to 3 stories and 30 feet tall.

3 *Three alternatives are provided for consideration for Condition 3:*

3-A Deviation #3 is approved to allow a floor area ratio of 1.6 for the entire CPD, measured in accordance with 34-633 of the LDC.

3-B Deviation #3 is partially approved to allow floor area ratios as follows, measured in accordance with 34-633 of the LDC:

- The floor area ratio on Parcels 1 and 2 is limited to ___.
- The floor area ratio on Parcel 3 is limited to ___.

3-C Deviation #3 is denied. Floor area ratios are limited by the strict application of the ratios in the LDC, measured in accordance with 34-633 of the LDC:

- The floor area ratio on Parcels 1 and 2 is limited to 1.4.
- The floor area ratio on Parcel 3 is limited to 1.0.

4 Deviation #4 is approved to replace the Type D buffer required by 10-416(d)(2) of the LDC with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on Sheets X-502-RW.00 through X-504-RW.02 of the Master Concept Plan as revised through January 4, 2018, subject to the following requirements:

- Prior to obtaining any development orders on this site, the landowner will donate to the town a perpetual sidewalk easement on the south side of Fifth Street where the proposed sidewalk is shown on private land.
- The landowner will construct the sidewalks, curbs, and tree yards and will plant the lawn and street trees, as shown on the Master Concept Plan before certificates of occupancy are granted for adjoining buildings. These improvements must meet technical specifications of the Town of Fort Myers Beach along Fifth Street and Crescent Street and of Lee County along Estero Boulevard. The landowner will maintain the tree yards and street trees as long as the resort is in operation.
- The street trees shown along Estero Boulevard will be moved closer to the curb if Lee County accepts the new 1.5-foot lateral offset standard of the Florida Department of Transportation.
- The landowner will seek approval from Lee County to route stormwater from the existing drainage inlet on Estero Boulevard into the resort's stormwater system so that roots from street trees on this block cannot interfere with the underground exfiltration trench.
- No buffer vegetation may be planted in any public right-of-way or any sidewalk easement.

- The materials, technical specifications, and minimum opacity of the latticework around the ground story are subject to approval of the Town Manager or designee, as required by 34-992(c) of the LDC.
- If the climbing vegetation being planted on the latticework does not visually screen activities in the ground story, the Town Manager will require corrective actions, which could include different vegetation, different management techniques, supplemental screening behind the latticework, etc.

- 5 The approved property development regulations for this CPD are presented in Exhibit A, which will be attached to the CPD approval. Exhibit A will be substituted during the permitting process for the property development regulations that the LDC provides for the DOWNTOWN zoning district. The applicant will rename Sheet X-110 of the Master Concept Plan from “property development regulations” to “building heights and view corridors” to avoid confusion.
- 6 The approved schedule of uses for this CPD is as follows: (The applicant will substitute this schedule for their proposed schedule of uses on Sheet X-109 of the Master Concept Plan, and will clearly identify Parcels 1, 2, 2B, 2C, and 3 on that sheet.)

BAY SIDE (Parcels 1 & 3)	GULF SIDE (Parcel 2)
<p><u>LODGING</u></p> <p>Hotel</p> <p>Uses Accessory to Hotel:</p> <p>ATM</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets X-506-COP.01 & X-507-COP.02</p> <p>Parking Lot, Accessory</p> <p>Subordinate Commercial Uses</p> <p>Temporary Uses, if permitted by Chapter 34</p>	<p><u>LODGING</u></p> <p>Hotel</p> <p><u>RETAIL</u></p> <p>Permanent Shared Parking Lot (on Parcel 2C only)</p> <p>Recreation Facilities, Commercial</p> <p>Restaurant</p> <p>Commercial Accessory Uses:</p> <p>ATM</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets X-506-COP.01 & X-507-COP.02</p> <p>Subordinate Commercial Uses</p> <p>Water-oriented Rentals</p>

MARINE (if permitted by Chapter 27)
Parasailing Operations Office
Personal Watercraft Operations Office

PARCEL 2B: Uses on Parcel 2B shall be limited in the same manner as would be provided by the “Environmentally Critical” zoning district. The LDC contains other regulations that will apply here, such as restrictions on minor structures in 6-366, on beach furniture in 14-5, on lighting in 14-76 and 14-79, on personal watercraft and parasailing in chapter 27, on signs in 30-93, on zoning in 34-652, on alcoholic beverages in 34-1264, on dunes in 34-1575, and on equipment rentals in 34-3151.

- 7 This CPD approves structures up to the following square-footage limits on the 4.78 acres landward of the 1978 coastal construction control line:
[these numbers may be adjusted during the public hearing process]
- **Hotel**
[282,484 requested] SF, of which up to *[107,982 requested]* SF could be guest units and up to 102,318 SF could be ground-story parking.
[278 requested] guest units could be up to 450 SF each and *[12 requested]* guest units could be larger
[260 requested] guest units to be on bay-side Parcel 1 (above parking)
[30 requested] guest units to be on gulf-side Parcel 2 (above restaurant)
 - **Retail on Parcel 1**
[2,301 requested] SF in an existing building on Parcel 1 for uses that are ancillary to the resort
 - **Restaurant on Parcel 2**
[16,029 requested] SF for a restaurant, of which *[1,514 requested]* SF would be a bar; plus an additional *[1,364 requested]* SF for outdoor seating and an additional *[2,020 requested]* SF for indoor storage
 - **Beach Club on Parcel 2**
[3,825 requested] SF for an ancillary restaurant
[2,534 requested] SF in an existing building for ancillary restrooms and lockers
 - **Pedestrian Bridges between Parcels 1–2 & between Parcels 2–3**
[2,711 requested] SF for two publicly accessible pedestrian bridges

8 Redevelopment and future uses on the subject property must be consistent with the Master Concept Plan that was approved for this CPD. All prior Master Concept Plans, CPD zoning approvals, special conditions, and development agreements for the subject property are no longer valid. All development activities and future uses must comply with all the requirements of the Town of Fort Myers Beach Land Development Code at the time of Development Order approval, except as explicitly modified by this CPD approval. Lot lines shown on existing plats must be vacated prior to issuance of Development Orders. If changes to this approval are requested, they will be reviewed as requests to formally modify this CPD. This CPD's new Master Concept Plan consists of these 29 sheets:

- Title Sheet — Master Concept Plan & Exhibits
- X-101-FLU — Future Land Use and CPD Boundary
- X-102-EX — Existing Conditions Exhibit
- X-103-BNDY — Boundary Survey
- X-104-DA — Developable Area Exhibit
- X-105-MCP.00 — Master Concept Plan, First Floor
- X-106-MCP.01 — Master Concept Plan, Second Floor
- X-107-MCP.02 — Master Concept Plan, Third Floor
- X-108-MCP.03 — Master Concept Plan, Fourth Floor
- X-109-MCP.04 — Master Concept Plan, Deviations / Notes / Uses
- X-110-MCP.05 — Master Concept Plan, Building Heights / View Corridors
- X-111-FAR.00 — Floor Area Ratio, First Floor (Grade)
- X-112-FAR.01 — Floor Area Ratio, Second Floor
- X-113-FAR.02 — Floor Area Ratio, Third Floor
- X-114-FAR.03 — Floor Area Ratio, Fourth Floor & Roof
- X-A100-A — First Floor Plan (Grade), Resort
- X-A100-B — First Floor Plan (Grade), Beachside
- X-A115 — Roof Plan
- X-A201 — Exterior Elevations
- X-A202 — Exterior Elevations
- X-A203 — Exterior Elevations
- X-A204 — Exterior Elevations
- X-A301 — Building Sections
- X-501-PARK — Parking Locations and Calculations
- X-502-RW.00 — Right-of-Way and Sidewalk/Buffer Plan (Estero Blvd)
- X-503-RW.01 — Right-of-Way and Sidewalk/Buffer Plan (Crescent St)
- X-504-RW.02 — Right-of-Way and Sidewalk/Buffer Plan (Fifth St)
- X-506-COP.01 — Consumption on Premises Diagrams

- X-507-COP.02 — Consumption on Premises Diagrams & Pedestrian Circ.
[underlined sheets have been or are being modified to update sheets submitted in November 2017]

9 Two pedestrian bridges are shown on the Master Concept Plan. Conceptual approval of these bridges is subject to these requirements for their design, approval, and operation:

- The pedestrian bridges will be constructed simultaneously with the buildings they connect.
- A publicly accessible stairwell and elevator on Parcel 3 must connect the sidewalk on the north side of Fifth Street to the Fifth Street pedestrian bridge.
- The elevated courtyard on the second story of the main resort building on Parcel 1 must include a publicly accessible route between the two pedestrian bridges.
- Publicly accessible stairwells and elevators on both sides of Estero Boulevard must connect the sidewalks to each end of the Estero Boulevard pedestrian bridge. Bicycle racks for public use will be provided under the restaurant building on Parcel 2. The stairwell on Parcel 2 must provide access to publicly accessible restrooms in the restaurant building.
- Before constructing the bridge over Fifth Street, the landowner must enter into a formal agreement with the Town of Fort Myers Beach regarding design, maintenance, liability, operations, future changes, and other relevant other details.
- Before constructing the bridge over Estero Boulevard, the landowner must obtain approval from Lee County and must enter into a formal agreement with the Town of Fort Myers Beach regarding design, maintenance, liability, operations, future changes, and other relevant details.
- In order to guarantee the general public's permanent right to use both bridges and the adjoining stairways, the landowner must execute an instrument to guarantee this access in a form suitable to the Town Attorney.

10 Sheet X-105 of the Master Concept Plan identifies certain important features on Parcel 2 (the beach-side parcels) that will require separate critical actions by the town and by the landowner at a later date. This sheet is being included in the Master Concept Plan with these understandings:

- As shown on Sheet X-105, the landowner intends to request the vacation of a narrow right-of way at the end of Crescent Street, plus the first 185 feet of Canal Street south of Estero Boulevard which is part of

town-maintained Beach Access #36. Understanding that the town's Comprehensive Plan strictly limits vacations of rights-of-way in order to preserve future access to the water, the landowner has agreed to provide a net increase in public access by donating an expanded Parcel 2C to the town after constructing a new beach access plus a new public parking lot that contains at least 23 parking spaces and meets all LDC requirements including buffers and landscaping, or that contains a new public street on the same land, at the Town Council's option; and by constructing and donating a new perpetual pedestrian beach access just west of Crescent Street that meets ADA accessibility requirements.

- The landowner will execute instruments to complete both donations in a form suitable to the Town Attorney and will provide them to the Town Attorney, who will not record either instrument unless the Town Council formally vacates the two existing rights-of-way shown on Sheet X-105.
- The town will not issue development orders for demolition, site work, or new buildings within this CPD (except on Parcel 2C), unless the town agrees to vacate both rights-of-way.

11 The beach club on Parcel 2 must meet these additional requirements:

- To allow the reduced building frontage on the south side of Estero Boulevard (see LDC 34-675), development order plans must demonstrate two view corridors from Estero Boulevard to the beach that total at least 324 feet along Estero Boulevard.
- Any perimeter fence on the beach side of Estero Boulevard must be at least 20% transparent, must be placed within a landscaped planting area at least 5 feet wide, and may not exceed 3 feet in height. If the Florida Building Code requires a taller fence at this location, the fence height may be increased accordingly provided the increased height is at least 80% transparent.
- A detailed lighting plan, including any lit signage, must be provided with the development order application for the beach club; this plan must comply with LDC requirements in 10-154(8) and 14-76 for sea turtle conservation.
- A detailed landscaping plan showing the location and type of beach plantings to be provided adjacent to the existing retaining wall must be provided with the development order application for the beach club.
- Directional signage shall be erected along Estero Boulevard that advises the public of both new public beach accesses.
- The beach club and its ancillary uses may operate only from 7am to 8pm or one hour after sunset.

- 12** The following transportation and access features are shown on the Master Concept Plan are an integral part of this approval:
- All existing vehicular access points on Estero Boulevard shall be closed except the access to the public parking lot on Parcel 2C.
 - The only access point on Crescent Street will be an entrance-only driveway near Fifth Street, which will be the main entrance for resort guests.
 - Access points on Fifth Street are limited to the main exit for resort guests and a separate entrance and exit for service vehicles on Parcel 2, plus a driveway to the valet parking and service area on Parcel 3.
- 13** Prior to the town issuing any development orders for demolition, site work, or new buildings on Parcel 2 (except on Parcel 2C), the landowner must execute and record a restrictive covenant in favor of and enforceable by the Town that acknowledges that this CPD approval has consumed all allowable density and intensity on this parcel and that no additional development may occur beyond that which is approved by this CPD. Within 60 days of completion of construction on Parcel 2 (but not later than 36 months after commencing construction), the landowner must convey to the Town a perpetual conservation easement in a form acceptable to the Town Attorney, which after acceptance will be recorded in the Public Records of Lee County, over those portions of Parcel 2 (excluding Parcel 2C) on which structures are not constructed or proposed to be constructed under the Master Concept Plan adopted as part of this CPD. The intent of this condition is to limit in perpetuity the density and intensity of Parcel 2 to that which is approved by this CPD and to maintain all areas on which buildings are not constructed in a similar manner as shown on the Master Concept Plan, allowing an outdoor recreation area but specifically excluding future parking facilities, buildings, and similar structures.
- 14** Development order plans must identify the number and location of all parking spaces required by the LDC within the area now identified for parking. The public parking spaces to be constructed on Parcel 2C cannot be used to meet LDC requirements for resort parking.
- 15** Conceptual locations of storage and operations for the rental of beach furniture, personal watercraft, and parasailing had been proposed on Sheet X-508 of the Master Concept Plan. Sheet X-508 is not part of this approval; decisions on the rental of beach furniture, personal watercraft, and parasailing will be made in accordance with town codes.

- 16** An early concept for the location and type of signs throughout the CPD was submitted as Sheet X-505 of the Master Concept Plan; that sheet is not included in the approved Master Concept Plan. Individual signs may be placed on this site during and after development as may be allowed by the LDC regulations that are in effect at that time.
- 17** On-premises consumption of alcoholic beverages is approved at the locations shown on Sheets X-506-COP.01 and X-507-COP.02 of the Master Concept Plan, subject to these limitations:
- Alcoholic beverages in the outdoor rooftop event space are limited to special events scheduled through the resort. Permanent structures are not permitted in the rooftop event space.
 - Outdoor seating is permitted on the second story outdoor deck provided it remains in substantial compliance with the COP diagrams on Sheets X-506-COP.01 and X-507-COP.02.
 - Alcoholic beverages are not approved on the sandy beach, which retained its EC zoning.
 - Alcoholic beverages may be served at locations other than those shown on the Master Concept Plan only if approved by special exception or by administrative approval, as provided in 34-1264 of the LDC.
- 18** Prior to applying for a permit for the stormwater management system from the SFWMD, the landowner will consult with the town's stormwater consultant to assess the feasibility of routing stormwater from Crescent Street and Fifth Street through the project's stormwater system. In order to be considered feasible, any routing of stormwater from Crescent and Fifth Streets must accommodate the project's design as approved by this CPD. The landowner will provide copies of the SFWMD permit application, and all subsequent responses to requests for additional information, to the Town's stormwater consultant for review concurrent with filing with the SFWMD.

VII. PROCESS

A. Staff Review

A complete application package was submitted for this rezoning in March 2017. The application was deemed insufficient in April and again in August; the applicant provided additional information in July and again in November. The application was deemed sufficient for review in December.

This staff report is based on the latest application material provided for each subject, regardless of when that material was submitted. Some supplemental diagrams and additional documentation were provided by the applicant while this report was being prepared, including a revised Traffic Impact Statement.

B. LPA Public Hearing

The LDC provides the following requirements for the Local Planning Agency's recommendations on CPD rezoning requests:

Sec. 34-216. Public hearings.

(a) Hearing before the local planning agency. *After an application is complete, the application will be scheduled for a public hearing before the local planning agency.*

- (1) At the public hearing the local planning agency will consider the application in accordance with article II of this chapter.*
- (2) The recommendation made to the town council must be supported by the guidelines set forth in § 34-85 of this chapter. In addition, the findings must address whether the following criteria can be satisfied:*
 - a. The proposed use or mix of uses is appropriate at the subject location;*
 - b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;*
 - c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.*
 - d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:*
 - 1. Policies 4-B-4 and 4-C-3 on commercial uses in the "Mixed Residential" category.*
 - 2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "Boulevard" category.*
 - 3. Policy 4-C-4 on building heights taller than the standard height limit.*
 - 4. Policy 4-C-8 on density transfers.*
 - 5. Policy 4-E-1 on pre-disaster buildback.*

6. *Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.*
 - (3) *If the local planning agency determines that a proposed condition is insufficient, it may recommend an alternate condition for consideration by the town council.*
 - (4) *If the application includes a schedule of deviations pursuant to §§ 34-212(3) and 34-932(b), the local planning agency's recommendation must approve, approve with modification, or reject each requested deviation based upon a finding that:*
 - a. *Each item enhances the achievement of the objectives of the planned development; and*
 - b. *The general intent of this chapter to protect the public health, safety, and welfare will be preserved and promoted; and*
 - c. *Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and*
 - d. *Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.*
- If the local planning agency concludes that the application omits necessary deviations, it may include the necessary deviations in its recommendation without an additional hearing.*

C. Town Council Public Hearing

1. Public hearing.

The LDC reserves final authority over this rezoning request to the Town Council, which will hold its own public hearing to consider the CPD application along with all attendant information, staff reports, and the local planning agency's minutes and recommendation.

2. LDC requirements

The LDC provides the following requirements for the Town Council's decisions on zoning changes:

Sec. 34-85. Rezoning.

- (1) ***Function.*** *The town council shall hear and decide all applications for changes in zoning district boundaries.*
- (2) ***Considerations.*** *In reaching its decision, the town council shall consider the following, whenever applicable:*
 - a. *Whether there exists an error or ambiguity which must be corrected.*
 - b. *Whether there exist changed or changing conditions which make approval of the request appropriate.*
 - c. *The impact of a proposed change on the intent of this chapter.*
 - d. *The testimony of any applicant.*
 - e. *The recommendation of staff and of the local planning agency.*

- f. *The testimony of the public.*
- g. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*
- h. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
- i. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*
- j. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*
- k. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*
- l. *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*
- m. *For planned development rezonings, see § 34-216 for additional considerations.*

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

- a. *The Fort Myers Beach Comprehensive Plan.*
- b. *This chapter.*
- c. *Any other applicable town ordinances or codes.*
- d. *For planned development rezonings, see § 34-216 for additional findings.*

(4) Authority.

- a. *When rezoning land to conventional zoning districts or redevelopment districts (see §§ 34-612(1) and (2)), the town council shall not impose any special conditions or requirements beyond those contained in this code, except as authorized by subsections 34-87(4)b. related to variances and 34-88(4)b. related to special exceptions.*
- b. *In reaching decisions on planned development rezonings (see § 34-612(3)), the town council shall proceed in accordance with § 34-216 and shall have the authority to adopt a master concept plan, establish permitted uses, attach special conditions, and grant deviations from this code in accordance with §§ 34-932–933.*

3. If CPD is not approved.

If CPD approval is not granted at the Town Council's public hearing, the council could decide to continue the public hearing to a later date for additional consideration.

If CPD approval is denied with prejudice, the same application could be refiled 12 months later. If the application is denied without prejudice, the 12-month waiting period would not apply.

If CPD approval is denied, the applicant also has certain rights to request a rehearing by the Town Council or to file a legal challenge to the denial.

4. If CPD is approved.

If any special conditions or decisions on deviations require adjustments to the Master Concept Plan, those adjustments must be completed prior to execution of the rezoning resolution.

The proposed special conditions set forth certain steps the applicant must take before obtaining development orders to begin site work and then building permits for vertical construction. These steps may include right-of-way vacations, a conservation easement, transfer of Parcel 2C to the town for a beach access and public parking lot, etc.

VIII. STAFF REPORT EXHIBITS

A. Property Development Regulations (prepared by staff)

B. Opinion on Changes to Floodplain Maps

C. Photographs of Pedestrian Bridges

D. Comprehensive Plan Policies

EXHIBIT A. Property Development Regulations (prepared by staff)

DOWNTOWN – as adjusted for TPI-FMB Commercial Planned Development

DOWNTOWN Zoning District

Sec. 34-671. Purpose.

[LDC language shortened]

The purpose of the DOWNTOWN district is create the desired quality and character for the center of pedestrian-oriented commercial activities within the town. New commercial buildings are expected to accommodate pedestrians by offering sidewalks and shade and along streets and pedestrian passages through large buildings.

Sec. 34-672. District map & applicability.

[not applicable to this CPD]

Sec. 34-673. Allowable uses.

[replaced by following language]

Allowable uses for this CPD are defined by the schedule of uses in the CPD rezoning resolution.

Sec. 34-674. Building placement.

[replaced by following language]

(a) Build-to lines established. Build-to lines (see § 34-662) are established as follows:

- (1) Build-to lines for new buildings are between 5 and 10 feet for principal buildings on Fifth Street, Crescent Street, and Estero Boulevard.
- (2) Build-to lines for buildings that existed prior to this CPD approval are between 0 and 10 feet.
- (3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ 34-991–1010).

(b) Setback lines established. Setback lines (see § 34-662) are established as follows, unless shown differently on the Master Concept Plan:

- (1) Minimum setbacks from water bodies are set forth in § 34-638(d)(3).
- (2) For accessory structures, minimum setbacks are set forth in § 34-1171–1176.

Sec. 34-675. Building size.

[replaced by following language]

(a) Hotel rooms. The number of hotel rooms allowed in this CPD is limited by the hotel-room equivalency factors found in § 34-1803, except as follows:

- (1) The equivalency factor for rooms larger than 450 square feet shall remain as provided by § 34-1803(a)(1).
- (2) The equivalency factor for rooms smaller than 450 square feet shall be _____.
(Deviation #1)
- (3) This CPD may include hotel rooms of various sizes. The total number of hotel rooms allowed will be determined by multiplying the number of rooms in each size category by the appropriate equivalency factor. The sum of those computations cannot exceed the number of dwelling units that allowed by the Fort Myers Beach Comprehensive Plan.

(b) Building height. Building heights (see § 34-631) shall be limited to: *(Deviation #2)*

- (1) For Parcel 1 (bounded by Estero Boulevard, Crescent Street, and Fifth Street):
 - a. No more than ____ stories.
 - b. No more than ____ feet above base flood elevation.
- (2) For Parcel 2 (between Estero Boulevard and the Gulf of Mexico):
 - i. No more than ____ stories.
 - b. No more than 40 feet above base flood elevation.
- (3) For Parcel 3 (between Fifth Street and the Sky Bridge):
 - i. No more than ____ stories.
 - b. No more than ____ feet above base flood elevation.

(c) Floor area ratio (FAR). Floor area ratios (see § 34-633) shall not exceed **1.** for the combined properties in this CPD. *(Deviation #3)*

(d) Building frontage. Building frontages (see § 34-663) shall be as shown on the Master Concept Plan. The reduced frontage for properties between Estero Boulevard and the Gulf of Mexico is being permitted because open views of the Gulf of Mexico will be provided by two view corridors totaling 324 feet, as shown on the Master Concept Plan.

Sec. 34-676. Circulation and parking.

[replaced by following language]

(a) Off-street parking reductions. The DOWNTOWN district is planned as a “park-once” district, with preference given to pedestrian movement within the district. A substantial reduction is being allowed from the off-street parking requirements found in § 34-2020:

- (1) The number of off-street parking spaces for all uses in the CPD shall first be calculated according to the requirements of § 34-2020, except for the beach club on Parcel 2 and the public parking lot on Parcel 2C.
- (2) § 34-2020 does not address parking requirements for an outdoor beach club; 51 additional parking spaces are required for that use.
- (3) The combined number of spaces required by (1) and (2) will be multiplied by 67% to determine the minimum number of off-street parking spaces to be provided in this CPD.
- (4) Public parking spaces being provided on Parcel 2C may not be counted toward the minimum number of off-street parking spaces.

(b) Parking lot locations. All off-street parking spaces shall be located under buildings and shall be concealed by a continuous visual screen as depicted on the Master Concept Plan. The Type D buffer required by § 10-416(d) is replaced by Sheets X-502-RW.00 through X-504-RW.02 of the Master Concept Plan. *(Deviation #4)*

(c) Driveway connections. All existing driveways and parking spaces shall be relocated from Estero Boulevard to locations shown on the Master Concept Plan. The only driveway that may remain on Estero Boulevard is the entrance to the new public parking lot on Parcel 2C.

(d) Drive-through lanes. Drive-through lanes are not allowed in this CPD because traffic generated by drive-through lanes harms a pedestrian environment.

Sec. 34-677. Additional requirements.

[replaced by following language]

(a) Commercial design standards. The commercial design standards (§§ 34-991–1010) shall apply to this CPD except as modified by these understandings:

- (1) The approved building elevations, as shown in the Master Concept Plan, either comply with or override conflicting commercial design standards, as provided by § 34-992(b).
- (2) The ground-floor window and retail standards are not applicable, as provided by § 34-992(c).
- (3) The Master Concept Plan includes precise site plans and building elevations, and the CPD was approved in part based on detailed renderings provided by the applicant during the public hearing process. Architectural elements that were specifically shown in this documents have been determined to comply with the commercial design standards, as allowed by § 34-992(d)(1).
- (4) The facade projections shown on the Master Concept Plan are approved and they satisfy the facade projection requirements of § 34-995(e).
- (5) Pedestrian passageways are shown on the master Concept Plan, including two pedestrian bridges, their sidewalks and elevators, the courtyard passage between the two bridges, and the public restrooms on Parcel 2. These passageways comply with § 34-997(d).

(b) Open space and buffers. Open space and buffer requirements in this CPD are shown on Sheets X-502-RW.00 through X-504-RW.02 of the Master Concept Plan.

Sec. 34-678. Outdoor display and sales of merchandise and food.

[replaced by following language]

(a) Purpose. The pedestrian environment can be enhanced when businesses display a sample of their products or sell food or beverages in a manner that enhances the public realm, contributes to an interesting and comfortable shopping and dining district, and maintains and improves the town's sense of place and property values.

(b) Restrictions. Merchandise, food, and beverages may be displayed or sold to anyone on a public sidewalk only in accordance with § 34-678 of the LDC (which applies to all properties in the DOWNTOWN zoning district) or as specifically approved through a modification of the CPD zoning.

(c) Special events. See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq.

Secs. 34-679--34-680. Reserved.

EXHIBIT B. Opinion on Changes to Floodplain Maps



Tomasello Consulting Engineers, Inc.

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www.TomaselloEngineers.com

September 5, 2017

Tom Torgerson
TPI Hospitality
4805 Tamiami Trail N.
Naples, Florida 34103
via e-mailtom@tpihospitality.com

RE: Ft. Myers Beach TPI Project- Helmerich Plaza

Dear Tom,

TCE conducted wave transformation modeling from the shoreline to inland of the subject property using FEMA's Wave Height Analysis for Flood Studies (WHAFIS) model. The WHAFIS model has been used in Flood Insurance Studies (FIS) since 1980 to incorporate the effects of wave action on Flood Insurance Rate Maps (FIRMs) for communities along the Atlantic and Gulf Coasts. The model uses a specified stillwater elevation (SWEL), the computed wave setup, and the starting wave conditions as input. This information is found in the effective FIS for Lee County. Once this information had been gathered, simulations of wave transformations were then conducted with WHAFIS taking into account the storm-induced erosion and overland features (dunes, buildings, vegetation, etc.) encountered along each transect. Output from the model includes the combined SWEL and wave height along each cross-shore transect allowing for the establishment of base flood elevations (BFEs) and flood zones from the shoreline to points inland within the study area.

The results of the analyses confirmed that due to the fact that the topography seaward of the subject property is low and with the exception of a small primary frontal dune and some vegetation, there are no obstructions to stop the propagation of 3-foot waves during a 1-Percent-Annual-Chance event. The location where the 3-foot wave can no longer exist is one of the determinations FEMA uses to delineate the VE zone on FIRMs. In order to remove the VE from the subject property a wave attenuation wall of some sort would need to be constructed approximately 4.5-feet above natural grade adjacent to the seaward property line on the subject property. The purpose of a wave attenuation wall is to cause storm induced waves to break, therefore losing size and energy.

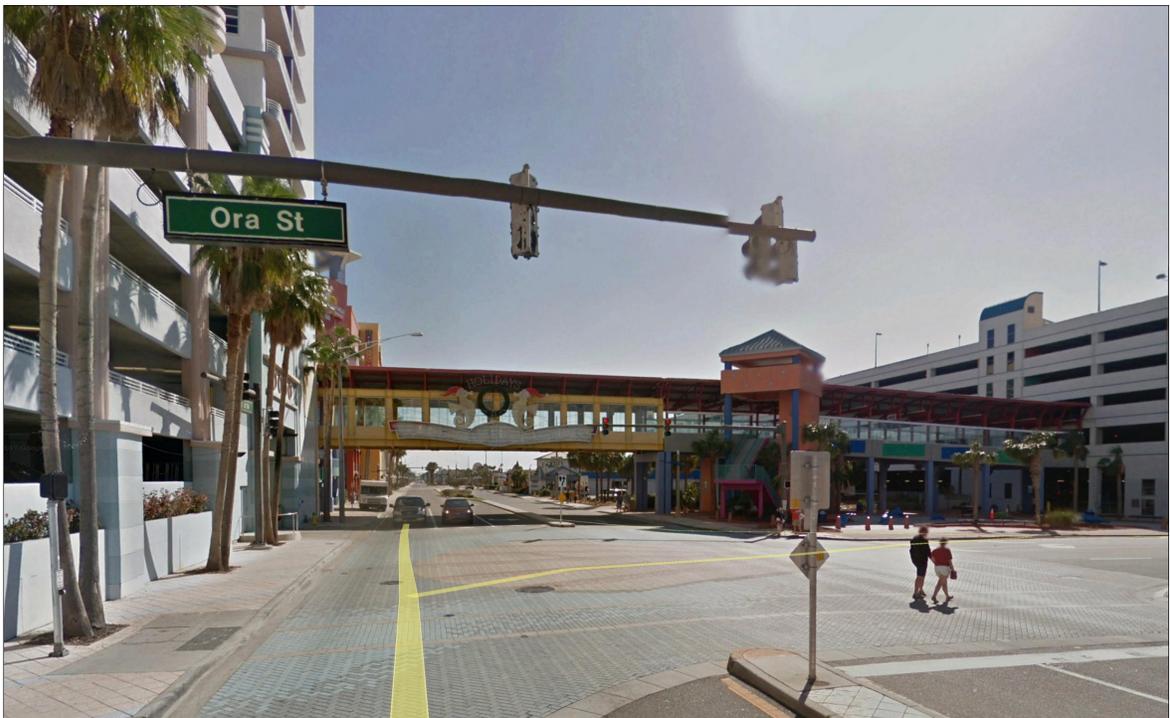
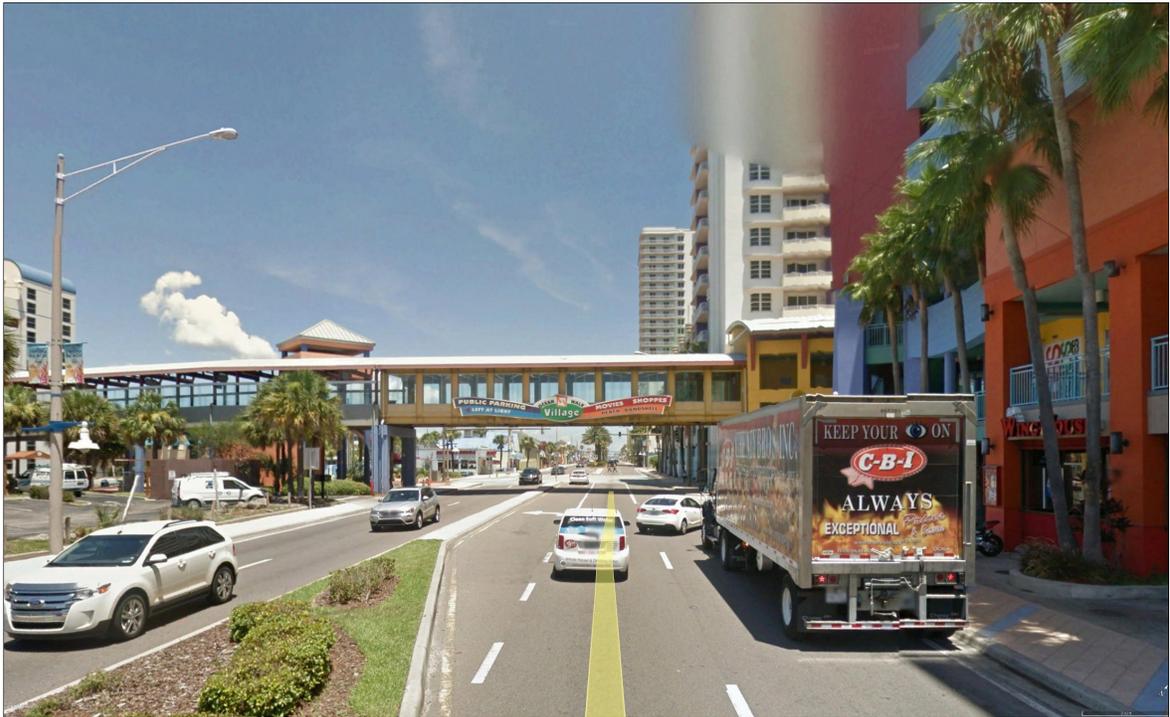
Sincerely,

Richard S. Tomasello, P.E., CFM

EXHIBIT C. Photographs of Pedestrian Bridges



Pedestrian Bridge at Don Cesar, St. Petersburg Beach



Pedestrian Bridge at Ocean Walk, Daytona Beach

EXHIBIT D. Comprehensive Plan Policies

In Community Design Element:

POLICY 3-D-6 Design and construct streetscape improvements for Old San Carlos, Crescent Street, Center Street, and First through Fifth Street. These include on-street parking, new sidewalks, buried utilities, and landscaping.

In Future Land Use Element:

GOAL 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.

OBJECTIVE 4-A SMALL-TOWN CHARACTER — Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion..

POLICY 4-A-1 Maintaining the town’s current “human scale” is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

POLICY 4-A-2 The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm.

POLICY 4-A-3 The town shall protect residential neighborhoods from intrusive commercial activities (see Policies 4-C-2 and 4-C-3 below

POLICY 4-A-6 The beaches provide incomparable recreational and environmental benefits to the town; careful management of the beach, including renourishment when necessary, can increase both. Frequent beach accesses are essential to the town’s character and shall be maintained and expanded where possible.

POLICY 4-B-1 OVERBUILDING: Judicious planning could have avoided the kind of overbuilding found at Fort Myers Beach by limiting construction to match road capacity and the physical environment. Since such planning came too late, the town must deal with today’s congestion plus the impacts of future development that has vested rights to proceed. These conditions have shaped the vision of this plan, as development rights once granted are not easily or lightly reversed; great care has been taken in this plan to balance important public and private rights.

POLICY 4-B-6 “PEDESTRIAN COMMERCIAL”: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum

density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All “Marina” uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

POLICY 4-B-8 “RECREATION”: applied to public parks, schools, undevelopable portions of Bay Beach, and those parts of Gulf beaches that lie seaward of the 1978 coastal construction control line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line). The maximum density of residential development here is 1 dwelling units per 20 acres, with all dwelling units to be constructed outside this category. Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities. Non-recreational uses (such as the elementary school) now comprise 2.7% of the land in this category; additional school sites and public buildings shall not increase this percentage beyond 6%.

POLICY 4-C-2 COMMERCIAL INTENSITY: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5,

POLICY 4-C-3 COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply:

- i. No rezonings for commercial uses shall be allowed in the “Low Density” category.
- ii. Where new or expanded commercial uses are encouraged, as in the “Pedestrian Commercial” category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.
- iii. In the “Mixed Residential” category, commercial uses are limited to lower-impact uses such as offices, motels, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.

Landowners may seek commercial rezoning only through the planned development process.

- iv. In the “Boulevard” category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.
- v. The following principles shall be considered by the town when evaluating requests for new commercial uses:
 - a. Shopping and services for residents and overnight guests are strongly preferred over shopping and services that will attract additional day visitors during peak-season congestion.
 - b. Shopping and services that contribute to the pedestrian character of the town are strongly preferred over buildings designed primarily for vehicular access.
- vi. The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by:
 - a. the type of commercial activities (such as traffic to be generated, hours of operation, and noise);
 - b. its physical scale (such as the height, and bulk of proposed buildings); and
 - c. the orientation of buildings and parking).

Commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved.

POLICY 4-C-4 BUILDING HEIGHTS: The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.

POLICY 4-C-6 MOTEL DENSITIES: The Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units. These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. They may vary between a low of one guest unit and a high of three guest units for each dwelling unit. (These factors would apply only where guest units are already permitted.) In order to implement the 1999 Old San Carlos Boulevard / Crescent Street Master Plan that encourages mixed-use buildings with second and third floors over shops on Old San Carlos, hotel rooms may be substituted for otherwise allowable office space in that situation and location only without using the equivalency factors that apply everywhere else in the town. This alternate method for capping the number of hotel rooms applies only to properties between Fifth to First Streets that lie within 200 feet east and west of the centerline of Old San Carlos Boulevard. Hotel rooms built under this alternate method must have at least 250 square feet per rentable unit, and under no circumstances shall buildings they are located in exceed four stories (with the ground level counted as the first story).

POLICY 4.C.8 DENSITY TRANSFERS: The Town Council may, at its discretion, permit the transfer of residential and hotel/motel development rights from one parcel to another if the following conditions are met:

- i. the transfer is clearly in the public interest, as determined by the Town Council;
- ii. the parcels affected by the transfer are in close proximity to each other;
- iii. the density of residential or hotel/motel units being transferred is based upon allowable density levels in the category from which the density is being transferred;
- iv. the transfer is approved through the planned development rezoning process; and
- v. binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.

POLICY 4-E-2 COASTAL SETBACKS: To protect against future storm damage and to maintain healthy beaches, the Town of Fort Myers Beach wishes to see all buildings relocated landward of the 1978 Coastal Construction Control Line. This line has been used on the Future Land Use Map to delineate the edge of land-use categories allowing urban development. Some existing buildings lie partially seaward of this line; when these buildings are reconstructed (either before or after a natural disaster), they shall be rebuilt landward of this line. Exceptions to this rule may be permitted by the town only where it can be scientifically demonstrated that the 1978 line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. (Exceptions must also comply with all state laws and regulations regarding coastal construction.)

POLICY 4-F-1 HISTORIC BUILDINGS: The protection of historic buildings is of great importance to the town, and shall be aided by implementing the policies set forth in other elements of this comprehensive plan.

POLICY 4-F-2 SPECIFIC REDEVELOPMENT PLANS: This comprehensive plan anticipates substantial redevelopment over the coming years. Specific concepts have been developed for three specific areas:

- i. **Times Square** – The Estero Island CRA’s plan for the Times Square area is reflected in this plan, bounded by the “Pedestrian Commercial” category at Times Square. Implementation of that plan will be on-going as discussed through this comprehensive plan and in accordance with the specific regulations provided in the Land Development Code. The Times Square redevelopment plan is described in Community Design Policies 3-D-1 through 3

In Coastal Management Element:

OBJECTIVE 5-D BEACHES AND DUNES — Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes.

POLICY 5-D-1 The town’s policies on shoreline protection measures shall be as follows (see also Objective 5 and related policies in the Conservation Element of this plan):

- i. Beach renourishment will be necessary along much of the Gulf beach. The long-term recreational and economic benefits will offset the cost. The town shall work closely with Lee County, which has agreed to take the lead role in carrying out this important activity. All practical measures shall be taken to ensure that beach renourishment improves sea turtle nesting habitat rather than interfering with it. Public access to existing and renourished beaches is an important priority of the town of Fort Myers Beach.
- ii. Sand dunes should be protected and re-created wherever they have been removed. Native dune plants should be protected and non-native exotics removed. Dune walkovers should be constructed where they do not exist and existing structures should be maintained.
- iii. The use of vehicles on any part of the beach should be severely limited in accordance with Conservation Policy 6-E-4(iv).
- iv. Buildings and other structures should be located as far away from the shoreline and dune system as possible since the beach is a constantly changing environment. Beachfront development shall be protected from coastal erosion, wave action, and storms by vegetation, setbacks, and/or beach renourishment rather than by seawalls or other hardened structures which tend to hasten beach erosion, interfere with public access, and block sea turtle nesting.
- v. Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it

complies with this comprehensive plan and all state and local permitting requirements.

- vi. Where buildings are threatened by erosion that cannot be reversed by major beach renourishment, the town's priorities are (1) to allow the structure to be moved away from the beach; (2) to allow emergency renourishment (including the use of trucked-in sand); and (3) to allow rip-rap only when the previous priorities are not possible. Existing seawalls on the beach may be maintained or removed but not rebuilt.
- vii. The absolute last resort for shoreline protection is the use of hardened structures (except that terminal groins may be permitted at inlets if acceptable to state and federal permitting agencies). New beachfront buildings requiring seawalls for protection from coastal erosion shall not be permitted.

OBJECTIVE 5-E ACCESS TO THE WATER — Increase the number of well-maintained accesses to beaches, bays, and navigable waters to serve the existing and future population and visitors.

POLICY 5-E-1 Ensure the continued maintenance of existing beach access points, currently provided by Lee County with funds from the Tourist Development Council.

POLICY 5-E-2 Evaluate the need for expanded parking areas and the potential for revenue generation from metered parking as a funding source for additional public access amenities.

In Conservation Element:

POLICY 6-B-5 ADJACENT DEVELOPMENT – Development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas shall protect the natural character and public benefit of these areas including, but not limited to, scenic values for the benefit of future generations.

POLICY 6-B-8 ADJACENT DEVELOPMENT – Development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas shall protect the natural character and public benefit of these areas including, but not limited to, scenic values for the benefit of future generations.

POLICY 6-E-1 For any beachfront development approved after the adoption of this plan and for all public beach areas within the town, state-approved dune walk-over structures shall be required at appropriate crossing points. These same structures are also encouraged wherever pedestrians will be crossing dune areas.

In Transportation Element:

GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks

and bikeways, a network of trolleys and water taxis linked to off-island systems, and parking options matched to road capacity.

POLICY 7-B-3 IMPROVEMENTS TO ESTERO BOULEVARD: The Town of Fort Myers Beach shall initiate additional pedestrian and streetscape improvements along Estero Boulevard beginning in 1999, and shall negotiate with Lee County for the turnover of responsibility for its maintenance if necessary to carry out these improvements or to further other town policies.

POLICY 7-E-2 TRAFFIC CALMING: The town shall support two types of traffic calming to reduce speeding, which endangers lives and diminishes the quality of the pedestrian environment of Fort Myers Beach:

- i. The first is “active” or traditional traffic calming along residential streets, using physical techniques such as speed humps, narrowed lanes, landscaping, traffic diverters, jogs, or traffic circles at intersections.
- ii. The second is “passive” traffic calming along Estero Boulevard, to control speeding without reducing the number of vehicles that can use the road. Techniques include full curbs and sidewalks separated by street trees; buildings nearer the road; interesting vistas for drivers; and avoidance of overly wide travel lanes or intersections.

POLICY 7-E-3 BUILDINGS CLOSE TO THE STREET: Where pedestrian levels are high, buildings should adjoin the sidewalk rather than be separated by parking spaces. Front walls of stores, offices, and restaurants should have large windows rather than blank walls, preferably shaded by awnings or canopies. Access to parking areas shall be off side streets wherever possible. The town’s Land Development Code shall implement these concepts beginning in 1999.

POLICY 7-E-4 SIDEWALKS AND BIKEWAYS: The town shall work toward major expansion of sidewalks and bikeways. In addition to the next phase of Estero Boulevard sidewalks (see Policy 7-E-1 above), the town shall support the following projects:

- i. Support Lee County’s imminent plans to fill the gaps from Buccaneer to Estrellita Drive and from the Villa Santini Plaza to Bay Beach Lane using federal funds;
- ii. Initiate extensive improvements by 1999 to Old San Carlos and Crescent Street in conjunction with parking improvements (see Policy 7-F-2);
- iii. Initiate engineering studies by 1999 for bikeways and additional sidewalks on the second side of Estero Boulevard and improved pedestrian crossings, including consideration of a pedestrian overpass at Times Square.

POLICY 7-H-1 PEDESTRIAN OVERPASSES: Although pedestrian overpasses are often ignored by pedestrians, an overpass providing a panoramic view of the Gulf might be attractive enough to reduce at-grade crossings at Times Square without discouraging foot traffic in this highly congested area. Even without an overpass, the pedestrian-actuated stop light may be replaceable with a flashing caution light to minimize effects of the crossing on traffic flow.

POLICY 7-H-10 CONNECTIONS TO ESTERO BOULEVARD: An excessive number of streets and driveways have direct access to Estero Boulevard,

reducing its ability to handle peak-season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points onto Estero Boulevard.

POLICY 7-I-1 Traffic congestion is a serious problem at Fort Myers Beach, caused by a combination of high tourism demand for its beaches and past over-building relative to road capacity. Neither factor is within the control of the Town of Fort Myers Beach, although its residents must tolerate congestion every winter. This comprehensive plan seeks to manage congestion levels and encourage alternate means of mobility including walking, bicycling, and trolleys.

POLICY 7-I-2 The peak capacity of Estero Boulevard's congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level for more than four calendar months in any continuous twelve-month period. Measurements from the permanent count station at Donora Boulevard shall be used for this standard.

POLICY 7-J-1 RIGHTS-OF-WAY: Town and county rights-of-way are needed for the undergrounding of utilities; for the expansion of sidewalks and bike paths; for water accesses; for on-street parking; for public transit and road improvements; and for other public purposes. The town shall strictly limit vacations of rights-of-way and easements to preserve future access for these purposes.

POLICY 7-J-2 TRAFFIC IMPACT ANALYSES: A thorough traffic impact analysis is currently required only for major rezonings and very large development orders. The town shall amend its Land Development Code during 2010 to:

- i. decrease the thresholds for requiring traffic impact analyses;
- ii. require them to study the cumulative impacts of potential development; and
- iii. use the results in assessing whether impacts are acceptable, and whether an improved design could offset some of the impacts.

In Recreation Element:

OBJECTIVE 10-G PUBLIC ACCESS — Increase the number and quality of public access points to the Gulf beaches and Estero Bay.

In Historic Preservation Element:

POLICY 13-A-4 Require all applications for development review to identify the location and status of historic resources and archaeological sites, utilizing as data bases the 1986 Lee County Historic Sites Survey, the 1987 Archaeological Site Inventory and Zone Management Plan for Lee County, the 1992 Historical Report and Survey Supplement for Lee County, and updated information from implementation of Policies 13-A-3 and 13-A-6. This identification of historic and archaeological resources will assist in administering protective regulations.