

RESOLUTION 16-07

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA REGARDING STORMWATER UTILITY FEE ADJUSTMENT FOR BAY BEACH

WHEREAS, The Town of Fort Myers Beach, Florida, (Town) has, pursuant to Section 403.0893, Florida Statutes, enacted Ordinance 15-08 creating a Stormwater Utility to finance the operation, construction, and maintenance of stormwater devices; for stormwater system planning; for review of development plans for compliance with stormwater management codes; and for bay, spring, and river quality management; and

WHEREAS, Ordinance 15-08 recognizes that “all real property in the Town either uses or benefits from the maintenance of the stormwater system”; and

WHEREAS, the Stormwater Utility is, by definition, the funding of the administration and operation of a stormwater system by assessing to the beneficiaries the cost of the system based upon their relative contribution to its need; and

WHEREAS, the EBIA has approached the Town requesting an adjustment of the full amount of the Town’s Stormwater Utility Fee based upon the assertion that the stormwater from properties bounding and served by Bay Beach Lane are treated and managed by a private Stormwater Management System already in place under South Florida Water Management District Environmental Resource Permit #36-00611-S and that none of the Bay Beach Lane properties contribute stormwater to the Utility’s need; and

WHEREAS, on February 1, 2016, Town Council passed a motion, substantively as follows:

- (a) Direct the Town Attorney to bring back Town Ordinance 15-08 addressing all the insufficiencies that have been put on record whether that is at the work session or meeting plus any additional remedies needed;
- (b) Direct the Town Manager, who serves as the director of this Utility, to recognize the stormwater facility that exists at Bay Beach;
- (c) Direct the Town Attorney to review and schedule the proposed resolution regarding the “benefit area” as distributed by EBIA’s legal representative, Mr. Ciccarone, to be considered for adoption at our next meeting;
- (d) Set the Stormwater Utility Fee at \$19.98 per ESU, which does not include the administrative fee, with an effective date of March 1, 2016; allow the Stormwater Utility Fee to be reviewed as per our ordinance; and, use the fees collected to retire the Town’s inter-fund loan, provide \$50,000 for

stormwater operations and maintenance, and develop the Town's stormwater facility plan; and

- (e) Review this fee and action in conjunction with: the facilities plan and the outcome of the charter referendum, prior to the first council meeting in September 2016, in conjunction with Town budget discussions; with the obligation of at least the majority of this Council being present to amend this action as is necessary at that point.

WHEREAS, the Town Council finds it appropriate to recognize the private Stormwater Management System serving the properties located along and adjacent to Bay Beach Lane and to grant an adjustment to the Stormwater Utility Fee in accordance with the terms of this Resolution.

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

1. **Recitals**. The above recitals are true and correct and are incorporated herein by this reference.

2. **Adjustment**. The Town hereby recognizes that those lands comprising the Bay Beach Zoning District, as defined in Fort Myers Beach Land Development Code s. 34-651 and further depicted and described on attached Exhibit A, is served by an existing private stormwater management system in place under South Florida Water Management District Environmental Resource Permit #36-00611-S. Based upon unequivocal certification to the Town from a Florida licensed engineer indicating that the system is fully functional and contains all stormwater generated from the Bay Beach Zoning District, the Town will grant an adjustment to the Stormwater Utility Fee of 100%. Recertification to the Town will be required on a biennial basis, due on or before March 1 of the respective year. The initial engineer certification is attached as Exhibit B.

3. **Authorization of Town Officials**. The Town Manager and or his Director-designee are authorized and directed to take all actions necessary to implement the terms of this Resolution and authorized to execute any documents required and to take any such necessary actions to give it effect.

4. **Effective Date**. This resolution becomes effective immediately upon its adoption.

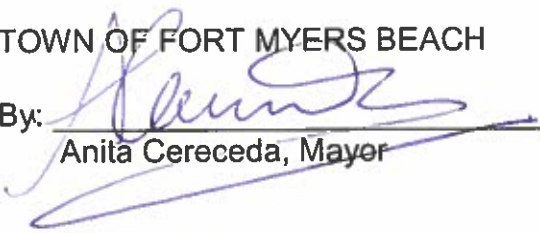
The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Stockton; and seconded by Council Member Hosafros and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor	<u>Aye</u>
Dan Andre, Vice Mayor	<u>Aye</u>
Rexann Hosafros	<u>Aye</u>
Alan Mandel	<u>Aye</u>
Summer Stockton	<u>Aye</u>

DULY PASSED AND ADOPTED THIS 16th day of February, 2016.

TOWN OF FORT MYERS BEACH

By:


Anita Cereceda, Mayor

Approved as to legal sufficiency:

By:


Dawn Perry-Lehnert, Town Attorney

ATTEST:

By:


Michelle Mayher, Town Clerk

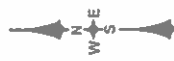
Exhibit:

A- 3 page legal description and boundary survey

B- Engineer Certification

LINE	BEARING	DISTANCE
L1		
L2		
L3		
L4	N 18°55'55" W	76.78'
L5	N 79°17'38" E	78.13'
L6	N 02°12'16" E	51.89'
L7	S 19°00'47" E	70.96'
L8	S 18°42'33" E	122.95'
L9	N 89°19'57" E	48.00'
L10	N 89°11'33" E	85.00'
L11	N 19°36'48" W	85.00'
L12	N 05°45'00" E	58.00'
L13	N 89°13'11" E	44.94'
L14	N 17°47'34" W	126.76'
L15	N 20°02'46" W	113.46'
L16	N 01°33'34" E	54.26'
L17	S 01°28'41" W	100.94'
L18	S 27°57'44" E	119.90'
L19	S 32°39'55" E	27.16'
L20	N 74°26'10" W	169.75'
L21	S 88°45'06" W	146.04'
L22	N 85°52'41" W	187.13'
L23	N 53°46'36" W	161.42'
L24	N 60°30'07" W	36.70'
L25	S 03°15'17" W	52.34'
L26	S 42°48'34" W	74.65'
L27	S 11°58'01" W	120.90'
L28	S 04°29'30" W	63.98'
L29	S 24°45'41" E	63.42'
L30	N 37°49'24" W	18.87'
L31	N 18°34'20" W	45.30'

ABBREVIATIONS
 C1 = DESIGNATION OF CURVE SHOWN IN TABLE
 CL = CENTERLINE
 INSTR. = INSTRUMENT
 L1 = DESIGNATION OF LINE SHOWN IN TABLE
 O.R. = OFFICIAL RECORDS
 PG. = PAGE
 POB = POINT OF BEGINNING
 POC = POINT OF COMMENCEMENT
 RAW = RIGHT-OF-WAY

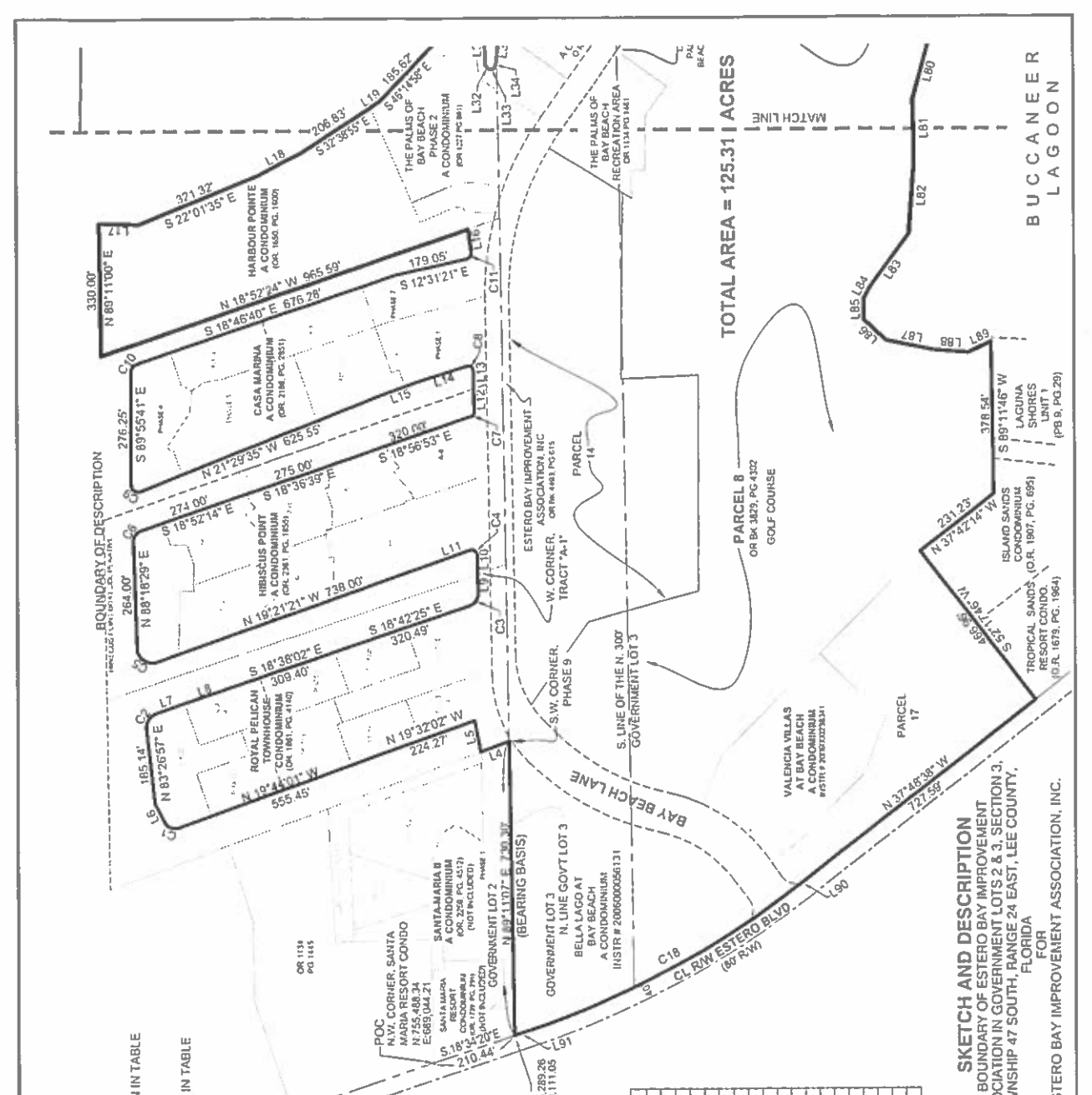


THIS IS NOT A SURVEY!

CURVE	RADIUS	CENTRAL ANGLE	CHORD LENGTH	CHD. BEARING	ARC LENGTH
C1	29.90'	81°55'17"	39.08'	N 21°14'08" E	42.62'
C2	37.45'	77°32'13"	46.90'	S 57°45'54" E	50.68'
C3	30.16'	72°01'38"	35.47'	S 54°43'14" E	37.91'
C4	14.50'	108°48'21"	23.57'	N 34°57'05" E	28.00'
C5	38.00'	107°39'50"	61.35'	N 34°28'34" E	71.00'
C6	26.00'	72°49'17"	30.87'	S 55°16'53" E	33.00'
C7	11.50'	72°18'07"	13.42'	S 56°32'53" E	15.00'
C8	13.50'	111°00'45"	20.10'	N 35°42'48" E	23.35'
C9	18.00'	111°33'55"	25.62'	N 34°17'23" E	35.05'
C10	25.00'	71°19'00"	29.09'	S 64°21'11" E	31.05'
C11	18.50'	85°35'05"	25.21'	S 55°28'53" E	27.74'
C12					
C13	690.00'	32°10'55"	302.48'	N 74°43'30" W	387.56'
C14	234.90'	45°10'35"	180.46'	S 69°35'45" W	185.22'
C15	550.00'	30°00'00"	284.70'	S 29°00'25" W	287.98'
C16	415.00'	11°24'14"	82.46'	S 19°42'35" W	82.60'
C17	39.99'	91°50'59"	57.47'	S 00°09'33" W	64.11'
C18	2251.83'	19°15'04"	753.05'	N 18°11'52" W	756.60'

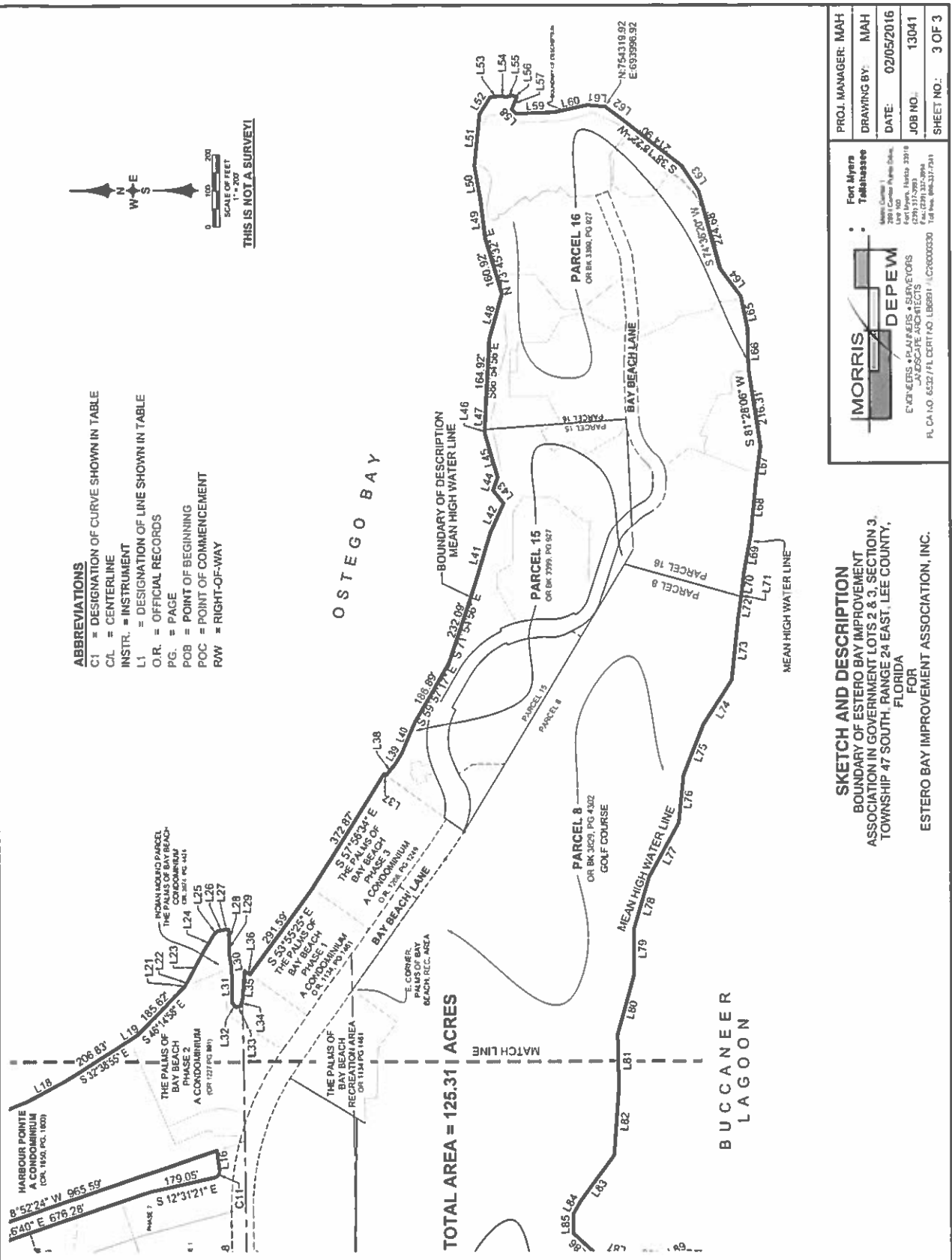
PROJ. MANAGER: MAH
 DRAWING BY: MAH
 DATE: 02/05/2016
 JOB NO.: 13041
 SHEET NO.: 2 OF 3

MORRIS DEPEW
 ENGINEERS • PLANNERS • SURVEYORS
 LANDSCAPE ARCHITECTS
 Fort Myers
 Tallahassee
 14800 Central Expressway, Suite 100
 Fort Myers, Florida 33918
 Fax: (239) 337-9999
 14800 Central Expressway, Suite 100
 Tallahassee, Florida 32304-1411
 P.L. CA. NO. 06527/LC001 MDL 006991 / LC00000330



SKETCH AND DESCRIPTION
 BOUNDARY OF ESTERO BAY IMPROVEMENT
 ASSOCIATION IN GOVERNMENT LOTS 2 & 3, SECTION 3,
 TOWNSHIP 47 SOUTH, RANGE 24 EAST, LEE COUNTY,
 FLORIDA
 FOR
 ESTERO BAY IMPROVEMENT ASSOCIATION, INC.

LINE	BEARING	DISTANCE
L19	S 32°35'55" E	27.16'
L21	S 55°36'12" E	3.48'
L22	S 55°40'07" E	15.95'
L23	S 61°54'49" E	95.09'
L24	S 59°20'27" E	50.10'
L25	S 41°17'34" E	13.40'
L26	S 12°04'43" E	17.40'
L27	S 02°43'18" E	14.35'
L28	S 87°05'07" W	39.30'
L29	N 87°03'10" W	22.88'
L30	S 80°44'18" W	46.34'
L31	S 88°42'00" W	94.26'
L32	S 48°46'12" W	14.98'
L33	S 12°43'21" E	12.35'
L34	S 69°36'02" E	17.29'
L35	S 65°33'47" E	60.69'
L36	S 35°41'00" W	17.18'
L37	S 33°51'38" W	6.37'
L38	S 49°22'19" E	35.02'
L39	S 57°15'00" E	40.41'
L40	S 66°41'00" E	97.42'
L41	S 73°32'03" E	142.56'
L42	S 65°56'34" E	89.65'
L43	S 51°24'41" E	45.62'
L44	S 71°28'29" E	30.27'
L45	N 74°10'37" E	127.66'
L46	S 87°24'35" E	9.72'
L47	S 87°24'35" E	85.82'
L48	S 74°29'55" E	131.01'
L49	N 83°11'17" E	102.20'
L50	N 80°12'43" E	95.61'
L51	S 64°10'50" W	144.81'
L52	S 58°06'20" E	54.05'
L53	S 07°20'47" E	28.39'
L54	S 09°37'17" W	16.21'
L55	S 15°23'33" E	16.11'
L56	S 16°40'21" W	14.26'
L57	N 67°04'01" W	36.53'
L58	S 45°01'40" W	16.61'
L59	S 01°54'53" E	107.68'
L60	S 12°12'48" E	92.23'
L61	S 04°42'34" W	47.49'
L62	S 37°06'20" W	52.85'
L63	S 56°37'50" W	64.85'
L64	S 53°06'20" W	94.35'
L65	S 76°26'54" W	94.35'
L66	S 67°06'02" W	102.65'
L67	N 62°29'51" W	104.65'
L68	N 64°44'49" W	136.81'
L69	N 79°47'51" W	116.01'
L70	N 63°44'01" W	50.20'
L71	N 65°34'06" W	11.21'
L72	N 81°27'40" W	50.59'
L73	N 83°53'19" W	173.98'
L74	N 57°06'30" W	144.86'
L75	N 60°36'55" W	152.22'
L76	N 84°02'28" W	131.27'
L77	N 61°21'05" W	158.15'
L78	N 73°25'42" W	146.05'
L79	N 89°33'46" W	176.47'
L80	N 74°26'10" W	169.75'
L81	S 68°45'06" W	146.04'
L82	N 65°24'11" W	187.17'
L83	N 53°45'36" W	161.42'
L84	S 60°30'09" W	30.70'
L85	S 69°15'12" W	52.34'
L86	S 47°49'34" W	74.65'
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FL. C.A. NO. 6432 / FL. CERT. NO. LB8691 / C-26000030 / Tallahassee, FL 32302-3000

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DEPEW

ENGINEERS · PLANNERS · SURVEYORS
LANDSCAPE ARCHITECTS

2891 Center Pointe Drive Unit 100 | Fort Myers, Florida 33916

Phone (239) 337-3993 | Toll Free (866) 337-7341

www.morris-depew.com

February 12, 2016

Sent VIA EMAIL

Ms. Dawn Lehnert, Esq.
Town Attorney
Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers, FL 33931
Dawn@fortmyersbeachfl.gov

**RE: REVISED Stormwater Management System Discharge Status
Estero Bay Improvement Association (MDA 13041)**

Dear Ms. Lehnert:

This letter is provided in regards to the relationship between the stormwater management systems that are operated by the Town of Fort Myers Beach and that of the Bay Beach development, also known as the Estero Bay Improvement Association (EBIA).

It is my opinion as a registered Professional Engineer that no stormwater discharged from the EBIA stormwater management system is conveyed to any portion of a stormwater management (SWM) system maintained and operated by either the Town or Lee County. The private system EBIA operates is designed and permitted to discharge stormwater directly to Estero Bay at two different locations, neither of which are maintained by the Town.

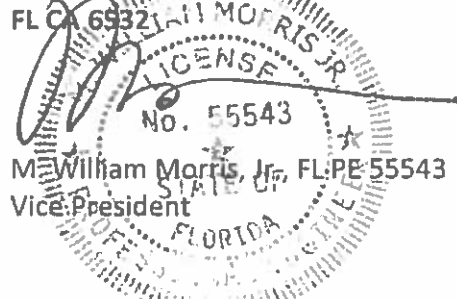
Furthermore, I have evaluated the current function of the EBIA SWM system and affirm that it operates in compliance with the Environmental Resource Permit as approved by the SFWMD based on my determination that the stormwater discharged from the SWM system does not exceed the allowable permitted rate, minimum water quality requirements for detention volume are met prior to stormwater discharge, the peak storm stage will not overtop the existing perimeter berm during the 25 year design event, and none of the adjacent conservation areas are adversely impacted by the operation of the SWM system.

I have arrived at the conclusions I have expressed above based on my review of the EBIA stormwater system design, the SFWMD permitting history, review of existing topography, and my personal observations of the subject property and the surrounding properties over the last 2-3 years.

Please let me know if there is anything else needed in this regard.

Sincerely,

MORRIS-DEPEW ASSOCIATES, INC.



M. William Morris, Jr. FL:PE 55543
Vice President

- Cc: T. Taege - EBIA
J. Costello
M. Ciccarone