

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS  
PUBLIC HEARING / AGENDA ITEM #9c**

**SUBJECT: QUASI-JUDICIAL** – Application #3339 – Request to amend Special Exception for 14 Townhomes to allow 16 Single Family Detached Lots in the R/C (Residential/limited commercial) District at 6645 North Oceanshore Boulevard. Parcel #37-10-31-1550-00000-0220; 3.87+/- acres. Owner: Consolidated Capital Funding II, LLC/Applicant: Michael D. Chiumento, III, Esquire (Project # 2022120002).

**DATE OF MEETING:** March 20, 2023

**OVERVIEW/SUMMARY:** This request is quasi-judicial in nature and requires disclosure of ex parte communication. The request is for approval of an amendment to the Special Exception to change the approval for 14 townhomes to 16 residential lots in the R/C (Residential/limited commercial) zoning district:



On December 1, 2022, Michael D. Chiumento, III, Esquire, submitted an application to amend the Special Exception for 14 townhomes in the R/C (Residential/limited commercial) District. The R/C District formerly allowed a Special Exception for multi-family projects not to exceed 8 units per acre. Based on available information, the special exception was ultimately approved for 14 townhomes to be constructed on the subject property.

The Technical Review Committee reviewed this request as part of its January 18, 2023 meeting; comments were addressed through the February 6, 2023 response from Michael D. Chiumento, III, Esquire, to the Technical Review Committee comments. The Scenic A1A PRIDE Committee reviewed this request as part of their October 28, 2022 meeting. The Committee's report is attached. The Planning and Development Board reviewed this request at its February 14, 2023 regular meeting. The Planning and Development Board

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unanimously recommended approval of the request, subject to the conditions outlined below.

Public comments (in order of appearance):

Name	Address	Comments
Courtney VandeBunte	5 Debra Ln.	Insurance, dunes
Carol Scott	38 San Carlos Dr.	Dangerous road, dune erosion, oil
Ronnie Wilson	15 San Jose Dr.	MSHOA sewer extension, dune berm
Charles Beeman	6525 Old A1A	Previous approval for 5-6 houses, CCCL
Jon Steele	6545 Old A1A	Shallow water table
Sallee Arnoff	24 Audubon Ln.	Development approvals, density
Mark Kowalski	11 Wendi Ln.	Dangerous road, drinking water
Dennis Clark	5784 N. OSB	Density, sewer extension
Marius Timis	6580 N. OSB	Water, evacuation plans, sewage
Elizabeth Kowalski	11 Wendi Ln.	Asked Board to visit subject parcel

Public notice has been provided for this application according to Flagler County Land Development Code Section 2.07.00.

This agenda item is:

  X   quasi-judicial, requiring disclosure of ex-parte communication; or  
       legislative, not requiring formal disclosure of ex-parte communication.

**OPTIONS FOR THE BOARD:** The Board of County Commissioners may:

**Approve** Application #3339, approving the project-specific dimensional requirements for the development of 16 detached single-family lots, approving the extension of wastewater service by the Matanzas Shores Owner’s Association in accordance with Section 30-33(g) of the County Code, and concurring with the Planning and Development Board’s finding that all the special exception criteria as listed in the guidelines at Land Development Code Section 3.07.03.F have been met for the amendment to single family detached lots at 6645 N. Oceanshore Boulevard (Parcel #40-10-31-1550-00000-0220), subject to the following conditions:

- a. that the Owner satisfy any outstanding conditions related to the 2006 Planning Board determination; the 2008 Settlement Agreement; and the 2008 Planning Board determination, as applicable;
- b. that the Project connect to central sewer as provided through the Matanzas Shores Owner’s Association system (the executed Wastewater Treatment Service License Agreement is attached);
- c. that the Owner provides the County with the 15 foot wide pedestrian easement for a public dune walkover;
- d. that the Owner consents to a dune restoration easement in favor of the County;
- e. that the North and West perimeter buffers be augmented so as to create an opaque barrier of natural vegetation a minimum of six (6) feet in height within five (5) years of the commencement of development of the parcel;

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- f. that the Project is designed with a cul-de-sac with a minimum fifty (50) foot turning radius and the secondary means of ingress and egress is stabilized with an all weather surface sufficient to accommodate emergency service vehicles; and
- g. that the Owner present the Site Plan to the A1A Scenic PRIDE Committee for their review and comment prior to Site Plan approval by the County.

**Deny** Application #3339, denying the project-specific dimensional requirements for the development of 16 detached single-family lots, denying the extension of wastewater service by the Matanzas Shores Owner's Association in accordance with Section 30-33(g) of the County Code, and/or not concurring with the Planning and Development Board's finding that all the special exception criteria as listed in the guidelines at Land Development Code Section 3.07.03.F have not been met for the amendment to single family detached lots at 6645 N. Oceanshore Boulevard (Parcel #40-10-31-1550-00000-0220) for the amendment to single family detached lots at 6645 N. Ocean Shore Boulevard (Parcel #40-10-31-1550-00000-0220).

**Continue** Application #3339, on the basis that additional information is needed from staff or the applicant. Based on the presentation and the public hearing, the Board does not have sufficient information to be able to render a decision on the amendment to the special exception request. Continuing the special exception request to a time and date certain will provide an opportunity for staff or the applicant to provide additional information.

**ATTACHMENTS:**

- 1. Technical Staff Report
- 2. Engineering Concept Plan sheet
- 3. Application and supporting documents
- 4. Wastewater Treatment Service License Agreement
- 5. TRC comments
- 6. Applicant's response to TRC comments
- 7. Scenic A1A PRIDE Committee review letter
- 8. Draft Planning and Development Board February 14, 2023 meeting minutes (in part)
- 9. Public notice

**APPLICATION #3339  
AMENDMENT TO SPECIAL EXCEPTION FOR  
CHANGING 14 TOWNHOMES TO 16 RESIDENTIAL LOTS IN THE R/C DISTRICT  
6645 NORTH OCEAN SHORE BOULEVARD  
TECHNICAL STAFF REPORT**

Application/Project #: 3339/2022120002

Address: 6645 North Oceanshore Boulevard

Owner: Consolidated Capital Funding II, LLC

Applicant: Michael D. Chiumento, III, Esquire

Parcel #: 40-10-31-1550-00000-0220

Parcel Size: 3.87+/- acres

**Legal Description:**

Lot 22 and a portion of Lot 21 of Dupont Estates, Map Book 3, Page 17, Public Records of Flagler County, Florida and fully described in Official Records Book 1354, Page 1881, Public Records of Flagler County, Florida. (Parcel Number: 40-10-31-1550-00000-0220).

**Existing Zoning and Land Use Classification:**

Zoning: R/C (Residential/limited commercial) District

Land Use: Mixed Use: Low Intensity/Low-Medium Density

**Future Land Use Map Classification/Zoning of Surrounding Land:**

North: Mixed Use: Low Intensity/Low-Medium Density/R/C (Residential/limited commercial) District

East: Atlantic Ocean

South: Mixed Use: Low Intensity/Low-Medium Density/R/C (Residential/limited commercial) District

West: North Oceanshore Boulevard (a/k/a State Road A1A); Mixed Use: Low Intensity/Low-Medium Density/R/C (Residential/limited commercial) District

Land Development Code Sections Affected: Land Development Code (LDC) Sections 3.03.13, *R/C (Residential/limited commercial) District* and 3.07.03.F, *Procedure for variances and special exceptions*, Section 3.03.13.D., Permitted Special Exceptions in the R/C (Residential/limited commercial) District, and Section 3.07.03(F), Special Exception Guidelines.

Summary of Request: Consolidated Capital Funding II, LLC, successfully achieved an approved special exception (following a settlement agreement) for 14 three story townhomes and now wants to amend that approval for 16 detached single-family

residential lots. According to Property Appraiser records, the subject parcel is undeveloped.

The subject property is located northeast of the intersection with North Oceanshore Boulevard and Old A1A. The site consists of a total project area of 3.87+/- acres. Access to the property is from North Oceanshore Boulevard. The resulting authorization for the 14 townhome units built upon a series of 19 conditions: six from the October 10, 2006 Planning Board meeting; six from the 2008 Settlement Agreement; and seven from the September 9, 2008 Planning Board meeting. While most of the conditions were submittal or schedule related – especially those that resulted from the 2008 Settlement Agreement – there were additional conditions that remain in effect. For the most part, the submittal for the 16 residential lots fails to specifically address the status of these conditions as it relates to the present 16 lot request. Nonetheless, staff has attempted to review the submittal to the Special Exception guidelines based on the submitted conceptual plan (see below), along with the previously prescribed 19 conditions (presented in the next attachment).

Two points of specific public interest are being met through the proposed project: the Owner has agreed to provide a 15 foot wide pedestrian access easement to the County along the South boundary line of the parcel for a future beach walkover; and the Owner will consent to the County's dune easement as part of this Project, filling an important void in the County's coastal dune project.

#### Special Exception Guideline Analysis:

As provided in FCLDC subsection 3.07.03.F, the Planning and Development Board shall hear and decide upon requests for special exceptions as authorized by land classifications. The Board may approve, with conditions, requests which are in harmony with the intent and purpose of the regulations. In making its determination, the Board shall be guided by the following:

1. Ingress to and egress from the property shall provide for automotive and pedestrian safety and convenience, shall not unduly interfere with traffic flow and control, and shall provide access in case of fire or catastrophe.

Applicant Analysis: [No narrative response received.]

Staff Analysis: The project has an internal sidewalk system for the residents which also connects to the sidewalk along the East side of the North Oceanshore Boulevard right-of-way. The Project also dedicates a 15 foot wide public pedestrian access easement from the North Oceanshore Boulevard sidewalk to the Atlantic Ocean for a future dune walkover which is one of the goals and objectives of the County (public beach access).

2. Offstreet parking and loading areas shall be provided as required, shall take into account relevant factors in subsection 1. preceding, and shall be located to minimize economic, noise, glare or odor effects on adjacent and nearby properties.

Applicant Analysis: [No narrative response received.]

Staff Analysis: Each resident has a garage and sufficient off-street parking for two additional vehicles.

3. Refuse and service areas shall be located with consideration for relevant factors in subsections 1. and 2. preceding.

Applicant Analysis: [No narrative response received.]

Staff Analysis: Refuse is intended to be by streetside adjacent to the homes. No common refuse or service areas are proposed.

4. The proposed use shall be compatible with the availability and location of utility services, whether public or private.

Applicant Analysis: [No narrative response received.]

Staff Analysis:

- a. Over the past two (2) years, the Owner, the County and the Matanzas Master HOA worked on amending the County code to ensure and permit the MHOA to provide wastewater service rather than the previously allowed septic fields. This effort was at the expense of the Owner.
  - b. As for potable water, the City of Palm Coast has a service adjacent to the site and will be the provider.
  - c. All other utilities are available and satisfied.
5. Screening and buffering shall be provided which preserves or improves compatibility and harmony of use and structure between the proposed use and adjacent and nearby properties, according to the type, dimensions and character of the proposed use.

Applicant Analysis: [No narrative response received.]

Staff Analysis:

- a. This property was a mobile home park and RV site for decades. This property and the two adjacent properties have very little vegetation and virtually no hardwood trees. What once existed was destroyed during previous storms.
  - b. The adjacent properties have very little vegetation. The proposed use has a generous landscape plan on all sides buffering the right of way and adjacent property. Such buffer was reviewed and coordinated with the assistance of residents in the Hammock as indicated in the A1A Scenic PRIDE Committee's letter of support.
  - c. Along the North Oceanshore Boulevard right of way (West parcel line of the Project), the Project provides for a landscape buffer averaging more than forty (40) feet with a minimum of the minimum code requirement of twenty-five (25) feet. In some areas the landscape buffer exceeds 100 feet.
6. Signs and exterior lighting, if any, shall maintain traffic safety and minimize glare and economic effects on adjacent and nearby properties.

Applicant Analysis: [No narrative response received.]

Staff Analysis: All lighting shall comply with the County's Land Development Code. Most importantly the lighting shall protect species inclusive of marine sea turtles. A lighting plan will be reviewed by the County during the Site Plan process.

7. Required yards and open spaces shall be provided.

Applicant Analysis: [No narrative response received.]

Staff Analysis: The dimensional standards for the Project including open space are provided on the proposed plans. It is noted that the previous allowance for multi-family relied on the R-3 standards in the LDC. For a transition to detached single-family lots, no dimensional standards are provided other than those presently listed in the R/C zoning district for residential development.

8. The height of structures shall be in harmony with that of adjacent and nearby uses and structures.

Applicant Analysis: [No narrative response received.]

Staff Analysis: The height of all structures shall not exceed that permitted by the County's Land Development Code and is set at 35 feet.

9. The economic effect of the proposed use on adjacent and nearby properties shall be positive.

Applicant Analysis: [No narrative response received.]

Staff Analysis:

- a. The adjacent properties are vacant or set to be demolished. The residential units proposed in this Project are anticipated to sell (according to the Owner) for more than \$850,000 up to \$1,200,000. In addition, the Project is in harmony with the existing homes in the general vicinity.
- b. Given that the Owner will provide public beach access, the Owner asserts this public amenity will increase the value of all residences in the community.

Dimensional Requirements:

The R/C zoning district previously referenced utilizing the R-3 requirements for its approved Special Exception multi-family developments:

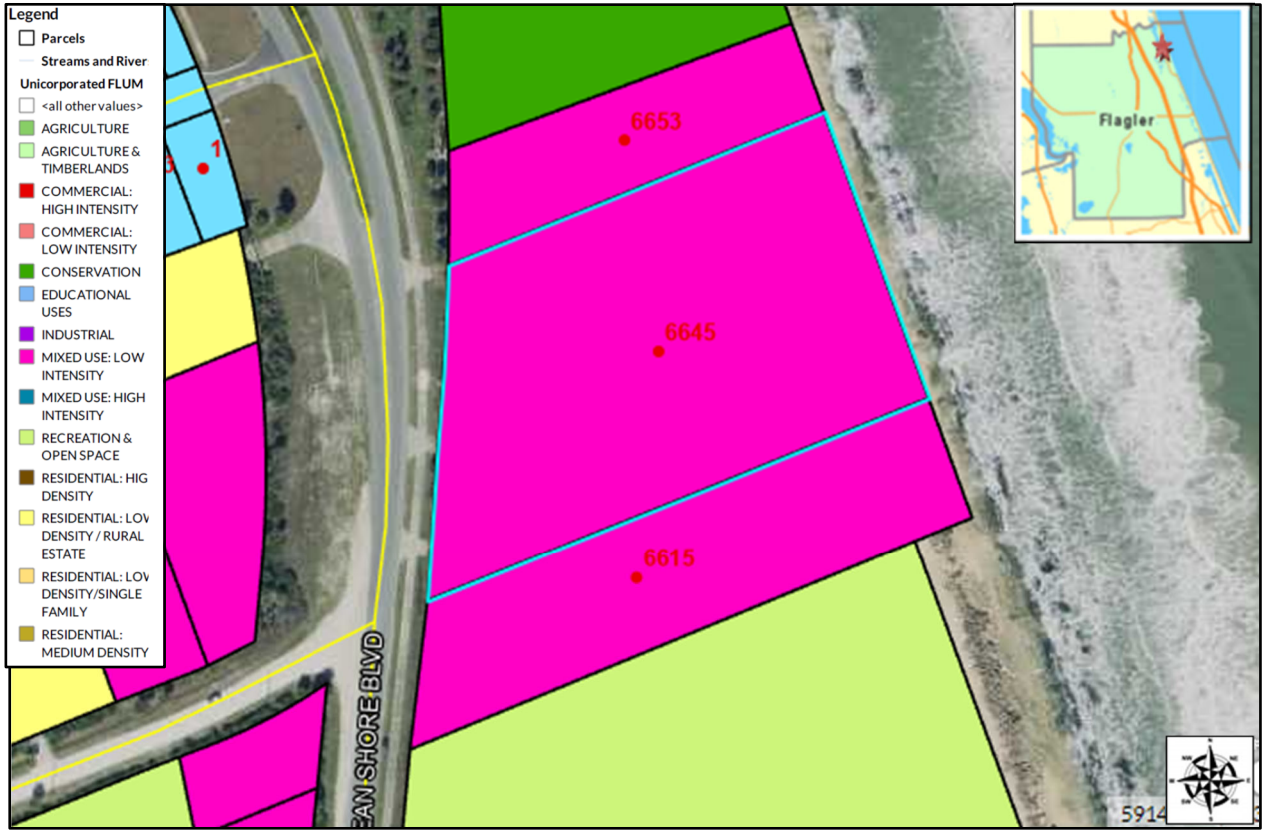
Criteria	R-3 (R/C Multi-Family) LDC Sec. 3.03.09.01.D.	R/C (Single Family Dwellings) LDC Sec. 3.03.13.E.	Project (as submitted)
Min. site size	One acre	N/A	N/A
Max. density	8 units/acre	N/A	N/A
Min. lot area	2,000 s.f. <sup>1</sup>	9,000 s.f.	2,800 s.f.
Min. lot width	20 feet <sup>2</sup>	75 feet	40 feet
Min. front yard setback	25 feet <sup>3</sup>	35 feet <sup>11</sup> 25 feet <sup>12</sup> 20 feet <sup>13</sup>	20 feet
Min. rear yard setback	20 feet <sup>4</sup>	20 feet	10 feet
Min. side yard setback (interior)	No minimum <sup>5</sup>	7.5 feet	5 feet
Min. side yard setback (abutting street)	25 feet <sup>6</sup>	25 feet	N/A
Min. spacing between buildings	30 feet	N/A	N/A
Max. building height	35 feet <sup>7</sup> , 45 feet <sup>8</sup>	35 feet	35 feet
Project perimeter setback	50 feet <sup>9</sup>	N/A	N/A
Max. lot coverage		35%	60%
Min. pervious area	30%	30%	40% <sup>14</sup>
Min. living area	650 s.f.	1,000 s.f.	800 s.f. <sup>15</sup>
Min. land area for recreational uses	5% <sup>10</sup>	N/A	N/A



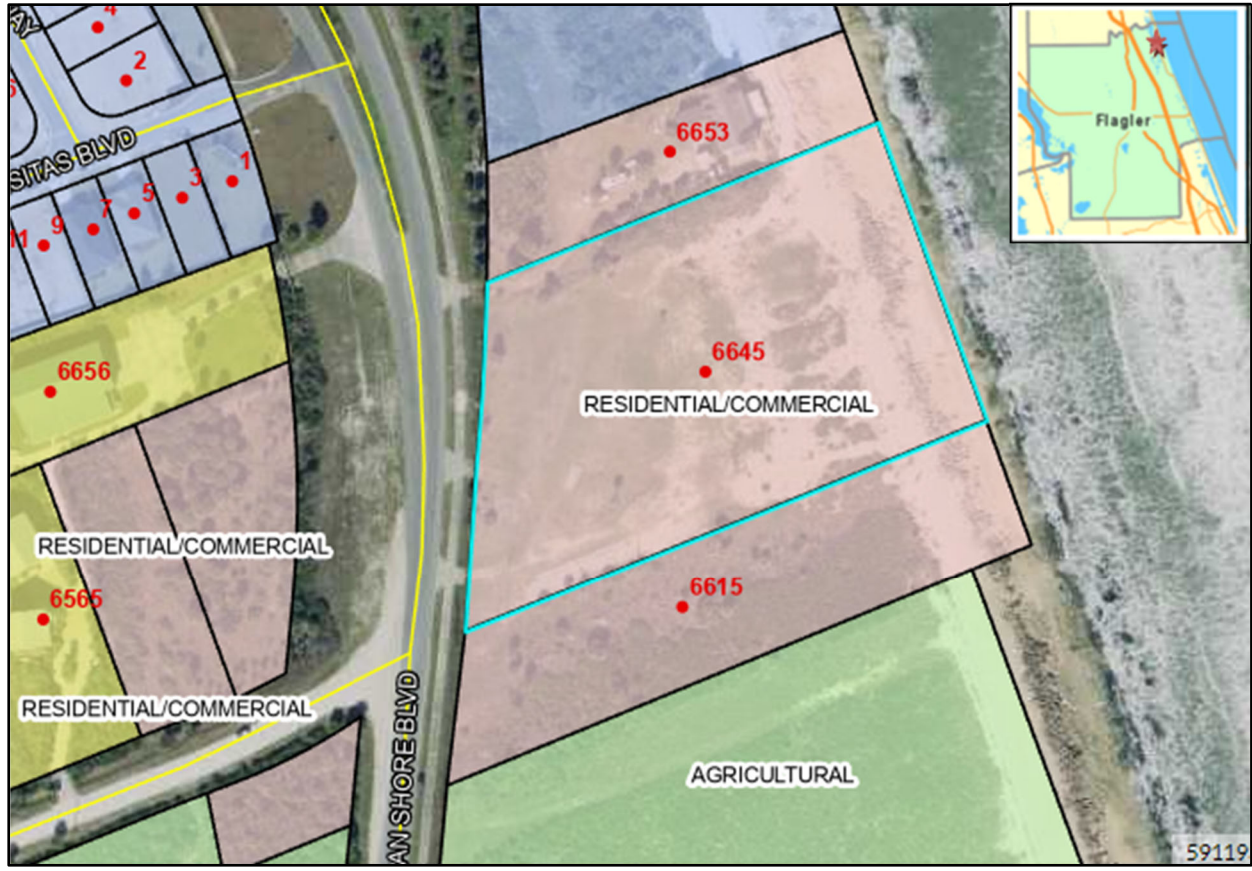
- Notes:
1. In the R-3 zoning district, the minimum lot area is per dwelling unit.
  2. In the R-3 zoning district, the minimum lot width is per dwelling unit.
  3. In the R-3 zoning district, the minimum front yard setback is per dwelling unit on separately platted lots within the same project.
  4. In the R-3 zoning district, the minimum rear yard setback is per dwelling unit on separately platted lots within the same project.
  5. In the R-3 zoning district, the minimum interior side yard setback is per dwelling unit on separately platted lots within the same project. No minimum side yard setback is listed.
  6. In the R-3 zoning district, the minimum side yard setback (abutting street) is per dwelling unit on separately platted lots within the same project.
  7. In the R-3 zoning district, the maximum building height is 35 feet if located within 100 feet of the project perimeter.
  8. In the R-3 zoning district, the maximum building height is 45 feet if located more than 100 feet from the project perimeter.
  9. In the R-3 zoning district, no structures shall be located within 50 feet of the project's perimeter (except parking areas) and 25 feet of this area shall be used for a vegetative buffer.
  10. In the R-3 zoning district, a minimum of 5 percent of the total developed area is to be used for recreational uses.
  11. In the R/C zoning district, for single-family dwellings, the minimum front yard setback for principal structures is 35 feet where the property depth exceeds 100 feet.
  12. In the R/C zoning district, for single-family dwellings, the minimum front yard setback for principal structures is 25 feet where the property depth is 100 feet or less.
  13. In the R/C zoning district, for single-family dwellings, the minimum front yard setback for principal structures is 20 feet for ocean front lots.
  14. For the project, the minimum pervious are is listed as 40%, while the "maximum site impervious surface ratio" is listed as 31%, listed as 0.75 acres of lot impervious area and 0.47 acres of roadway impervious area.
  15. For the project, the "minimum floor area" is listed as 800 s.f.

As provided, the project is larger than the minimum lot area and width as compared to the R-3 requirements, but smaller than the requirements in the R/C district for single-family development.

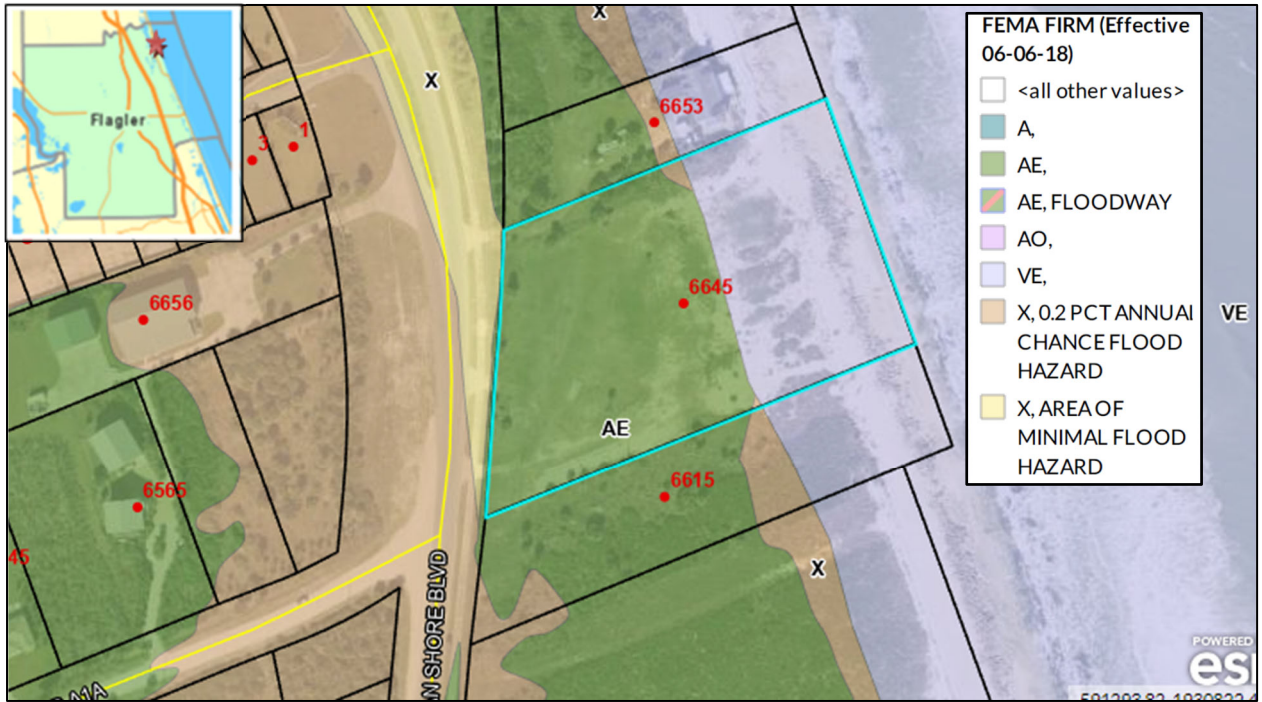
# Future Land Use Map



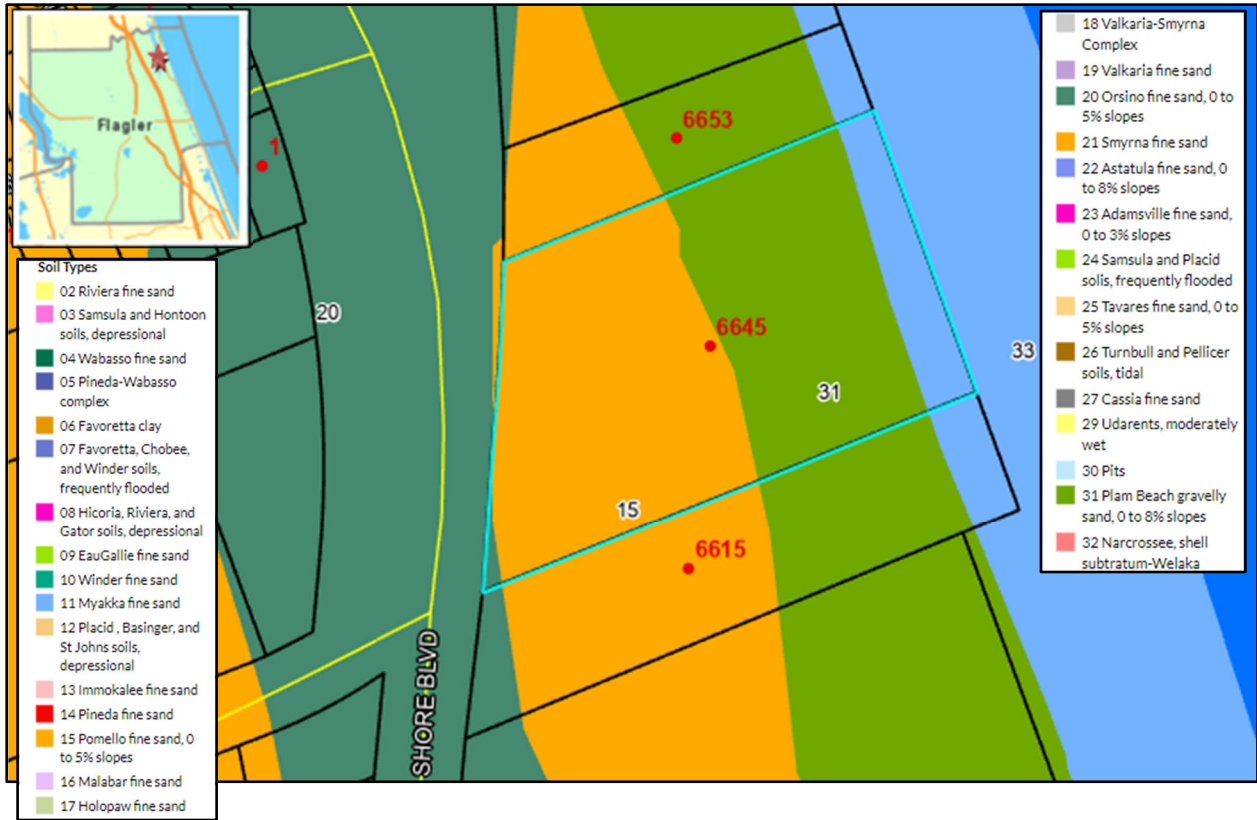
# Zoning Map



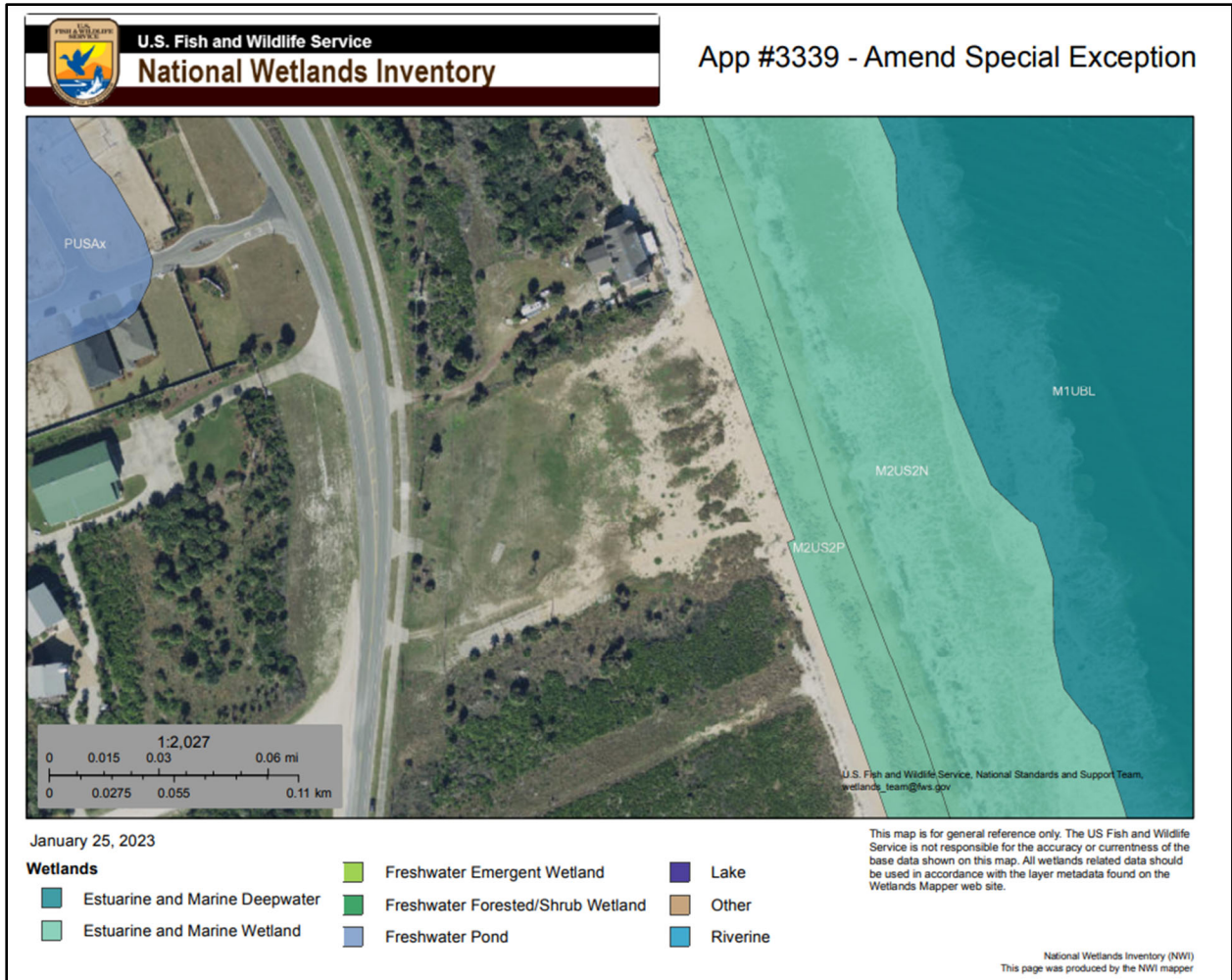
# Flood Zone



# Soils



# Wetlands



SOLITUDE CONDOS/CONSOLIDATED SPECIAL EXCEPTION CONDITIONS

CONDITIONS	STATUS	STAFF COMMENT
Site Development Plan approval meeting all development criteria of the Flagler County Land Development Code, including but not limited to, Scenic A1A Corridor Overlay requirements, Marine Sea Turtles, etc. (from 10/10/2006 Planning Board meeting)	Conceptual Site Plan has been submitted as part of this request	N/A
Present the Site Development Plan to the Scenic A1A Scenic PRIDE Committee (from 10/10/2006 Planning Board meeting)	The Conceptual Site Plan has been reviewed by the Scenic A1A PRIDE Committee	N/A
Return to the Planning Board with the site plan and letter from A1A Scenic PRIDE Committee (from 10/10/2006 Planning Board meeting)	The February 14, 2023 Planning and Development Board meeting satisfies this condition as it relates to this iteration of the Project	N/A
Receipt of all permits from other regulatory agencies having jurisdiction (from 10/10/2006 Planning Board meeting)	Unclear if this condition has been satisfied	Other agency permits should be submitted
Recordation of the Dedication of Restricted Covenant regarding Development Entitlements dated July 12, 2006, signed by Colonial Land Company of Flagler County, Inc. and Consolidated Capital Funding II, LLC in the Public Records of Flagler County, Florida (from 10/10/2006 Planning Board meeting)	This should have been completed	Staff to verify
Wastewater removal be permitted by DEP (from 10/10/2006 Planning Board meeting)	Connection to Matanzas Shores Master HOA system satisfies this condition	Permits will be issued as necessary for the actual extension work
The County shall permit the Owner to amend the Applications to provide for an alternative conceptual site plan (the "Amended Application")(from the 2008 Settlement Agreement)	This is assumed to have occurred previously	N/A
Within ten (10) days of he BOCC's approval and execution of this Agreement the Owner shall file with the Court a Dismissal of the Petition (from the 2008 Settlement Agreement)	This is assumed to have occurred previously	N/A

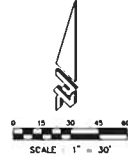
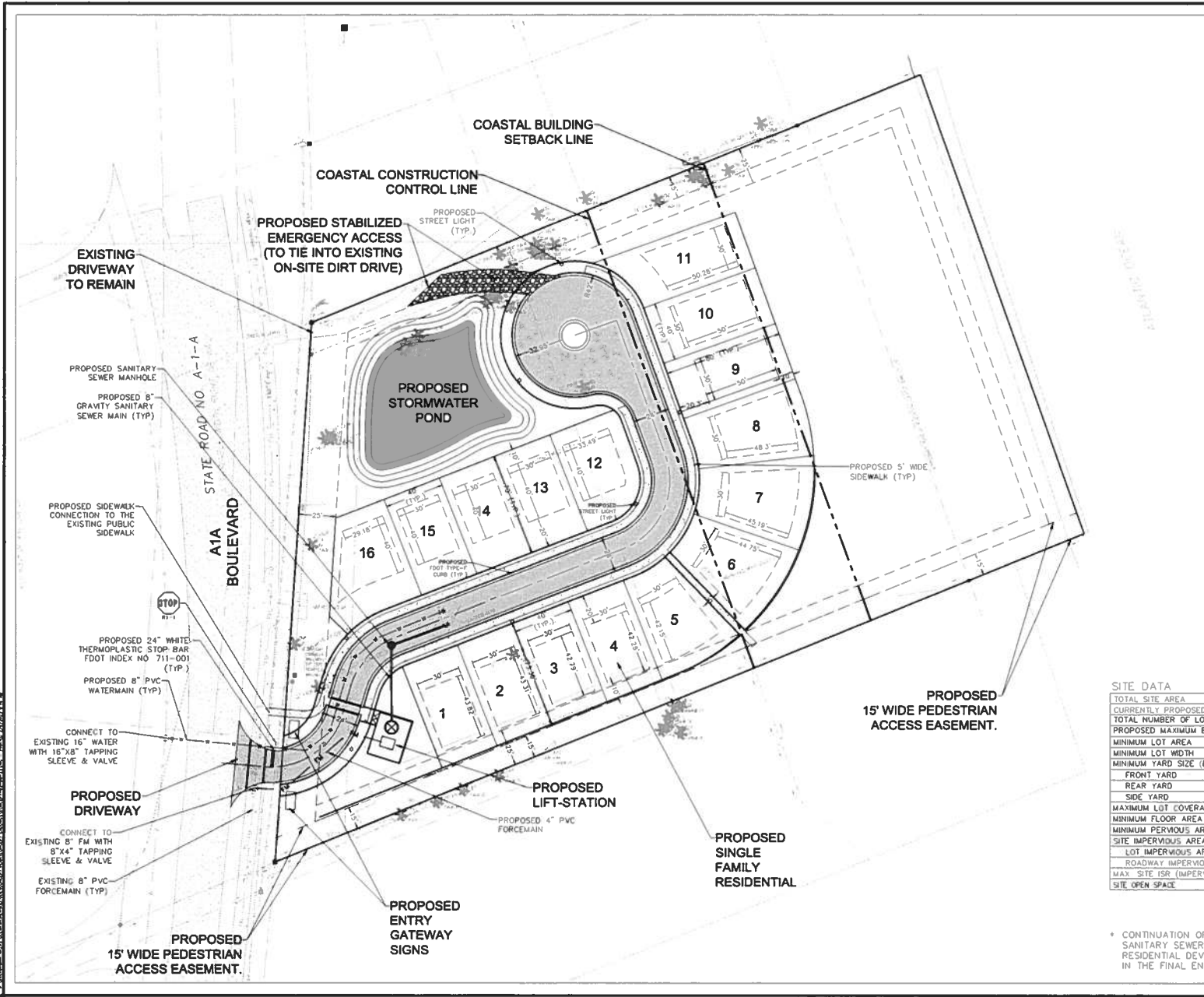
SOLITUDE CONDOS/CONSOLIDATED SPECIAL EXCEPTION CONDITIONS

CONDITIONS	STATUS	STAFF COMMENT
Within thirty (30) days of filing the dismissal of the Petition the Owner shall submit to the County its Amended Application (from the 2008 Settlement Agreement)	This is assumed to have occurred previously	N/A
Within sixty (60) days from the Owner filing the Amended application the County Planning Board shall hear the amended application (from the 2008 Settlement Agreement)	This is assumed to have occurred previously	N/A
The Owner shall submit the Amended Application to the Scenic A1A Pride for further review and comment (from the 2008 Settlement Agreement)	This is assumed to have occurred previously	N/A
The Planning Board shall hold a public hearing consistent with the County's Comprehensive Plan and LDC to review the Amended Application and render its decision consistent with the LDC (from the 2008 Settlement Agreement)	This occurred; the Planning Board reviewed the request and added additional conditions (see below)	N/A
All project signage will comply with the dimensional and location requirements of Sec. 7.03.06, LDC, with sign color regulated in the A1A Scenic Corridor by Sec. 7.02.04.6., LDC (from 9/9/2008 Planning Board meeting)	Will be required, Site Plan will demonstrate compliance	N/A
All project lighting will comply with Sec. 6.05.05 of the LDC (from 9/9/2008 Planning Board meeting)	Site Plan will depict lighting and each lot's development will include a statement of compliance along with installation of lighting that meets these requirements	N/A
The western and northern landscape buffers shielding the parking from public view will be composed of landscaping providing a minimum of eighty percent (80%) opacity after maturity, and that native plants will be used (from 9/9/2008 Planning Board meeting)	This is not being met by the current Conceptual Site Plan; the current Plan does not satisfy this requirement	Amend the Plan to demonstrate compliance with this condition
The Scenic A1A PRIDE Committee will be provided an opportunity to review the final site plans, landscape plans, and signage plan and provide comments to the County (from 9/9/2008 Planning Board meeting)	The Conceptual Site Plan has been reviewed by Scenic A1A PRIDE Committee; this condition contemplates additional reviews yet to come	Complete as needed



SOLITUDE CONDOS/CONSOLIDATED SPECIAL EXCEPTION CONDITIONS

CONDITIONS	STATUS	STAFF COMMENT
Upon connection of the project to central sanitary sewer, that the drainfield area will remain as recreational open space (from 9/9/2008 Planning Board meeting)	The current Conceptual Site Plan does not switch this area to recreational open space	Amend the Plan to demonstrate compliance with this condition
Should funds become available, that the power lines along A1A in front of the development be moved underground (from 9/9/2008 Planning Board meeting)	No funds (other than Owner/Developer funds) have been identified for this work; A1A Scenic Overlay requirements call for underground utilities	Encourage transitioning powerline in this area to be placed underground due to proximity to Atlantic Ocean
The turning radius for fire and garbage trucks meets the necessary criteria for turning (from 9/9/2008 Planning Board meeting)	Undetermined	To be determined through successive review steps




**LEGEND:**

- PROPOSED ASPHALT PAVEMENT
- PROPOSED CONCRETE PAVEMENT
- PROPOSED STREET LIGHT

**SITE DATA**

TOTAL SITE AREA	3.91 AC
CURRENTLY PROPOSED DEVELOPMENT AREA	2.72 AC
TOTAL NUMBER OF LOTS	16
PROPOSED MAXIMUM BUILDING HEIGHT	35'
MINIMUM LOT AREA	2,800 SF
MINIMUM LOT WIDTH	40'
MINIMUM YARD SIZE (BUILDING)	
FRONT YARD	20'
REAR YARD	10'
SIDE YARD	5'
MAXIMUM LOT COVERAGE	60%
MINIMUM FLOOR AREA	800 SF
MINIMUM PERVIOUS AREA	40%
SITE IMPERVIOUS AREA	
LOT IMPERVIOUS AREA	0.75 AC
ROADWAY IMPERVIOUS AREA	0.47 AC
MAX. SITE ISR (IMPERVIOUS SURFACE RATIO)	31%
SITE OPEN SPACE	2.69 AC

\* CONTINUATION OF POTABLE WATER & SANITARY SEWER UTILITIES INTO THE PROPOSED RESIDENTIAL DEVELOPMENT TO BE INCLUDED IN THE FINAL ENGINEERING PLANS



**ZEV COHEN & ASSOCIATES, INC.**  
LANDSCAPE ARCHITECTURE  
ENVIRONMENTAL PLANNING  
TRANSPORTATION

PROJECT NO. 0870  
DESIGNED BY: HKS  
DRAFTED BY: OMSA  
CHECKED BY: HKS  
DATE: 08/04/2010  
CITY OF 2008

**SOLITUDE AT MATANZAS  
CONCEPTUAL PLAN**

DATE: 08/04/2010  
BY: HKS  
SCALE: AS SHOWN

SHEET: **CP3** OF 1



# APPLICATION FOR SPECIAL EXCEPTION

FLAGLER COUNTY, FLORIDA  
 1769 E. Moody Boulevard, Suite 105  
 Bunnell, FL 32110  
 Telephone: (386) 313-4009 Fax: (386) 313-4109

Application/Project #: 3339 / 2022120002

<b>PROPERTY OWNER(S)</b>	Name(s): Consolidated Capital Funding II, LLC	
	Mailing Address: P.O. Box 1509	
	City: Sanford	State: FL Zip: 32772
	Telephone Number	Email
	Fax Number:	Address:

<b>APPLICANT/AGENT</b>	Name(s): Michael D. Chiumento III, Esq.	
	Mailing Address: 145 City Place, Suite 301	
	City: Palm Coast	State: FL Zip: 32164
	Telephone Number 386-445-8900 ext 102	Fax Number 386-445-6702
	Email Address michael3@legalteamforlife.com & cmcneil@legalteamforlife.com	

<b>SUBJECT PROPERTY</b>	SITE LOCATION (street address):	6645 N. Ocean Shore Blvd., Palm Coast 32137	
	LEGAL DESCRIPTION: <i>(briefly describe, do not use "see attached")</i>	Dupont Estates Lot 21 E of A1A & Part of Lot 22 etc	
	Parcel # (tax ID #):	37-10-31-1550-00000-0220	
	Parcel Size:	3.87	
	Current Zoning Classification:	Residential/Commercial	
	Current Future Land Use Designation	Mixed Use: Low Intensity	
	Subject to A1A Scenic Corridor IDO?	XX YES	NO

**Requested Use:** Amendment to the approved Conceptual Site Plan to allow 16 single family detached lots.

Signature of Owner(s) or Applicant/Agent \_\_\_\_\_ Date \_\_\_\_\_  
 if Owner Authorization form attached

**\*\*OFFICIAL USE ONLY\*\***

PLANNING BOARD RECOMMENDATION/ACTION: \_\_\_\_\_  
 APPROVED [ ]  
 APPROVED WITH CONDITIONS [ ]  
 DENIED [ ]

Signature of Chairman: \_\_\_\_\_ Date: \_\_\_\_\_

NOTE: The applicant or a representative, must be present at the Public Hearing since the Board, at its discretion, may defer action, table, or take decisive action on any application. Rev. 08/14



# APPLICATION FOR SPECIAL EXCEPTION

FLAGLER COUNTY, FLORIDA  
 1769 E. Moody Boulevard, Suite 105  
 Bunnell, FL 32110  
 Telephone: (386) 313-4009 Fax: (386) 313-4109

Application/Project #: 3339 / 2022120002

<b>PROPERTY OWNER(S)</b>	Name(s): <b>Consolidated Capital Funding II, LLC</b>	
	Mailing Address: <b>P.O. Box 1509</b>	
	City: <b>Sanford</b>	State: <b>FL</b> Zip: <b>32772</b>
	Telephone Number	Email Address:
	Fax Number:	

<b>APPLICANT/AGENT</b>	Name(s): <b>Michael D. Chiumento III, Esq.</b>	
	Mailing Address: <b>145 City Place, Suite 301</b>	
	City: <b>Palm Coast</b>	State: <b>FL</b> Zip: <b>32164</b>
	Telephone Number <b>386-445-8900 ext 102</b>	Fax Number <b>386-445-6702</b>
	Email Address <b>michael3@legalteamforlife.com &amp; cmcneil@legalteamforlife.com</b>	

<b>SUBJECT PROPERTY</b>	SITE LOCATION (street address):	<b>6645 N. Ocean Shore Blvd., Palm Coast 32137</b>	
	LEGAL DESCRIPTION: <i>(briefly describe, do not use "see attached")</i>	<b>Dupont Estates Lot 21 E of A1A &amp; Part of Lot 22 etc</b>	
	Parcel # (tax ID #):	<b>37-10-31-1550-00000-0220</b>	
	Parcel Size:	<b>3.87</b>	
	Current Zoning Classification:	<b>Residential/Commercial</b>	
	Current Future Land Use Designation	<b>Mixed Use: Low Intensity</b>	
	Subject to A1A Scenic Corridor IDO?	<b>XX</b> YES	NO

**Requested Use:** Amendment to the approved Conceptual Site Plan to allow 16 single family detached lots.

Authentisign  
  
 Signature of Owner(s) or Applicant/Agent if Owner Authorization form attached Date 12/01/22

**\*\*OFFICIAL USE ONLY\*\***

PLANNING BOARD RECOMMENDATION/ACTION: APPROVED [ }  
 APPROVED WITH CONDITIONS [ }  
 DENIED [ }  
 Signature of Chairman: \_\_\_\_\_ Date: \_\_\_\_\_

NOTE: The applicant or a representative, must be present at the Public Hearing since the Board, at its discretion, may defer action, table, or take decisive action on any application. Rev. 08/14



# Owner's Authorization for Applicant/Agent

FLAGLER COUNTY, FLORIDA

1789 E. Moody Boulevard, Suite 105

Bunnell, FL 32110

Telephone: (386) 313-4009 Fax: (386) 313-4109

Application/Project # \_\_\_\_\_

Michael D. Chiumento III, Esq. \_\_\_\_\_, is hereby authorized TO ACT ON BEHALF OF Consolidated Capital Funding II, LLC \_\_\_\_\_, the owner(s) of those lands described within the attached application, and as described in the attached deed or other such proof of ownership as may be required, in applying to Flagler County, Florida for an application for Special Exception \_\_\_\_\_.

(ALL PERSONS, WHO'S NAMES APPEAR ON THE DEED MUST SIGN)

By: [Signature]  
Signature of Owner

Michael M. Gilardi, Manager of Consolidated Capital Funding II, LLC  
Printed Name of Owner / Title (if owner is corporation or partnership)

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Printed Name of Owner

Address of Owner: P.O. Box 1509

Telephone Number (incl. area code) (407) 290-0572

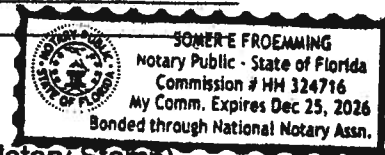
Mailing Address Sanford, FL 32772  
City State Zip

STATE OF Florida

COUNTY OF Seminole

The foregoing was acknowledged before me this 1<sup>st</sup> day of December, 2022 by Michael M. Gilardi and na who is/are personally known to me or who has produced as identification, and who (did) / (did not) take an oath. na

[Signature]  
Signature of Notary Public



(Notary Stamp)

<http://www.flaglercounty.org/doc/dpt/centprmt/landdev/owner%20auth.pdf>

Revised 5/08

Chiumento Law, PLLC  
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145 City Place, Suite 301  
Palm Coast, FL 32164  
Tel. (386) 445-8900  
Fax: (386) 445-6702

5048 N. Ocean Shore Blvd.  
Palm Coast, FL 32137

*By Appointment Only:  
57 W. Granada Blvd.  
Ormond Beach, FL 32174*

October 18, 2022

Planning & Zoning  
Attn: Adam Mengel, Growth Management Director  
1769 E. Moody Blvd.,  
Bunnell, FL 32110

**RE: 6645 N. Ocean Shore Blvd., Palm Coast, Florida  
Parcel ID No. 37-10-31-1550-00000-0220**

As you know, I represent Consolidated Capital Funding II, LLC (the "Owner") which owns a 3.87 acre parcel of land (**Exhibit "A"**) located at 6645 North Ocean Shore Blvd, Flagler County (the "Property"). On September 8, 2008 the Flagler County Planning Board approved a special exception for a fourteen (14) unit three story town house project commonly called "Solitude" as depicted on the Conceptual Site Plan (**Exhibit "B"**).

On June 27, 2016, Flagler County Planning and Zoning department issued a "binding letter regarding the entitlements" for the Property (the "Vesting Letter", **Exhibit "C"**). The Vesting Letter provides the Owner with its vested right, conditions and obligations to develop the Property. Specifically, the Owner's vested rights to construct the fourteen-unit (14) town house development as depicted by the Conceptual Site Plan is "subject to": (i) conditions approved by the Planning Board on October 8, 2006 and September 9, 2008, and (ii) the Settlement Agreement between the Owner and the County. The Owner agrees with the Vesting Letter and that the project may be constructed as approved today.

In 2020, the Owner and County staff held a preapplication meeting. We reviewed the approved project, amendments to it and various other issues. The Owner presented an amended Conceptual Site Plan converting from the 14 townhomes to 16 single family detached lots. During that meeting, the County inquired if the Owner would eliminate the wastewater septic system permitted for the project and alternatively connect to the Matanzas Shores' Owner Association's ("MSOA") or City of Palm Coast's wastewater system. After investigation, the Owner concluded that obtaining services could only be from MSOA.

For nearly two years, the Owner, the County and MSOA held discussions and negotiations for the Owner's request for wastewater services. To achieve such, the County amended its utility ordinance allowing, among other thing, the MSOA to offer utility services to other properties outside its boundaries. Shortly thereafter, the Owner and MSOA entered into a utility agreement to provide the Property treated wastewater services. As a result of the County, the MSOA and the Owner's efforts, the Property can eliminate the septic system and discharge waste water into the MSOA's waster water treatment facility.

Now that this issue is resolved, the Owner officially requests that the County consider an amendment to the approved Conceptual Site Plan (the "Amended Plan"). We assert that the Amended Plan is more harmonious with the community than the approved town house project. The Owner, through the Amended Plan shall comply with most of the conditions cited in your Vesting Letter. In addition, the Owner went through significant expense and increased costs to connect to the MSOA utility system. The Owner will also maintain public beach access, rebuild the dunes during construction and grant the County a beach renourishment easement.

The Amended Plan depicts a sixteen (16) unit, single family detached residential project (**Exhibit "D"**). The architecture will be unified (**Exhibit "E"**). Of those present, binding conditions, the Amended Plan will satisfy the following:

1. Except as depicted, the Site Development Plan approval meeting all development criteria of the Flagler County Land Development Code, including but not limited to the Scenic A1A Corridor Overlay requirements, marine Sea Turtles, etc.
2. Present the Amended Plan to the Scenic A1A Pride Committee (the "Committee"),
3. Return to the Planning Board with the Site Plan and letter form the Committee,
4. Receipt of all permits from other regulatory agencies having jurisdiction;
5. Recordation forthwith in the Dedication of Restricted Covenants;
6. Satisfy or obtain waiver from the Committee the following:
  - a. Parking hidden by landscaping with 80% opacity at maturity,
  - b. Review of the final plan and preliminary plat.
7. Conditions put forth by the Planning Board which may include:
  - a. Project signage compliant with County LDC,
  - b. Lighting to comply with County LDC
  - c. Western and northern landscape buffers to screen parking,
  - d. Turning radius of fire and garbage trucks meet criteria.

In light of the above, the Owner respectfully requests that the County accept this petition to amend the approved conceptual site plan attached and the approved Special Exception to provide for sixteen (16) single family residential lots as depicted on the Amended Plan. The Owner will commit to the architectural themes noted herein and provide landscaping as shown on the Amended Plan. Moreover, the Owner will meet with the Committee on October 28, 2022 to obtain its input and requests. The Owner will also consider all comments and requests put forth by the County.

On behalf of the Owner, I thank you in advance for your consideration. Should you have any questions or comments, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'MDC', with a long horizontal stroke extending to the right.

Michael D. Chiumento III  
Attorney  
MDC/cm

Enclosures



Prepared by and return to:  
Barry B. Ansbacher

→ Ansbacher & McKee, P.A.  
1301 Riverplace Blvd. Ste 2450  
Jacksonville, FL 32207-9047  
904-396-8050  
File Number: 040139  
Will Call No.: 396-8050

[Space Above This Line For Recording Data]

## Special Warranty Deed

This Special Warranty Deed made this 16th day of November, 2005 between Samy F. Bishai whose post office address is 2514 U.S. 1 South, Saint Augustine, FL 32086, grantor, and Consolidated Capital Funding II, LLC, a Florida limited liability company (FL Dept. of State No. L05000011930) whose post office address is 1009 Maitland Center Commons Boulevard, Maitland, FL 32751, grantees:

(Whenever used herein the terms grantor and grantees include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Flagler County, Florida, to-wit:

*Lot 22 and a portion of lot 21 of Dupont Estates, lying easterly of State Road No. A1A (A 100 foot right-of-way as now established) as recorded in Plat Book 3, Page 17, Flagler County, Florida. Together with that portion of old Ocean Shore Boulevard, created by Official Record Book 58, Page 557 of said county, being more particularly described as follows: Begin at the intersection of the easterly right-of-way line of State Road No. A1A with the northerly property line of lot 21, of said Dupont Estates; thence North 67°38'30" East, a distance of 443.62 feet to the margin of the Atlantic Ocean; thence South 19°38'33" East along said margin, 330.24 feet to the southerly line of lot 22, of said Dupont Estates; thence South 67°35'57" West along said southerly line, a distance of 189.33 feet to the easterly right of way line of said State Road No. A1A; thence North 05°16'30" East along said right-of-way, a distance of 123.27 feet to the point of a curve to the left, being concave northwesterly, said curve having a radius of 2914.93; thence along and around said curve an arc distance of 244.49 feet, said curve subtended by a chord bearing and distance of North 02°52'20" East, a distance of 244.42 feet to the point of beginning.*

Parcel Identification Number: 37-10-31-1550-00000-0220

Grantor's warranty excludes (a) riparian and littoral rights, (b) the rights, if any, of the public to use as a public beach or recreation area any part of the land lying between the body of water abutting the Property and the natural line of vegetation, bluff, extreme high water line or other apparent boundary line separating the publicly used area from the upland private area, (c) any lands lying waterward of the mean high water line of the Atlantic Ocean, and (d) rights under that certain easement recorded in Official Records Book 58, Page 561.

Grantor warrants that at the time of this conveyance, the subject property is not the grantor's homestead within the meaning set forth in the constitution of the state of Florida, nor is it contiguous to or a part of homestead property.



DoubleTime

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under grantors.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Witness Name: Barry B. Ansbacher

Samy F. Bishai (Seal)  
Samy F. Bishai

Witness Name: Lessa Culver

State of Florida  
County of Duval

The foregoing instrument was acknowledged before me this 1st day of November, 2005 by Samy F. Bishai, who [X] is personally known or [ ] has produced \_\_\_\_\_ as identification.

[Notary Seal]

Barry B. Ansbacher  
Notary Public

Printed Name: Barry B. Ansbacher

My Commission Expires: April 5, 2009



Unofficial Document

## WASTEWATER TREATMENT SERVICE LICENSE AGREEMENT

This **Wastewater Treatment Service License Agreement** (“Agreement”) is made by and between **Matanzas Shores Owner’s Association, Inc.**, whose address is 110 E. Collector Road, Palm Coast, Florida, 32137 (“MSOA”), and **Consolidated Capital Funding II, LLC** whose address is P.O. Box 1509, Sanford, Florida, 32772 (“CCFII”) (MSOA and CCFII collectively, the “Parties”), and shall be effective as of the date of the last of the Parties to sign it (“effective date”).

### RECITALS

**A.** MSOA is a Florida Corporation not-for-profit which owns and operates a Wastewater Treatment Plant and associated infrastructure and facilities for the collection, conveyance, and treatment of domestic wastewater (“WWTP Facilities”).

**B.** CCFII is a Florida Limited Liability Company which owns a parcel of land near the Matanzas Shores development bearing Parcel Identification Number: 37-10-31-1550-00000-0220 and described on the attached **Exhibit A**. The property owned by CCFII as described on Exhibit A is referred to herein as the “Development Parcel.”

**C.** CCFII intends to develop the Development Parcel, or to sell the Development Parcel to a third party to develop it, as a residential subdivision comprised of residential dwelling units. As part of planning the development of the Development Parcel, CCFII has inquired whether MSOA would be willing to provide wastewater treatment services to the Development Parcel so the ultimate developer of the Development Parcel can avoid constructing alternative wastewater treatment facilities, such as septic tanks, which would provide general environmental benefits and economic benefits to the owner of the Development Parcel.

**D.** MSOA’s wastewater treatment facilities have sufficient capacity to accommodate the collection, conveyance, and treatment of domestic wastewater emanating from the Development Parcel and MSOA desires to extend wastewater services to CCFII in exchange for the consideration identified in this Agreement.

**NOW, THEREFORE**, in exchange for mutual consideration, the value and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

**1. Recitals.** The Parties agree that the recitals above are true and correct in all material respects, and they are incorporated herein.

**2. Collection & Treatment of Wastewater.** In exchange for the consideration identified in this Agreement, MSOA hereby grants to CCFII a non-exclusive license to discharge domestic wastewater from the Development Parcel into MSOA’s wastewater treatment system. MSOA agrees to convey and treat domestic wastewater emanating from the Development Parcel, to exclusively include extension of such services to up to twenty-five residential dwelling units and a recreational facility, from and after the point of connection with MSOA’s existing wastewater conveyance infrastructure, which shall be at a location determined in accordance with Section 3 below. MSOA’s service obligation shall begin at and include the point of connection of

the Development Parcel's wastewater conveyance infrastructure to the existing MSOA wastewater conveyance infrastructure. CCFII shall be obligated to convey wastewater, and to install at its expense all infrastructure necessary for such conveyance, to the point of connection with MSOA's existing wastewater conveyance infrastructure. The license granted herein shall be revocable by MSOA in the event of an uncured default of this Agreement and shall not be deemed a license coupled with an interest.

**3. Installation & Maintenance of Infrastructure.** CCFII shall cause to be constructed, and shall pay for the construction and installation of, all infrastructure necessary to convey wastewater influent from the Development Parcel to MSOA's wastewater treatment facilities. Prior to causing any such infrastructure to be installed or constructed, CCFII shall provide detailed plans and specifications to MSOA for review and approval. Such plans and specifications shall describe the materials, dimensions, construction methodology, and location (depicted on a scaled property survey) of all wastewater conveyance infrastructure proposed to be installed and shall also specifically describe and depict the proposed method of connecting such infrastructure to MSOA's existing wastewater conveyance infrastructure. All such plans and specifications, including the method of connecting the Development Parcel wastewater infrastructure to MSOA's existing infrastructure, shall be subject to MSOA's express written approval. CCFII shall be responsible for the installation, maintenance, repair, and replacement of all infrastructure necessary to convey wastewater influent from the Development Parcel, including any future user's dwelling unit or facility (including any recreational facility that may be constructed within the Development Parcel), to the point of connection with MSOA's existing wastewater conveyance infrastructure. During the effective term of this Agreement, including any extensions or renewals hereof, MSOA shall be responsible for the maintenance and operation of its wastewater treatment and conveyance facilities from and after the point of connection of the Development Parcel's wastewater infrastructure with MSOA's existing wastewater infrastructure (i.e., MSOA's existing wastewater conveyance and treatment facilities).

Upon expiration or termination of this Agreement, MSOA may provide notice to CCFII requiring CCFII to disconnect and remove all infrastructure necessary to convey wastewater from the Development Parcel to MSOA's wastewater conveyance and treatment facilities, which includes without limitation all force main and other piping or conduit installed for that purpose, except any infrastructure (or part thereof) located on, under, or within property owned by CCFII, and CCFII shall cause all such infrastructure to be removed at its expense within one hundred twenty (120) days of receipt of notice. If CCFII fails to comply with the request, and in addition to all other remedies available at law or in equity, MSOA shall have the right to remove or relocate and dispose of any such infrastructure at CCFII's expense, the costs of which shall be payable to MSOA upon demand by MSOA. The foregoing rights and obligations survive expiration or termination of this Agreement for any reason and may be enforced through any remedy available at law or in equity, including through an action for specific performance. In addition, and notwithstanding that MSOA is not obligated to inspect, maintain, repair, or replace any infrastructure necessary to convey wastewater influent from the Development Parcel to the point of connection with MSOA's wastewater conveyance and treatment facilities, MSOA shall have the right, but not the obligation, to: (a) enter the Development Parcel at reasonable times to inspect any wastewater conveyance infrastructure; (b) request that CCFII undertake certain items of construction, maintenance, repair, or replacement of any wastewater conveyance infrastructure

from and before the point of connection with MSOA's existing wastewater conveyance and treatment facilities within a reasonable period of time if: (i) such items adversely affect, or if not performed would have the potential to adversely affect, MSOA's WWTP Facilities, (ii) such items, if not performed, would prevent or impair the proper and lawful conveyance of wastewater influent from the Development Parcel to MSOA's WWTP Facilities; (iii) such items, if not performed, may result in a violation of applicable law or may subject MSOA (or its directors, officers, or other agents or representatives) to civil or criminal penalties of any nature; or (iv) such items, if not performed, would present a risk of adverse environmental impacts; and (c) if CCFII fails to undertake such items of construction, maintenance, repair, or replacement within a reasonable time as requested by MSOA, to enter the Development Parcel and perform such items of construction, maintenance, repair, and replacement, and to levy a special assessment against CCFII (to the exclusion of other persons) for all associated costs, which shall be payable to MSOA within thirty (30) days of written demand by MSOA. A special assessment for that purpose shall not be based on the formula provided in Section 5(b) below.

**4. Easement for Installation & Maintenance of Infrastructure.** CCFII hereby agrees to grant MSOA an easement over, under, and through the Development Parcel, to install, operate, inspect, maintain, repair, and replace wastewater treatment infrastructure and as necessary to permit access to such facilities by MSOA, its agents, and contractors, regardless of whether MSOA bears the obligation to inspect, maintain, repair, or replace such infrastructure. This easement shall include the right (but not the obligation) to make repairs and modifications to the wastewater conveyance infrastructure serving the Development Parcel during the effective period of this Agreement, including any extensions or renewals of it, as necessary to accommodate the conveyance of wastewater influent from the Development Parcel to MSOA's wastewater conveyance and treatment facilities. The form of the foregoing easement will be provided by MSOA, and CCFII shall pay all costs associated with obtaining property surveys as necessary to describe the easement boundaries, which costs shall be in addition to the other monetary sums due from CCFII under this Agreement. Further, the Parties acknowledge and agree that nothing herein shall be deemed to delegate any obligation to MSOA to inspect, construct, operate, maintain, repair, or replace any wastewater infrastructure serving the Development Parcel before the point of connection of such infrastructure to MSOA's existing wastewater conveyance infrastructure.

**5. Payments Due from CCFII.**

**a. Connection Fee.** As part of the monetary consideration for this Agreement, CCFII shall pay MSOA a connection fee of five thousand dollars (\$5,000.00) per residential dwelling unit constructed within the Development Parcel, plus an additional connection fee of four thousand dollars (\$4,000.00) per recreational or other facility constructed within the Development Parcel which has any facility within it that discharges domestic wastewater. For example, if twenty-five total dwelling units and one recreational facility containing restrooms are constructed within the Development Parcel, CCFII would be obligated to pay MSOA a total connection fee of one hundred twenty-nine thousand dollars (\$129,000.00). Part of the connection fee equal to the sum of twenty-five thousand dollars (\$25,000.00) shall be paid by CCFII to MSOA within fifteen (15) days of the effective date of this Agreement. The remainder of the connection fee shall be paid by CCFII to MSOA within fifteen (15) days after MSOA's approval of all plans and

specifications for CCFII to connect to the WWTP Facilities and issuance of a land development permit by Flagler County in accordance with Sec. 30-33 of the Flagler County Code of Ordinances, whichever occurs last. Notwithstanding, in no event shall MSOA be obligated to accept the conveyance of domestic wastewater emanating from the Development Parcel until the full connection fee has been paid to MSOA.

**b. Service Charges.** In addition to the connection fee, CCFII shall pay MSOA a service charge associated with the operation and maintenance of the WWTP Facilities and MSOA's extension of wastewater conveyance and treatment services to the Development Parcel. Payment of the service charge shall commence upon recording of the final subdivision plat for the Development Parcel, or if no final subdivision plat for the Development Parcel is recorded, on the date that MSOA begins accepting the conveyance of domestic wastewater emanating from the Development Parcel. The service charge shall be established by MSOA from time to time and shall be based on the estimated, budgeted expenses for the operation, maintenance, repair, and replacement of the WWTP Facilities, including reasonable reserves for capital expenditures and deferred maintenance of the WWTP Facilities. The service charge imposed shall be equal to the charge or assessment imposed against each residential dwelling unit or equivalent residential unit ("ERU") located within the Matanzas Shores development. The service charge shall be calculated in accordance with the following formula:

$$S = \left(\frac{B}{T}\right) \times D$$

For the purposes of the equation above:

- S** = the total service charge payable by CCFII in a given fiscal year or budget period;
- B** = the total estimated, budgeted expenses for the operation and maintenance of the WWTP Facilities pursuant to the most recent budget adopted by MSOA for the applicable fiscal year or budget period;
- T** = the total number of residential dwelling units and equivalent residential units (ERU's) subject to the obligation to pay assessments or service charges to MSOA for wastewater collection, conveyance, and treatment services. T includes all users of the WWTP Facilities who have an obligation to pay an assessment or service charge to MSOA, not CCFII exclusively;
- D** = The total number of residential dwelling units within the Development Parcel, plus the equivalent residential units (ERU's) assigned by MSOA to any recreational or other facility constructed within the Development Parcel which has any facility within it that discharges domestic wastewater.

Upon commencement of CCFII's obligation to pay the service charge, CCFII shall pay the service charge based on twenty-five residential dwelling units plus the ERU's assigned by MSOA to the recreational facility (as proposed or constructed), regardless of whether all such dwelling units and the recreational facility have been constructed on the Development Parcel. However, if fewer than twenty-five residential dwelling units are ultimately constructed on the Development Parcel, CCFII shall inform MSOA in writing

when a certificate of occupancy has been issued for the last residential dwelling unit to be constructed on the Development Parcel, and the total service charge beginning the next fiscal year or budget period after such written notice is provided to MSOA shall be reduced to reflect to the total number of residential dwelling units constructed on the Development Parcel (i.e., for the next fiscal year or budget period, D in the equation above shall equal the total number of residential dwelling units constructed on the Development Parcel plus the ERU's assigned by MSOA to the recreational facility).

The total service charge (S) payable by CCFII shall be paid by CCFII to MSOA semiannually in two equal installments on January 1st and July 1st of each calendar year. If CCFII's obligation to pay the service charge commences after January 1st and before July 1st of a calendar year, the first service charge installment payment shall be paid within thirty (30) calendar days after the date on which CCFII's obligation to pay the service charge commences, and the second installment shall be paid on July 1<sup>st</sup> of the same calendar year. If CCFII's obligation to pay the service charge commences after July 1st and before December 31st of a calendar year, CCFII shall pay one service charge installment payment for that calendar year within thirty (30) days after the date on which CCFII's obligation to pay the service charge commences. All other service charges coming due after the first calendar year in which CCFII's obligation to pay the service charge commences shall be paid semiannually in two equal installments on January 1st and July 1st of each calendar year as provided above. Notwithstanding, nothing herein shall obligate MSOA to extend the wastewater treatment services contemplated by this Agreement to more than twenty-five residential dwelling units and a recreational facility on the Development Parcel unless MSOA subsequently agrees in writing to extend such services to additional dwelling units or other facilities, in its sole discretion.

**c. Special Assessment.** In the event the service charges and the assessments imposed against each residential dwelling unit or equivalent residential unit are insufficient to meet an expenditure, or anticipated expenditure, associated with the operation, maintenance, repair, or replacement of the WWTP Facilities, MSOA may levy a special assessment against CCFII to finance part of the expenditure. A special assessment for this purpose shall be levied against CCFII in accordance with the formula provided in Section 5(b) above, except that B shall equal the total expenditure (which may be an estimate and may include contingencies) for which the special assessment is being levied. Any surplus funds generated from the special assessment may be retained by MSOA and used to defray expenses associated with the future operation, maintenance, repair, or replacement of the WWTP Facilities. In addition, MSOA may levy a special assessment against CCFII (or its permitted assignee) to finance the costs of any maintenance, repair, or replacement of the WWTP Facilities, and any damages, civil penalties, administrative, professional, and legal expenses, incurred by MSOA arising out of or related to CCFII, its directors', officers', members', managers', contractors', agents', tenants', and guests', and any of their invitees' and assigns' (which shall include without limitation a homeowners' association, condominium association, or other permitted assignee, and the owners, residents, occupants, and invitees of the Development Parcel), intentional or negligent actions or omissions which cause damage to any part of the WWTP Facilities. A special assessment

for that purpose shall not be based on the formula provided in Section 5(b) above and may be exclusively levied against CCFII or its permitted assignee.

**d. Interest.** All sums payable by CCFII under this Agreement shall bear interest at the greatest lawful rate if not paid within fifteen (15) calendar days of the date each payment is due.

**e. Collection of Payments Due from CCFII.** All payments due from CCFII under this Agreement shall be payable by CCFII to MSOA. CCFII may collect or recover portions of any payments due to MSOA through assessment of owners of subdivided parcels within the Development Parcel or through any other lawful method it may determine; provided, however, that CCFII's inability to collect or recover any part of the payments due to MSOA from any third party (including owners of subdivided parcels within the Development Parcel) shall not reduce CCFII's payment obligations to MSOA under this Agreement.

**6. Discharge of Toxic Substances.** The WWTP Facilities are only able to accept domestic wastewater. If any non-domestic waste, grease, oils, or other toxic or other substances that cannot be processed are discharged from the Development Parcel, or by any owner, resident, or other user of the Development Parcel, into the wastewater treatment and conveyance system, including the WWTP Facilities, CCFII shall indemnify MSOA for all expenses associated with such improper discharge, including without limitation the costs of remediating any toxic shock to the system and the costs of repairs to any components of the system necessitated by the improper discharge. CCFII also agrees to indemnify, defend, and hold harmless MSOA for all claims, losses, damages, costs, including without limitation reasonable attorney's fees and costs, caused by the intentional or negligent discharge of an improper substance from the Development Parcel, or by any owner, resident, or other user of the Development Parcel, into the wastewater treatment and conveyance system. In addition, as a continued condition for the effectiveness of the license granted herein, CCFII shall obtain, and maintain in effect throughout the entire duration of the license, a pollution liability insurance policy covering claims for personal injury, property damage (including without limitation damage to the wastewater treatment and collection system), environmental cleanup and remediation, and any civil or penal sums (except punitive damages if prohibited by law) imposed by any governmental authority arising out of or related to the discharge of any pollutant or other improper substance into the wastewater treatment and conveyance system emanating from the Development Parcel, or from any owner, resident, or other user of the Development Parcel. Such insurance shall contain per-occurrence and aggregate limits of at least one million dollars (\$1,000,000.00) and shall be provided by a company with an A.M. Best rating of A- or better. CCFII shall cause MSOA to be named as an additional insured under the policy and shall provide certificates of insurance upon request by MSOA to confirm MSOA's status as an additional insured.

**7. Duration of License.** Unless terminated for reasons provided in other Sections of this Agreement, this Agreement and the license granted herein shall commence on the effective date and shall be effective for ten (10) years after the effective date ("Initial Term"). After the Initial Term, unless terminated for reasons provided in other Sections of this Agreement or



mutually agreed in writing by MSOA and CCFII, this Agreement and the license granted herein shall automatically renew for successive periods of five (5) years.

**8. Termination of Agreement & License Due to Government Action.** If the Florida Department of Environmental Protection or any governmental organization or agency with jurisdiction: (a) determines that MSOA cannot extend the wastewater collection and treatment services contemplated by this Agreement to the Development Parcel due to insufficient facility capacity or for any other reason; or (b) conditions the extension of such services on MSOA being subject to licensure or regulation by the Florida Public Service Commission or any other entity which may regulate the provision of utilities in a manner similar to the Florida Public Service Commission (as its authority exists as of the effective date of this Agreement), then MSOA may terminate this Agreement by providing written notice to CCFII, but only after first providing CCFII notice of the determinations or conditions set forth in (a) or (b) above so CCFII may consider whether to challenge such determinations or conditions. In the event CCFII is deemed by any court of competent jurisdiction to not have standing to challenge the determinations or conditions set forth in (a) or (b) above, CCFII may request that MSOA assign its rights to challenge such determinations or conditions unless MSOA intends to directly challenge such determinations or conditions on its own behalf. Otherwise, MSOA may assign its rights to CCFII to challenge the determinations or conditions set forth in (a) or (b) above conditioned upon CCFII agreeing, through an instrument of form and content acceptable by MSOA, to indemnify, defend, and hold harmless MSOA from any and all claims, costs, judgments, and liabilities of any nature (including attorney fees and costs) arising out of or related to CCFII's exercise of its assigned rights, which MSOA may be required to be secured through appropriate insurance or collateral, or both, as a condition of assignment. The regulation of MSOA by Flagler County with respect to wastewater utilities exclusively as it exists on the effective date of this Agreement shall not constitute a condition contemplated by (b) above. Unless prohibited by law or any governmental authority with jurisdiction, and unless doing so would subject MSOA to damages, civil penalties, fines, or other penalties, MSOA shall continue to provide the services contemplated by this Agreement to the Development Parcel in exchange for the payments due from CCFII per Section 5 of this Agreement for a reasonable period of time following the events giving rise to termination per this Section to allow CCFII a reasonable period of time to make alternative arrangements to dispose of its wastewater. The events giving rise to termination of this Agreement and the license granted hereby per this Section shall not constitute a breach of this Agreement by MSOA or give rise to any action for damages or injunctive relief against MSOA to CCFII or any third party. Further, in the event this Agreement is terminated for reasons other than default by CCFII per Section 10, CCFII shall not be obligated to pay any service charges or special assessments which would come due after the later of (i) termination, or unless prohibited by law or any governmental authority with jurisdiction, and unless doing so would subject MSOA to damages, civil penalties, fines, or other penalties, (ii) for a reasonable period of time during which MSOA continues to extend the services (and during which CCFII is attempting to make alternative arrangements to dispose of its wastewater) following the events giving rise to termination.

**9. Temporary Suspension of Services.** If during any term of this Agreement a problem with the WWTP Facilities develops which requires MSOA to temporarily close or cease use or operation of any part of the WWTP Facilities or otherwise prevents MSOA from extending the services contemplated by this Agreement, such as the discharge of a toxic substance into the

system, MSOA may temporarily suspend the services contemplated by this Agreement for a reasonable period of time as necessary to address the problem with the WWTP Facilities. In such an event, MSOA shall notify CCFII as soon as reasonably possible and shall diligently pursue a resolution of the problem with the goal of continuing services at the earliest opportunity. Similarly, MSOA shall be excused from performance under this Agreement if MSOA is temporarily or permanently prohibited from performing because of a force majeure. For the purposes of this provision, a force majeure shall include natural events and disasters (including earthquakes, hurricanes, floods, fire, plague, so-called Acts of God, and other natural disasters or phenomena), contamination, strikes, riots, war, terrorism, civil unrest, lawful orders or actions of any governmental authority with jurisdiction, a change of law or regulation, and any other matter or thing beyond MSOA's control. Further, neither a problem with the WWTP Facilities which requires MSOA to temporarily close or cease use or operation of any part of the WWTP Facilities or otherwise prevents MSOA from extending the services contemplated by this Agreement nor a force majeure shall constitute a breach of this Agreement by MSOA or give rise to any action for damages or equitable relief against MSOA to CCFII or any third party.

**10. Default & Remedies.** If CCFII fails to timely satisfy any obligation it has under this Agreement, it shall constitute a material default of this Agreement. All obligations of CCFII under this Agreement shall be deemed material. Upon default, MSOA shall provide written notice to CCFII describing the actions that CCFII must take to cure the default, if the default is curable, and providing (30) days for CCFII to cure the default. If the default is not reasonably capable of being cured within thirty (30) days (which shall not include a payment default), then CCFII shall begin to cure the default within thirty (30) days and diligently pursue such cure to completion. If the default is not cured or commenced to be cured and diligently pursued to completion by CCFII promptly to the sole satisfaction of MSOA, or if the default is not curable, MSOA shall provide a second notice (or in the case of an incurable default, a first notice) of default to CCFII stating that this Agreement shall be deemed terminated effective one hundred twenty (120) days from the date of the notice, after which MSOA shall have no further obligations under this Agreement, including any obligation to accept the conveyance of or treat wastewater emanating from the Development Parcel. In the event of default, and subject to the foregoing notice and opportunity to cure process, MSOA may exercise and pursue any right and remedy available at law or in equity. In the event MSOA elects to terminate this Agreement pursuant to this Section, CCFII shall remain liable for any monetary sums payable under this Agreement until the time at which the then-applicable term of this Agreement would have naturally expired. Notwithstanding, in the event of default, MSOA shall not initiate the cessation of the collection, conveyance, and treatment of wastewater emanating from the Development Parcel beginning on a day and time that is between 12:00 noon on a Friday and 8:00 a.m. on the following Monday or between 12:00 noon on the day preceding a public holiday and 8:00 a.m. of the day following the public holiday.

**11. Dispute Resolution.** Any dispute arising out of or related to this Agreement may be mediated upon mutual agreement of the Parties to the dispute and the costs thereof shall be equally apportioned among the Parties unless otherwise agreed. If any Party does not agree to mediation, or if the dispute is not successfully resolved at mediation, then any Party may seek relief in a court of competent jurisdiction (subject to the mandatory jurisdiction and venue clause) unless another form of dispute resolution is specifically required by law. Unless otherwise specifically required by law, mandatory and exclusive jurisdiction and venue for any dispute

arising out of or related to this Agreement shall be in a state circuit or county court of the Seventh Judicial Circuit in and for (or of) Flagler County, Florida. The prevailing party in any dispute shall be entitled to recover costs and reasonable attorneys' fees from the non-prevailing party, including the costs incurred by the prevailing party associated with mediation. Whenever used herein, the term "attorneys' fees" shall include, but not be limited to, fees charged for work performed by a law firm, attorneys, paralegals, and legal assistants along with all fees and costs associated with the dispute, including, but not limited to, demands, negotiations, investigation, pre-suit preparation, and litigation, irrespective of the forum in which the dispute was resolved, including all trial and appellate levels, and including any proceedings to determine the reasonableness and amount of attorneys' fees and costs to be awarded. Florida law shall govern all disputes. **THE PARTIES HEREBY MUTUALLY AND IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY CONCERNING ANY LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT AND AGREE THAT ANY DISPUTE ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE DECIDED BY A JUDGE WITHOUT A JURY.**

**12. Other Conditions of Agreement.**

**a. County Authorization.** This Agreement shall be subject to the condition precedent of Flagler County granting authorization to MSOA to extend the wastewater services contemplated by this Agreement to the Development Parcel. If Flagler County does not grant authorization to MSOA to extend the services contemplated by this Agreement to the Development Parcel, then this Agreement shall be null, void, and ineffective.

**b. Other Governmental Authorization.** This Agreement shall be subject to the conditions precedent and subsequent of all government agencies with jurisdiction granting the approvals necessary for MSOA to be lawfully permitted to extend the services contemplated by this Agreement to the Development Parcel, including without limitation approval by the Florida Department of Environmental Protection. CCFII shall be obligated to apply for and obtain approval from all governmental agencies with jurisdiction, at its sole expense, as necessary for MSOA to be lawfully permitted to extend the services contemplated by this Agreement to the Development Parcel. The foregoing obligation includes without limitation the obligation to apply for and obtain all authorizations and permits necessary to install and construct the wastewater conveyance infrastructure, including without limitation the obligation to obtain a land development permit from Flagler County to install any utility infrastructure where such permit is required and approval of the State of Florida (or appropriate agency thereof) to construct any wastewater conveyance infrastructure beneath or through State roadways. MSOA agrees to cooperate with CCFII in seeking approval from all governmental agencies with jurisdiction by providing information within its possession or control related to the WWTP Facilities within a reasonable time upon receipt of a request by CCFII. However, if MSOA is required to engage any professional to perform any services of any nature, including without limitation engineering or legal services, or to incur any other expense, incident to CCFII seeking authorization from any governmental agency with jurisdiction to receive wastewater treatment services from MSOA under this Agreement, MSOA shall provide

prior written notice and an estimated cost of such services or expenses to CCFII, and CCFII shall reimburse MSOA for all such expenses incurred within fifteen (15) days of receipt of an invoice therefor, but not to exceed \$10,000 in total without CCFII's prior written approval. If the estimated cost of such services or expenses is anticipated to exceed \$10,000 but CCFII does not issue written approval, then MSOA shall have no obligation to perform the action to which the cost or service relates. In the event that authorization from any governmental agency is required but not obtained, this Agreement shall be null, void, and ineffective.

**c. Single Family Residential Development.** This Agreement exclusively contemplates MSOA's agreement to accept the conveyance of, treat, and discharge domestic wastewater emanating from the Development Parcel attributable to single-family residential development and incidental recreational facilities serving the single-family residential development. If the Development Parcel is ultimately developed as anything other than a single-family residential development comprised of single-family homes (which may be attached dwelling units such as townhomes) and incidental recreational facilities, such as (non-exclusive examples) commercial or multifamily development (other than up to twenty-five attached townhomes), this Agreement shall be null, void, and ineffective.

**d. Construction of Dune Berm System.** As part of the consideration for this Agreement, and as mandatory conditions precedent and subsequent for the license granted herein, CCFII shall construct, or cause to be constructed, a dune berm system extending the entire length of the eastern (coastal) property line of the Property. Construction of the dune berm system shall commence within one-hundred twenty (120) days after MSOA's approval of all plans and specifications for CCFII to connect to the WWTP Facilities and issuance of a land development permit by Flagler County in accordance with Sec. 30-33 of the Flagler County Code of Ordinances, whichever occurs last, and shall be diligently pursued to completion. Notwithstanding, in no event shall MSOA be obligated to accept the conveyance of domestic wastewater emanating from the Development Parcel until the dune berm system has been constructed. CCFII shall cause the dune berm system to be constructed in accordance with the requirements of Flagler County and other governmental entities with jurisdiction. Further, after construction of the dune berm system, CCFII shall periodically inspect, replenish, repair, and maintain the dune berm system so that it always meets the dimensions, elevations, slopes, and other criteria approved by governmental entities with jurisdiction, as such requirements may be changed by such governmental entities periodically. CCFII's obligations under this Section shall be enforceable through any manner available at law or in equity, including through an action for specific performance.

**13. Notices.** All notices required or permitted to be given under this Agreement shall be sent to the following addresses for the Parties. A Party may designate an alternative address for providing notice by providing notice of the change of address to the other Party:

To MSOA:

Matanzas Shores Owner's Association, Inc.  
110 E. Collector Road  
Palm Coast, Florida 32137

**To CCFII:**

Consolidated Capital Funding II, LLC  
P.O. Box 1509  
Sanford, Florida 32772

**14. Assignability.** CCFII may assign this Agreement and the license granted herein exclusively as follows:

**a. Assignment to Person other than Homeowners' Association.** CCFII may assign this Agreement and the license granted herein to a person other than a homeowners' association contemplated by Section 14(b) below subject to the following conditions: (a) the assignment shall only be to one person or business entity; (b) the assignee must expressly agree to also assume all obligations of CCFII under this Agreement, which must be evidenced by a written agreement signed by the Parties and the assignee in which the assignee agrees to be bound by this Agreement in the same manner as CCFII; (c) the assignee must demonstrate to the sole satisfaction of MSOA an ability to timely satisfy all obligations under this Agreement, including future payment and other obligations; (d) CCFII must not be in default of this Agreement at the time of the assignment; and (e) the assignment shall be subject to MSOA's express written consent, which shall not be unreasonably withheld if the foregoing conditions are satisfied. If the foregoing conditions are satisfied, CCFII shall be released from the obligations under this Agreement upon the effective date of the permitted assignment.

**b. Assignment to Homeowners' Association.** CCFII, or its permitted assignee per Section 14(a) above, may assign this Agreement and the license granted herein other than as provided in Section 14(a) above subject to the following conditions: (a) the assignment must be to a homeowners' association as defined by Section 720.301(9), Fla. Stat. (2022); (b) the homeowners' association must expressly agree to also assume all obligations of CCFII under this Agreement, which must be evidenced by a written agreement signed by the homeowners' association, CCFII (or its permitted assignee under Section 14(a) above), and MSOA in which the homeowners' association agrees to be bound by this Agreement in the same manner as CCFII; (c) the owners of residential lots within the Development Parcel must be obligated to be mandatory members of the homeowners' association per a declaration of covenants (as defined by Section 720.301(4), Fla. Stat. (2022)) encumbering the Development Parcel; (d) the declaration of covenants (as defined by Section 720.301(4), Fla. Stat. (2022)) must obligate owners of residential lots within the Development Parcel to pay, and must obligate the homeowners' association to levy against owners of residential lots within the Development Parcel, assessments (as defined by Section 720.301(1), Fla. Stat. (2022)) sufficient to finance the payment obligations under this Agreement; and (e) the provision(s) of the declaration of covenants providing for (d) above must include a provision prohibiting amendment of such provisions without

the express written approval of MSOA. If the foregoing conditions are satisfied, CCFII shall be released from the obligations under this Agreement upon the effective date of the permitted assignment.

Except as expressly stated in Sections 14(a) and 14(b) above, CCFII may not assign any rights under this Agreement or the license granted herein without the express written consent of MSOA. MSOA may assign its rights and delegate its obligations under this Agreement to another entity in the event MSOA conveys the WWTP Facilities, or the obligation to operate the WWTP Facilities, to a third party.

**15. Usage of "Including."** When used in this Agreement, "including" shall mean "including without limitation" and shall be deemed followed by a non-exhaustive example or list of examples for illustrative purposes and shall not be deemed to be followed by an exclusive list of examples unless the word "including" is preceded by the word "exclusively."

**16. No Third-Party Beneficiaries.** This Agreement is exclusively between MSOA and CCFII. There are no intended third-party beneficiaries to this Agreement, including without limitation owners of property within the Development Parcel other than CCFII and other persons who may derive a benefit from the existence of this Agreement, such as an incidental beneficiary of the services provided by MSOA under this Agreement (e.g., a residential dwelling unit owner or occupant).

**17. Integration.** This Agreement constitutes the full, final, and entire understanding between the Parties and shall supersede any prior discussions, negotiations, understandings, or agreements, whether oral or written, with respect to the subject matter of this Agreement.

**18. Modification & Amendment.** This Agreement may only be modified or amended by a subsequent, written agreement signed by the Parties.

**19. Interpretation & Severability.** This Agreement shall be construed in an impartial, equally balanced, and non-deferential manner and shall not be construed against the drafting party or the party seeking to enforce this Agreement. If any provision of this Agreement shall for any reason be held invalid, illegal, or unenforceable, such provision shall not affect the validity or enforceability of any other provision of this Agreement. Any such provision shall be construed in the broadest manner possible to effectuate the intended purpose of the provision while avoiding the invalid, illegal, or unenforceable portion thereof to the narrowest extent possible to effectuate the intended purpose. In any such event, the remaining provisions of this Agreement shall remain valid and enforceable.

**20. Counterparts.** This Agreement may be executed in any one or more counterparts and each signed copy shall constitute one original, enforceable instrument.

**21. Authority to Execute.** Each Party represents and warrants to the other Party that they have undertaken all action as may be required by their respective corporate organizational documents to enter into this Agreement and bind the Party for whom each signatory has signed.

**22. Recording.** No person may record this instrument in the Official Records of any county without MSOA's express written approval.

**23. Proviso.** Notwithstanding any other provision of this Agreement, if the infrastructure necessary to convey wastewater emanating from the Development Parcel to the point of connection with MSOA's WWTP Facilities is not fully constructed and completed by CCFII within five (5) years of the effective date, this Agreement shall be void and ineffective; however, MSOA shall be permitted to retain, and shall not be required to reimburse CCFII for, any part of the connection fee previously paid or required to be paid by CCFII under this Agreement, with the consideration therefor being MSOA's reservation of wastewater treatment capacity to potentially serve the Development Parcel during the five year period following the effective date.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement on the dates written below.

{Signatures on following pages}

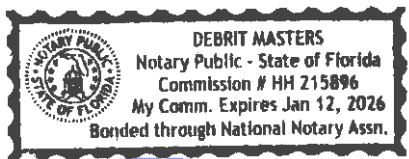


**MATANZAS SHORES OWNER'S  
ASSOCIATION, INC.**

By: [Signature]  
Printed: RONNIE WILSON  
As its: BOARD PRESIDENT  
Date: 4/12/2022

STATE OF FLORIDA  
COUNTY OF Flagler

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 12<sup>th</sup> day of April, 2022, by Ronnie Wilson, as Board President of Matanzas Shores Owner's Association, Inc., on behalf of the corporation.



[Signature]  
(Signature of Notary Public – State of Florida)  
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known or Produced Identification  
Type of Identification Produced: \_\_\_\_\_



**CONSOLIDATED CAPITAL FUNDING II,  
LLC**

By: *Michael Gilardi*

Printed: MICHAEL M GILARDI

As its: OWNER

Date: 4-8-22

STATE OF FLORIDA  
COUNTY OF Volusia

The foregoing instrument was acknowledged before me by means of  physical presence  
or  online notarization this 8 day of April, 2022, by  
Michael Gilardi, as owner of Consolidated Capital Funding  
II, LLC, on behalf of the company.

*Victoria Eichhorn*

(Signature of Notary Public – State of Florida)  
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known or Produced Identification  
Type of Identification Produced: FL Drivers License



Victoria Eichhorn  
Comm. #HH084114  
Expires: Feb. 5, 2025  
Bonded Thru Aaron Notary

**EXHIBIT A**  
**Legal Description of Development Parcel**

*Lot 22 and a portion of lot 21 of Dupont Estates, lying easterly of State Road No. A1A (A 100 foot right-of-way as now established) as recorded in Plat Book 3, Page 17, Flagler County, Florida. Together with that portion of old Ocean Shore Boulevard, vacated by Official Record Book 58, Page 557 of said county, being more particularly described as follows: Begin at the intersection of the easterly right-of-way line of State Road No. A1A with the northerly property line of lot 21, of said Dupont Estates; thence North 67°38'30" East, a distance of 443.62 feet to the margin of the Atlantic Ocean; thence South 19° 38'33" East along said margin, 330.24 feet to the southerly line of lot 22, of said Dupont Estates; thence South 67° 35'57" West along said southerly line, a distance of 589.33 feet to the easterly right of way line of said State Road No. A1A; thence North 05°16'30" East along said right-of-way, a distance of 123.27 feet to the point of a curve to the left, being concave northwesterly, said curve having a radius of 2914.93; thence along and around said curve an arc distance of 244.49 feet, said curve subtended by a chord bearing and distance of North 02°52'20" East, a distance of 244.42 feet to the point of beginning.*

**Parcel Identification Number: 37-10-31-1550-00000-0220**

**FLAGLER COUNTY**  
**TECHNICAL REVIEW COMMITTEE COMMENTS**

**MEETING DATE: 1 / 18 / 2023**

**REQUEST FOR AN AMENDMENT TO APPROVED SPECIAL EXCEPTION IN THE R/C  
(RESIDENTIAL/LIMITED COMMERCIAL) DISTRICT**

**APPLICANT: MICHAEL D. CHIUMENTO, III, ESQUIRE**  
**OWNER: CONSOLIDATED CAPITAL FUNDING II, LLC**

Distribution date: January 13, 2023

Project #: 2022120002

Application #: 3339

Attached are departmental comments regarding your submittal to Flagler County for the above referenced project. **Any questions regarding any of the comments should be addressed to the department providing the comment.**

Flagler County Building Department	386-313-4002
Flagler County Planning Department	386-313-4009
Flagler County Development Engineering	386-313-4082
Flagler County General Services (Utilities)	386-313-4184
County Attorney	386-313-4005
Flagler County Fire Services	386-313-4258
E-911 GIS Specialist	386-313-4274
Environmental Health Department	386-437-7358
Flagler County School Board	386-586-2386

**REVIEWING DEPARTMENT: BUILDING DEPARTMENT**

1. No comments at this time

**REVIEWING DEPARTMENT: COUNTY ATTORNEY**

1. The owner has not satisfied all of the conditions listed in the 2016 vesting determination letter, inclusive of the Settlement Agreement. The applicant should address these specific conditions within a narrative response (to be presented to the Board as part of this request) reflecting why one condition was adhered to while another was omitted.

**REVIEWING DEPARTMENT: DEVELOPMENT ENGINEERING**

1. FDOT ROW, driveway connection permit is required from the FDOT.
2. FDOT ROW, utility connection permit is required from the FDOT.
3. FDOT ROW, drainage connection permit is required from the FDOT.
4. The zoning on the property is R/C. Per LCD 3.03.13 E, the dimensional requirements for single family dwellings, must be met.
5. Show lot sq. footage on the site plan.
6. It appears that the setbacks do not meet the requirements for the R/C zoning district.
7. Why does the driveway have the curve at the ROW and not make the straight approach to the ROW?
8. Provide a will serve letter from the utility provider.
9. Show the proposed utility connections.
10. Address the provision of sidewalks.
11. Provide the location of site signage.
12. Provide the site lighting and the striping and signage.
13. Are there an amenities proposed?

**REVIEWING DEPARTMENT: E-911 STAFF**

1. No comments at this time.

**REVIEWING DEPARTMENT: ENVIRONMENTAL HEALTH DEPT**

1. No comments or objections providing wastewater service is not provided by onsite septic system.

**REVIEWING DEPARTMENT: FIRE INSPECTOR**

1. What is the building height and the side yard setbacks?

**REVIEWING DEPARTMENT: PLANNING DEPARTMENT**

1. The switch from 14 townhome units to 16 single family detached lots is problematic in that there are no dimensional requirements that the County can apply to the applicant's plan. In the least, a data table should be added to the plan sheet ("Concept Plan-1") to identify dimensional requirements inclusive of minimum setbacks and maximum lot coverage so that Growth Management staff has the ability to review future permitting for compliance with this approval.
2. The applicant should review the Special Exception guidelines at LDC Sec. 3.07.03.F to ensure that the submittal satisfies the guidelines. The applicant should provide a narrative response to each of the nine guidelines to accompany (and make reference to) the plan sheet to show how the guidelines are being met. This should also refer to any considerations included following the A1A Scenic PRIDE Committee's review of the project, and the applicant's efforts to comply with the A1A Scenic Corridor Overlay District requirements.

Chiumento Law, PLLC  
Michael D. Chiumento  
Michael D. Chiumento III  
William J. Bosch  
Vincent L. Sullivan  
Diane A. Vidal  
Cynthia Lane  
Andrew C. Grant, of counsel  
Eric R. Sloan, of counsel

*Michael D. Chiumento III*  
*Managing Partner*  
*Michael3@legalteamforlife.com*



145 City Place, Suite 301  
Palm Coast, FL 32164  
Tel. (386) 445-8900  
Fax: (386) 445-6702

*5048 N. Ocean Shore Blvd.*  
*Palm Coast, FL 32137*

*By Appointment Only:*  
*57 W. Granada Blvd.*  
*Ormond Beach, FL 32174*

February 6, 2023

Adam Mengel  
Flagler County Planning Department  
Via E-Mail: [AMengel@flaglercounty.gov](mailto:AMengel@flaglercounty.gov)

**RE: Application #3339**

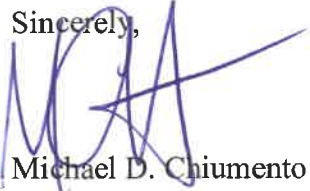
Dear Adam:

Please find enclosed the applicant's resubmittal in response to the County's January TRC comments for the amendment to the Special Exception. I believe all comments have been addressed or will be addressed during the technical site plan submittal if this amendment is approved. In addition, enclosed in the revised Conceptual Site Plan which provides more details as requested including, but not limited to, the Site Data table showing specific dimensional standards.

In anticipation of the February 14, 2023, PLDRB Meeting, I respectfully request that you review this resubmittal and provide me with any other issues that may arise. Our team will immediately address any issues that arise. Otherwise, please provide me with a copy of the County Staff Report upon its finalization. Note, I will provide you with our presentation to the PLDRB shortly.

As always, thank you for your cooperation and should you have any questions comments, please contact me at your earliest convenience.

Sincerely,



Michael D. Chiumento III  
Attorney  
MDC/cm

Enclosures

cc: Client

Chiumento Law, PLLC  
Michael D. Chiumento  
Michael D. Chiumento III  
William J. Bosch  
Vincent L. Sullivan  
Diane A. Vidal  
Cynthia Lane  
Andrew C. Grant, of counsel  
Eric R. Sloan, of counsel

*Michael D. Chiumento III  
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Palm Coast, FL 32137

*By Appointment Only:  
57 W. Granada Blvd.  
Ormond Beach, FL 32174*

**MEMORANDUM**

**TO: COUNTY PLANNING DEPARTMENT**

**CC: FILE  
CLIENT  
CAROLINE MCNEIL**

**FROM: MICHAEL D. CHIUMENTO III**

**DATE: FEBRUARY 6, 2023**

**RE: APPLICATION #3339  
SPECIAL EXCEPTION APPLICATION RESPONSE TO TRC  
COMMENTS**

---

**REVIEWING DEPARTMENT: BUILDING DEPARTMENT**

1. **No Comments at this time.**

**REVIEWING DEPARTMENT: COUNTY ATTORNEY**

1. **The owner has not satisfied all of the conditions listed in the 2016 vesting determination letter, inclusive of the Settlement Agreement. The applicant should address these specific conditions within a narrative response (to be presented to the Board as part of this request) reflecting why one condition was adhered to while another was omitted.**

**REVIEWING DEPARTMENT: DEVELOPMENT ENGINEERING**

1. **FDOT ROW, driveway connection permit is required from the FDOT**

Noted.

2. **FDOT ROW, utility connection permit is required from the FDOT**

Noted.

**3. FDOT ROW, drainage connection permit is required from the FDOT**

Noted.

**4. The zoning on the property is R/C. Per LCD 3.03.13 E, the dimensional requirements for single family dwellings, must be met.**

Noted.

**5. Show lot sq. footage on the site plan.**

Noted.

**6. It appears that the setbacks do not meet the requirements for the R/C zoning district.**

**7. Why does the driveway have the curve at the ROW and not make the starting approach to the ROW?**

This is consistent with the prior approved design.

**8. Provide a will serve letter from the utility provider.**

Noted, we will provide prior to site plan application.

**9. Show the proposed utility connections.**

This is listed on the plan.

**10. Address the provision of sidewalks.**

This is listed on the plan.

**11. Provide the location of site signage.**

This is listed on the plan.

**12. Provide the site lighting and the striping and signage.**

This is listed on the plan.

**13. Are there an amenities proposed?**

This is listed on the plan.

**REVIEWING DEPARTMENT: E-911 STAFF**



1. No comments at this time.

**REVIEWING DEPARTMENT: ENVIRONMENTAL HEALTH DEPT**

1. No comments or objections providing wastewater service is not provided by onsite septic system.

**REVIEWING DEPARTMENT: FIRE INSPECTOR**

1. What is the building height and the side yard setbacks?

This is listed on the plan.

**REVIEWING DEPARTMENT: PLANNING DEPARTMENT**

1. The switch from 14 townhome units to 16 single family detached lots is problematic in that there are no dimensional requirements that the County can apply to the applicant's plan. In the least, a data table should be added to the plan sheet ("Concept Plan-1") to identify dimensional requirements inclusive of minimum setbacks and maximum lot coverage so that Growth management staff has the ability to review future permitting for compliance with this approval.

The plans will be revised.

2. The applicant should review the Special Exception guidelines at LDC Sec. 3.07.03.F to ensure that the submittal satisfies the guidelines. The applicant should provide a narrative response to each of the nine guidelines to accompany (and make reference to) the plan sheet to show how the guidelines are being met. This should also refer to any considerations included following the A1A Scenic PRIDE Committee's review of the project, and the applicant's efforts to comply with the A1A Scenic Corridor Overlay District requirements.

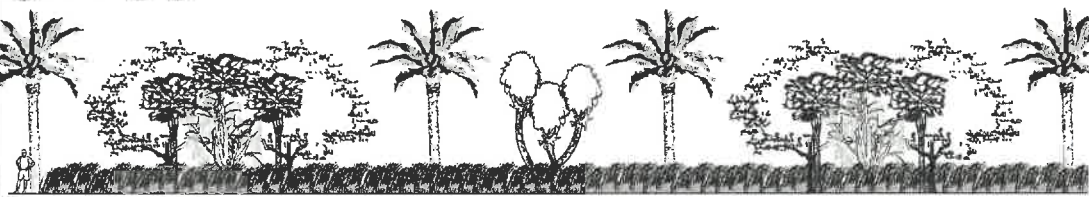
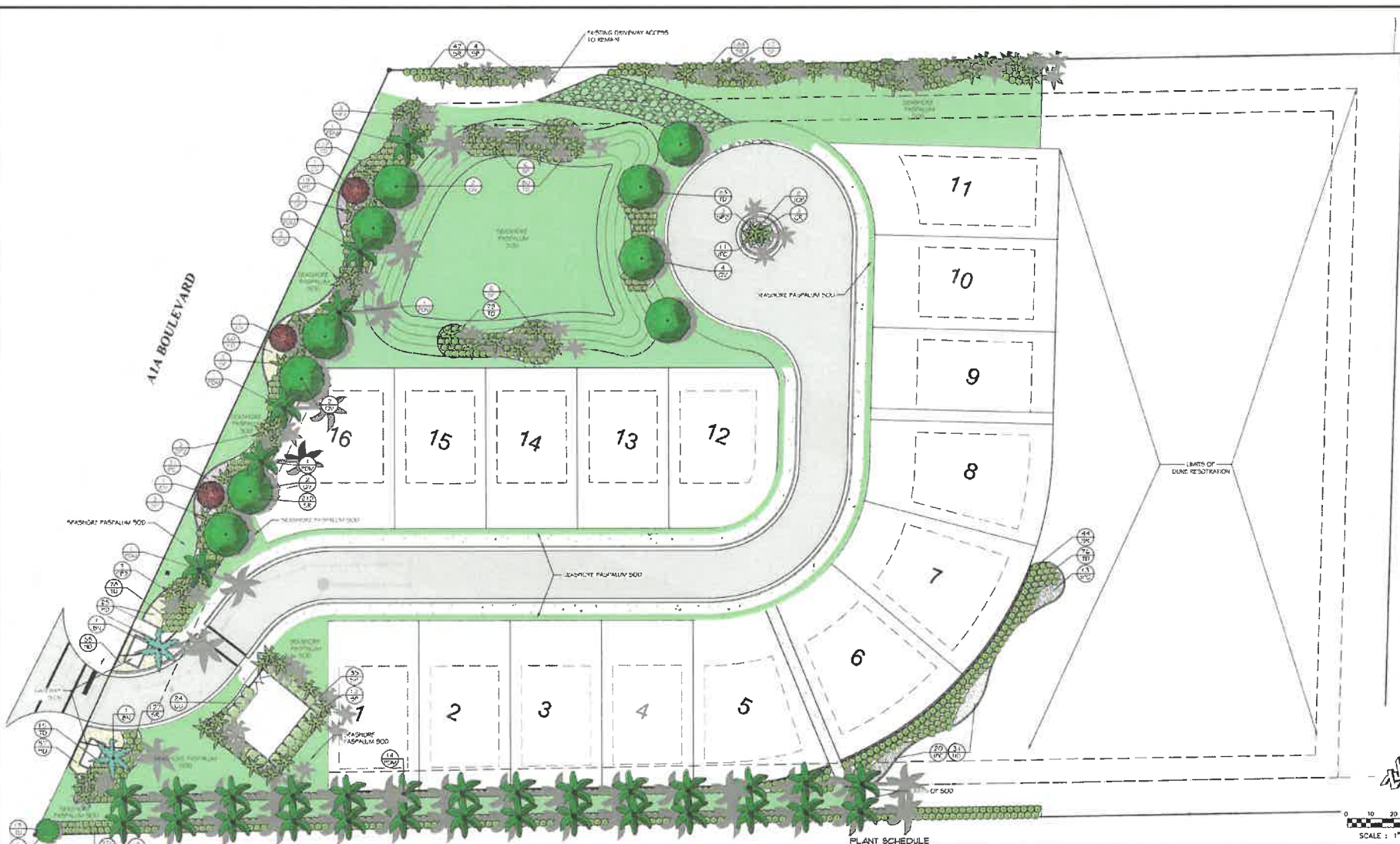


Consolidated  
Capital  
Funding II, LLC

A CUSTOM DEVELOPMENT  
**Solitude Homes at Matanzas Shores**

IRG Commercial, Inc.  
Licensed Pool Contractor

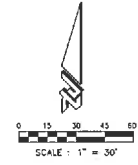
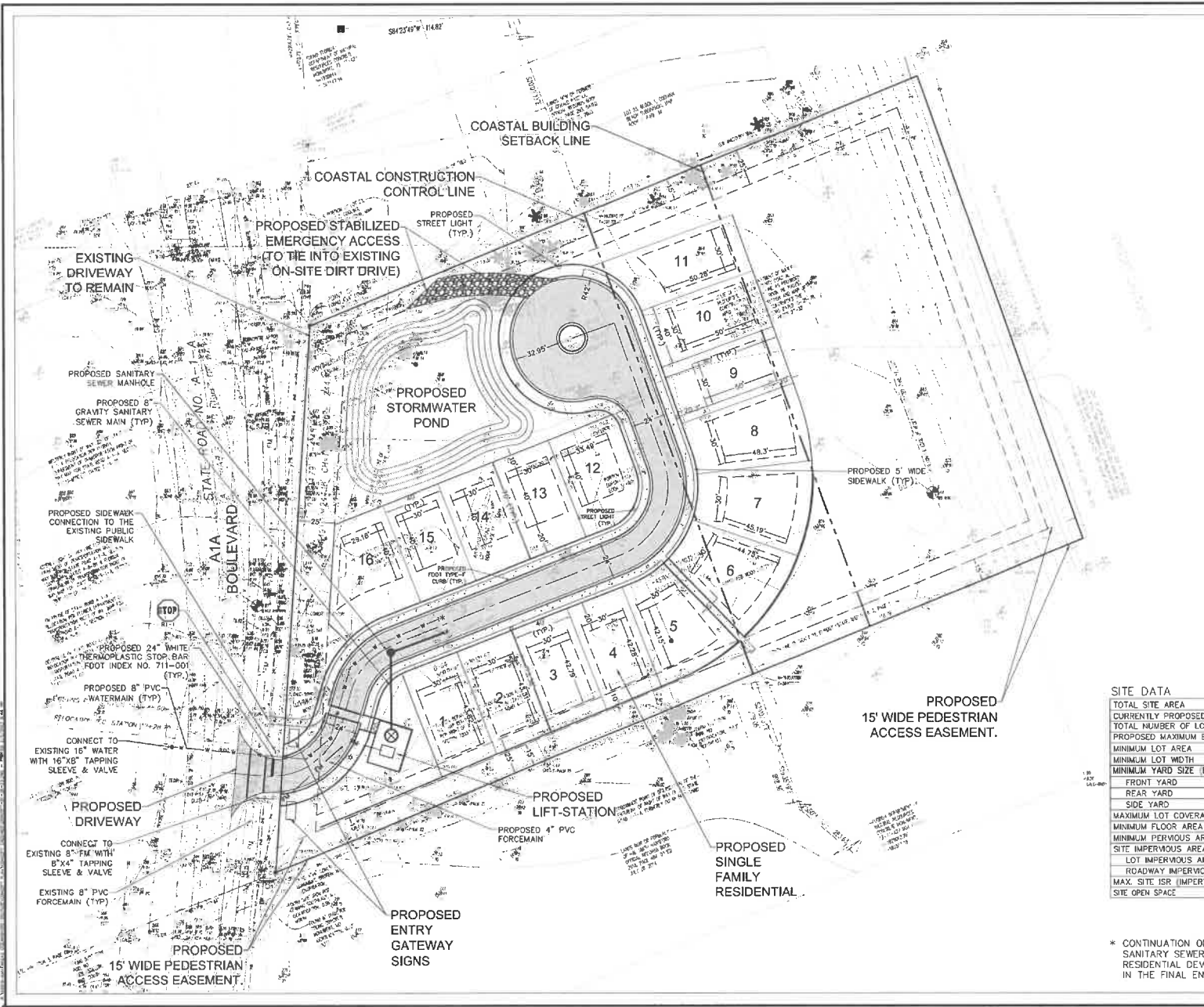







**PLANT SCHEDULE**

ITEMS	QTY	BOTANICAL NAME	CULTIVAR NAME	SIZE	CONTAINER	REMARKS	
TRF	2	CHRISTMAS TREE PALM	WEeping BOULEVARD	6" S. O.A. HT.			
MC	10	MYRTLE CACTUS	WAX MYRTLE	2" CAL.		PLANT TO GROUND	
DC		CHRISTMAS TREE PALM	SOUTHERN LIVE OAK	4" CAL. 10' HT. 140'			
PALM	2	BOTANICAL NAME	CULTIVAR NAME	SIZE	CONTAINER	REMARKS	
IN	2	BOUTANICA TORRELLI	SPREADER PALM	70" CLEAR TRUNK		REMARKS	
TR	22	PROSOPIS DACTYLOPERA - MEDICAL	MEDICAL DATE PALM	1/5 CAL.		SPECIES	
APC	1/5	SAGUO PALMETTO	CABBAGE PALM	VARY G.T. HEIGHTS 0 - 12	CURVED TRUNK'S, 5/16"	SPECIES	
SP	54	SAGUO PALMETTO	CABBAGE PALM	VARY G.T. HT. 0 - 16"		SPECIES	
SHRUBS	QTY	BOTANICAL NAME	CULTIVAR NAME	SIZE	CONTAINER	SPACING	REMARKS
TR	24	COCCOONIA TORRELLI	SEA SPICE	12" HT. X 12" DB. CR.	3 GAL.	24" ON	
CR	1	CYRILLA RACHAELDRA	ITTI	12" HT. X 12" DB.	1 GAL.	36" ON	
CA	6	JANIBERTUS COMPERTA - BLUE PACIFIC	BLUE PACIFIC BLUEPEP	4" HT. X 12" DB.	3 GAL.	36" ON	
DR	949	SERENOJA REPENS	SAGUO PALMETTO	24" HT. X 18" DB.	1 GAL.	30" ON	
GRASSES	QTY	BOTANICAL NAME	CULTIVAR NAME	SIZE	CONTAINER	SPACING	REMARKS
TD	334	TRIPSACDUM DACTYLOIDES	FAUCONIERE GRASS	18" 24" HT. X 18-24" SP.	3 GAL.	36" ON	
TR	114	BOTANICAL NAME	CULTIVAR NAME	SIZE	CONTAINER	SPACING	REMARKS
GROUND COVERS	QTY	TRIPSACDUM DACTYLOIDES	FAUCONIERE GRASS	18" 24" HT. X 18-24" SP.	3 GAL.	36" ON	
PC	94	TRIPSACDUM DACTYLOIDES	FAUCONIERE GRASS	18" 24" HT. X 18-24" SP.	3 GAL.	36" ON	
PC	94	TRIPSACDUM DACTYLOIDES	FAUCONIERE GRASS	18" 24" HT. X 18-24" SP.	3 GAL.	36" ON	
SOO	QTY	BOTANICAL NAME	CULTIVAR NAME	SIZE	CONTAINER	SPACING	REMARKS
POV	25,755 SF	PREMIUM ZENITHUM ALOHA	SEASIDE PINEAPPLE				

SCALE: NTS



**LEGEND:**

-  PROPOSED ASPHALT PAVEMENT
-  PROPOSED CONCRETE PAVEMENT
-  PROPOSED STREET LIGHT

**SITE DATA**

TOTAL SITE AREA	3.91 AC.
CURRENTLY PROPOSED DEVELOPMENT AREA	2.72 AC.
TOTAL NUMBER OF LOTS	16
PROPOSED MAXIMUM BUILDING HEIGHT	35'
MINIMUM LOT AREA	2,800 SF
MINIMUM LOT WIDTH	40'
MINIMUM YARD SIZE (BUILDING)	
FRONT YARD	20'
REAR YARD	10'
SIDE YARD	5'
MAXIMUM LOT COVERAGE	60%
MINIMUM FLOOR AREA	800 SF
MINIMUM PERVIOUS AREA	40%
SITE IMPERVIOUS AREA	
LOT IMPERVIOUS AREA	0.75 AC.
ROADWAY IMPERVIOUS AREA	0.47 AC.
MAX. SITE ISR (IMPERVIOUS SURFACE RATIO)	31%
SITE OPEN SPACE	2.69 AC.

\* CONTINUATION OF POTABLE WATER & SANITARY SEWER UTILITIES INTO THE PROPOSED RESIDENTIAL DEVELOPMENT TO BE INCLUDED IN THE FINAL ENGINEERING PLANS



CIVIL ENGINEERING  
LANDSCAPE ARCHITECTURE  
ENVIRONMENTAL PLANNING  
TRANSPORTATION

**SOLITUDE AT MATANZAS  
CONCEPTUAL PLAN**

PROJECT NO. 48018  
DESIGNED BY: JHK  
DRAFTED BY: CWAMA  
CHECKED BY: JHK



**Scenic A1A PRIDE**  
*Promoting Rational Integration of Development &  
 Environment*

October 31, 2022

Adam Mengel  
 Flagler County Growth Management  
 1769 E. Moody Blvd, Bldg 2  
 Bunnell, FL 32110

**Solitude Project – 6645 N Ocean Shore Blvd**

Dear Mr. Mengel,

The Scenic A1A PRIDE reviewed the Solitude project on 10/28/2022. The attached conceptual plan shows 16 single family dwellings on 3.87 acres. The homes are specified to be three stories and no more than 35 feet in height with 5-foot side setbacks. There is an open question whether the special exception allows smaller than the minimum size lots in the R/C district.

A public beach access on the south side of the property will be maintained by the homeowners association. Conditions for wastewater service from Matanzas Shores OA require renewing the dunes. We understand that a left turn lane may be required due to the entrance location just south of the merging of four lanes down to two.

Recommendations from Scenic A1A PRIDE include the following.

- Short-term rentals will be prohibited in the HOA covenants.
- A 40-foot landscape buffer along A1A with primarily native plants is required with eighty percent opacity after maturity.
- A1A PRIDE would like to review the final site plans, landscape plans, and signage plan before submission to the Planning Board.
- The stormwater pond area will include some picnic tables and/or recreational facilities.
- Power lines along A1A in front of the development be buried if economically feasible.

Sincerely,

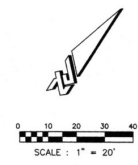
Dennis Clark, Chair  
 SCENIC A1A PRIDE  
 5784 N. Oceanshore Blvd, Palm Coast, FL 32137

c.c. Michael Chiumento III ([michael3@legalteamforlife.com](mailto:michael3@legalteamforlife.com))  
 Scenic A1A PRIDE Board



PLANT SCHEDULE

TREES	QTY	BOTANICAL NAME	COMMON NAME	SIZE	CONTAINER	REMARKS
MC	12	MIRICA CZEPIERA	WAX MYRTLE	2' 3/4" CAL.	48" GAL.	
PALM TREES						
SS	102	SABAL PALMETTO	CABBAGE PALM	VARY C.T. HT. 8'-11'	CONTAINER	
SS2	21	SABAL PALMETTO	CABBAGE PALM	VARY C.T. HT. 8'-11'	CONTAINER	
SHRUBS						
CT	24	COCCODRBA UUIPERA	SEA GRAPE	18" HT. X 12" 18" SP.	3" GAL.	SPACING 20" o.c.
SK	1,019	SEKENDIA RZIFENS	SAW PALMETTO	24" HT. X 18" SP.	3" GAL.	SPACING 36" o.c.
GRASSES						
SP	750	SPRY MEXICAN CORD GRASS	SPRY MEXICAN CORD GRASS	12" HT. X 10" SP.	1" GAL.	SPACING 24" o.c.
GROUND COVERS						
HD	303	HELIANTHUS DEBILIS	DUNE SUNFLOWER	10" HT. X 10" SP.	1" GAL.	SPACING 24" o.c.
IPC	33	PROMELA FIS-CAPPALZ	RAISIN CUP VINE	12" SP.	4" POT.	SPACING 36" o.c.
SOD						
PVA	27,761 SF	PASPALUM VAGRIATUM "ALPHA"	SEASHORE PASPALUM	---	---	---



CIVIL ENGINEERING  
LANDSCAPE ARCHITECTURE  
ENVIRONMENTAL  
PLANNING  
TRANSPORTATION

NO. DATE BY SUBMITTALS / REVISIONS

FOR REVIEW ONLY NOT FOR CONSTRUCTION

**SOLITUDE AT MATANZAS**  
FINAL ENGINEERING PLANS  
LANDSCAPE PLANS & DETAILS

CITY OF PALM BEACH  
PALM BEACH COUNTY, FLORIDA

PROJECT NO. 22-08016  
DESIGNED BY: JES  
DRAFTED BY: JES  
CHECKED BY: BG

DRAWING FILE: 22-08016-TEMPLATE  
SHEET: 08-RELANDING  
REF: 20000-000

JAY E. STEIN, A.L.A., NO. 88949  
REGISTERED LANDSCAPE ARCHITECT

SHEET: LA1 OF 2



**FLAGLER COUNTY PLANNING AND DEVELOPMENT BOARD REGULAR  
MEETING**

Flagler County Government Services  
Building, 1769 East Moody Blvd., Board  
Chambers, Bunnell, FL

**MEETING MINUTES**

**Tuesday, February 14, 2023 at 6:00 PM**

**1. Roll Call:** The meeting was called to order by the Chair and a quorum was present.

**Members present:** Jack Corbett, Mark Langello, Anthony Lombardo and Fernando Melendez (Chair).

**Members excused:** Michael Boyd, Timothy Connor and Heather Hawyood.

**Staff present:** Adam Mengel, Growth Management Director and Chuck Merenda, Assistant Growth Management Director.

**Board Counsel:** Sean Moylan, Deputy County Attorney.

**2.** Pledge to the Flag.

**3.** Approval of: January 10, 2023 regular meeting minutes.

**Motion: to approve.**

**Motion by: Anthony Lombardo**

**Motion 2<sup>nd</sup> by: Jack Corbett**

**Vote: Motion carries unanimously.**

**4.** Legislative, not requiring disclosure of ex parte communication:

Application #3337 – **FUTURE LAND USE MAP AMENDMENT FROM MIXED USE: LOW INTENSITY LOW/MEDIUM DENSITY TO RESIDENTIAL LOW DENSITY** – request for an amendment to the Future Land Use Designation for Parcel Numbers: 40-10-31-3280-00000-0010; 40-10-31-3280-00000-0020; 40-10-31-3280-00000-0030; 40-10-31-3280-00000-0050; 40-10-31-3280-00000-00A0; and 40-10-31-3280-00000-00B0. 7.02+/- acres located at 101, 102, 201, 202, and 301 Hammock Park Lane. Owner: DBD Solutions, LLC, a Georgia Limited Liability Company, and Hammock Commercial Park Owners' Association, Inc., a Florida Not for Profit Corporation/Applicant: Michael D. Chiumento, III, Esquire.

*Project #2022110046*

*(TRC, PDB, BCC)*

**Staff Presentation:** Mr. Mengel presented the staff report.



Mr. Langelo like the idea of planting trees.

Mr. Mengel advised that there is still a shade tree requirement for every lot.

**Motion:** The Planning and Development Board recommends to the Board of County Commissioners Approval of Application #3338, a rezoning from R/C (Residential/limited commercial) to PUD (Planned Unit Development) District for 7.02+/- acres for The Hammock Park PUD, finding that the proposed PUD Site Development Plan is consistent with the Flagler County Comprehensive Plan and the Flagler County Land Development Code, subject to:

- a. all development conditions within the PUD Development Agreement as approved through Ordinance No. 2022-\_\_\_;
- b. development of the subject parcels not to commence until approval of a Future Land Use Map amendment from Mixed Use: Low-intensity, Low- to Medium-Density to Residential: Low Density/Single Family; and
- c. other conditions as added by the Planning and Development Board as part of their recommendation following the public hearing.

**Motion by:** Jack Corbett

**Motion 2<sup>nd</sup> by:** Anthony Lombardo

**Vote:** Motion carries unanimously.

6. Quasi-judicial requiring disclosure of ex parte communication:

Application #3339 – **REQUEST FOR AN AMENDMENT TO THE APPROVED SPECIAL EXCEPTION FOR 14 TOWNHOMES TO AMEND THE SPECIAL EXCEPTION TO ALLOW 16 SINGLE FAMILY DETACHED LOTS** – request for an amendment to an approved special exception to modify the 14 townhomes to allow 16 single family detached lots. Subject Parcel Number is 37-10-31-1550-00000-0220 and parcel being 3.87+/- acres and located at 6645 N. Ocean Shore Boulevard. Owner: Consolidated Capital Funding II, LLC/Applicant: Michael D. Chiumento, III, Esquire.  
*Project #2022120002 (TRC, PDB, BCC)*

**Staff Presentation:** Mr. Mengel presented the staff report. Mr. Mengel included the recommendations from the Scenic A1A PRIDE committee. He mentioned the correspondence from Ms. Bagdonas.

**Applicant Presentation:** Michael D. Chiumento, III was present for the applicant, he handed out a packet and reviewed the packet providing the existing townhome project and the request for single-family detached.

**Board questions:**

Mr. Langelo questioned staff for the procedure.

Mr. Mengel responded that this will return as a preliminary plat.

Mr. Langelo questioned where the setbacks and landscaping be delineated.

Mr. Mengel responded that will happen here.

Mr. Langelo questioned the sewer.

Mr. Mengel responded that the sewer line runs along the west side of A1A. We have a will serve.

Mr. Melendez questioned the dune walkover.

**Public comments:**

Courtney VanDebunte people buying the houses, will they be able to be insured. Dune restoration is very misleading. She has been communicating with the State Parks Department, they are interested in buying the property.

Carol Scott at Lakeside at Matanzas Shores, entry from the south is difficult, from the north entry will be the same. The ocean has taken a lot of the sand dune. Questioned the oil seepage, no geologist study provided. The vegetation is not going to live. The 16 homeowners will be duped.

Ronnie Wilson, the former President of the Matanzas Shores Homeowners Association. They have met with the developers and had them to bring plans of the sand berm. The developer is prepared to meet that part of the challenge.

Charles Beeman 6525 Old A1A, questioned the previous approval, he was under the impression that there was only 5 to 6 houses on the property. The Construction Control Line, he did not understand that. Los Carlos that is 8' above sea level and most of the houses are below that.

Jon Steele, 6545 Old A1A, everyone has talked about what is on top of the land, his question is what is under the land and the water table.

Sallee Arnoff, Sugarmill Plantation she is opposed to increasing the density.

Mark Kowalski, end of Old A1A, he questions the traffic situation. He questions the water situation. Nobody seems to take quality of life, where are these people going shop?

Dennis Clark, Oceanshore Blvd in the Hammock, he is speaking for himself not as a committee member of the Scenic A1A PRIDE, the lot sizes are much less that the required 9,000 square feet.

Marius Timis spoke to concerns about the traffic, the water quality and the hurricanes.

Elizabeth Kowalski, small piece of land, she doesn't think anyone can build on it.

**Applicant Rebuttal:**

The Washington Oaks is separated from the subject parcel by a piece of property. In 2016 the vested rights to change the vested rights from townhomes to single-family detached.

Luke Kilic, P.E., Zev Cohen & Associates, Inc., 300 Interchange Boulevard, Ormond Beach, Florida, they have had Lassiter Transportation Group provide a traffic study the study suggests a left turn lane into the property. The water concerns, any improvements on the site would require stormwater retention. They are removing a drainfield from the site. The first floors will be garages, they will be working with the FDEP permitting consultant and permitting. The other items, such as dune restoration, we will work with the County to provide improvements. With respect to insurance, they will work FEMA to remove the flood zone so the homeowners will be able to get insurance.

Mr. Mengel responded that there is an intent from Mr. Chimento that the developer will consent to the easement for the construction of the dune and restoration. Water and sewer will be extended to the subject site. Statement about the Coastal Construction Control Line, anything seaward of the Coastal Construction Control Line must be permitted by the Florida Department of Environmental Protection. He also mentioned insurance, stormwater and traffic.

Mr. Moylan mentioned that the proposal here does not meet the dimensional requirements of the R/C zoning district; but that is because posturing of this having gone through many iterations; with 19 different conditions attached to this project. You are recommending a specific zoning for this project.

Mr. Langello, Mr. Chimento's comments that this property has vested rights. To the HOA who is allowing them to get the water. This property has every right to develop, if nothing is ever done here, the property is more apt to have flooding and allow flooding to happen. Mr. Langello questioned the density.

Mr. Moylan responded that the parties agreed to settle out of court, and the density does not violate the comprehensive plan.

Mr. Langello continued that FDOT will determine the connection to State Road A1A. Will these 2 extra units will create a problem for the County, the Sheriff and the density.

Mr. Mengel responded that this property has the Mixed Use: Low Intensity/Low-Medium Density will effective have better than 20 units.

Mr. Corbett commented that this is a scary part of the road, he's hopeful that the FDOT will make it safer.

Mr. Fernandez, this is a request for an amendment.

Mr. Lombardo commented that the single family detached homes is better than the townhomes.

**Motion: The Planning and Development Board recommends to the Board of County Commissioners Approval of Application #3339, finding that all the special exception criteria as listed in the guidelines at Land Development Code Section 3.07.03.F have been met for the amendment to single family detached lots at 6645 N. Ocean Shore Boulevard (Parcel #40-10-31-1550-00000-0220), subject to the following conditions:**

- a. that the Owner satisfy any outstanding conditions related to the 2006 Planning Board determination; the 2008 Settlement Agreement; and the 2008 Planning Board determination, as applicable;
- b. that the Project connect to central sewer as provided through the Matanzas Shores Master HOA system;
- c. that the Owner provides the County with the 15 foot wide pedestrian easement for a future dune walkover;
- d. that the Owner consents to the dune easement;
- e. that the North and West perimeter buffers be augmented so as to create an opaque barrier of natural vegetation a minimum of six (6) feet in height within five (5) years of the commencement of development of the parcel; and
- f. that the Owner present the Site Plan to the A1A Scenic PRIDE Committee for their review and comment prior to Site Plan approval by the County.

**Motion by: Anthony Lombardo**

**Motion 2<sup>nd</sup> by: Mark Langelo**

**Discussion: Mr. Langelo questioned that the motion does have the conditions that staff put in.**

**Mr. Lombardo responded correct.**

**Vote: Motion carries unanimously.**

7. Staff Comments.  
None.

8. Board Comments.  
None.

9. Public Comments – Each speaker will be allowed up to three minutes to address

the Planning and Development Board on any item or topic not on the agenda.  
None.

**10. Adjournment:**

Motion to adjourn Motion by: Anthony Lombardo

Motion 2<sup>nd</sup> by: Jack Corbett

Meeting adjourned at 8:15 p.m.

DRAFT

THE FLAGLER/PALM COAST  
**NEWS-TRIBUNE** P.O. Box 630476, Cincinnati, OH 45263-0476

**PROOF OF PUBLICATION**

Gina Lemon  
Purchasing  
Flagler County Board Of County Commissioners  
1769 E Moody BLVD # 306  
Bunnell FL 32110-6355

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who, on oath says that he/she is LEGAL COORDINATOR of The Flagler/Palm Coast NEWS-TRIBUNE, a weekly newspaper, published in Flagler County, Florida; that the attached copy of advertisement, being a Govt Public Notices in the Court, was published in said newspaper in the issues dated or by publication on the newspaper's website, if authorized, on:

01/25/2023

Affiant further says that The Flagler/Palm Coast News-Tribune is a newspaper published in said Flagler County, Florida, and that the said newspaper has heretofore been continuously published in said Flagler County, Florida each Wednesday and has been entered as second-class mail matter at the post office in said Flagler Beach, in said Flagler County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Subscribed and sworn to before on 01/25/2023

Legal Clerk

  
Notary, State of WI, County of Brown  
5.15.23

My commission expires

Publication Cost: \$33.52  
Order No: 8340625 # of Copies: 1  
Customer No: 465546

PO #:

**THIS IS NOT AN INVOICE!**

Please do not use this form for payment remittance.

NOTICE OF SPECIAL EXCEPTION

The Flagler County Board of County Commissioners hereby provides notice of consideration of Application #3339 submitted by Applicant, Michael D. Chiumento, III, Esquire, for property owners Consolidated Capital Funding II, LLC for an amendment to a Special Exception in the R/C (Residential/limited commercial) District.

Public hearing on the above-captioned matter will be held as follows:

FLAGLER COUNTY PLANNING AND DEVELOPMENT BOARD - Recommendation to Board of County Commissioners on adoption - February 14, 2023 at 6:00 p.m. in the Flagler County Government Services Building, Board Chambers, 1769 E. Moody Blvd., Building 2, Bunnell, Florida, 32110

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS - Adoption Hearing - March 20, 2023 at 5:30 p.m. in the Flagler County Government Services Building, Board Chambers, 1769 E. Moody Blvd., Building 2, Bunnell, Florida, 32110.

All interested persons are urged to attend these public hearings and be heard. Anyone wishing to express their opinion may attend, telephone 386-313-4009 or write to: Flagler County Planning Department, 1769 E. Moody Blvd, Building 2, Bunnell, FL 32110 or email to planningdept@flaglercounty.gov. Copies of the proposal, supporting data and analysis, staff reports and other pertinent information are available for review at the Flagler County Planning & Zoning Dept., 1769 East Moody Boulevard, Bldg. 2, Bunnell, Florida 32110.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF COUNTY COMMISSIONERS WITH RESPECT TO ANY MATTER CONSIDERED AT THE MEETING, A RECORD OF THE PROCEEDINGS MAY BE NEEDED AND, FOR SUCH PURPOSES, THE PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH APPEAL IS TO BE BASED. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE PLANNING DEPARTMENT AT LEAST 48 HOURS PRIOR TO THE MEETING.

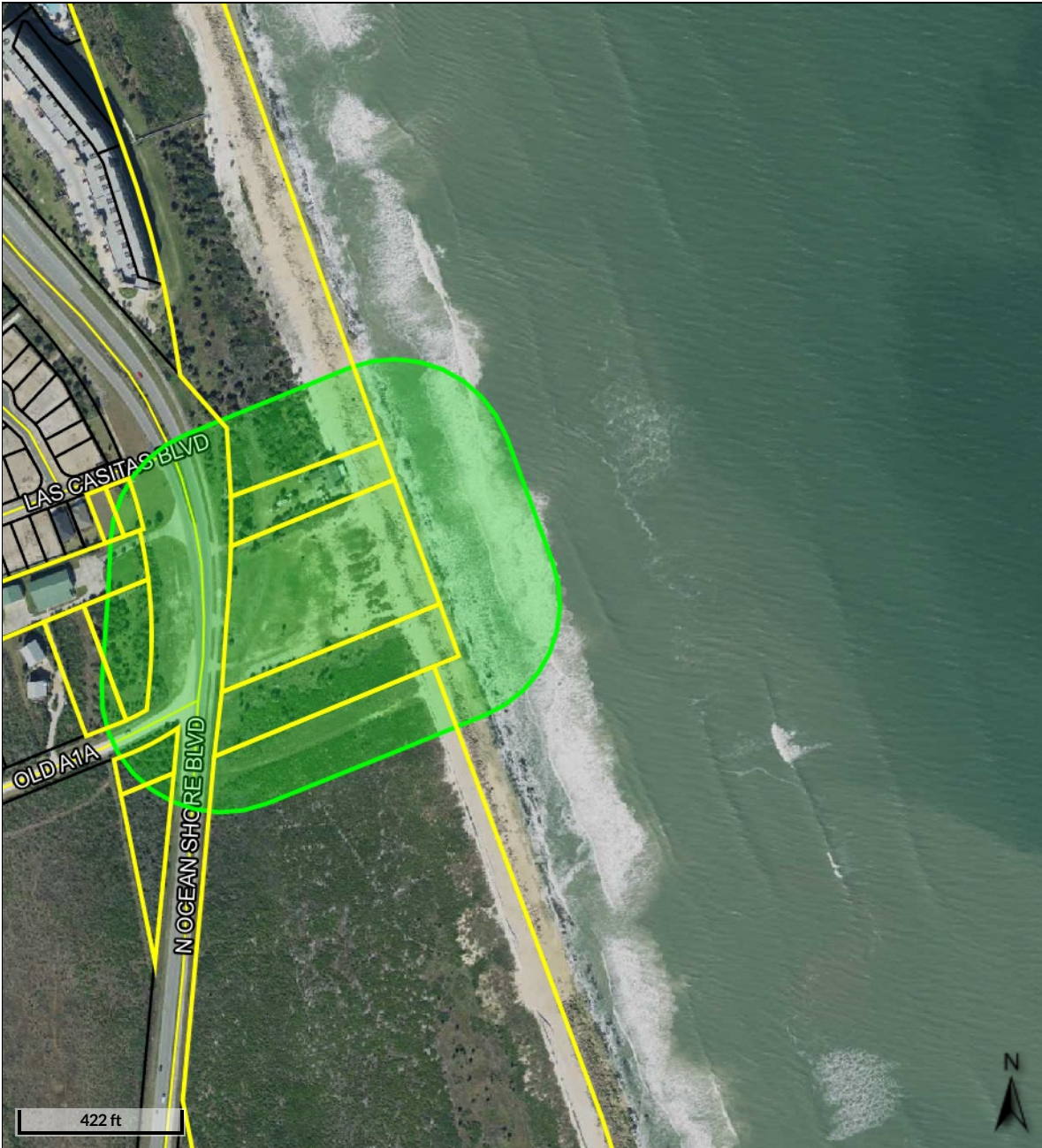
NT8340625 1/25/2023

NANCY HEYRMAN  
Notary Public  
State of Wisconsin

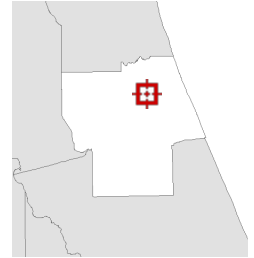


Application #3339




Modification of Special Exception



Overview



Legend

-  Parcels
-  Roads
-  Streams and River

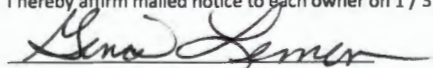
Date created: 1/18/2023  
Last Data Uploaded: 1/18/2023 8:15:07 AM

Developed by  Schneider  
GEOSPATIAL

Application #3339  
Modification of Approved Special Exception

ParcelId	OwnerName	OwnerAddress1	OwnerAddress2	OwnerAddress3	OwnerCityStZip
08-10-31-0000-01020-0010	TIMIS MARIUS		237 N HIDDEN TREE DRIVE		ST AUGUSTINE, FL 32086
17-10-31-0000-01010-0000	TIITF/DIV REC & PARKS	% DEP, DIVISION OF STATE LANDS	3900 COMMONWEALTH BLVD MAIL STATION 108		TALLAHASSEE, FL 32399
37-10-31-1550-00000-0220	CONSOLIDATED CAPITAL		PO BOX 1509		SANFORD, FL 32772
38-10-31-1200-00010-0230	PATELLA GERARD		6653 N OCEANSHORE BLVD		PALM COAST, FL 32137
08-10-31-0000-01020-0000	HANSFORD HAL SMITH		22 OCEAN DRIVE		ST AUGUSTINE, FL 32080
37-10-31-3780-00000-0010	SMITH TRICIA S	& GARY WILLIAM BLAYLOCK JTWR0S	3 LAS CASITAS BOULEVARD		PALM COAST, FL 32137
37-10-31-3780-00000-00G0	KB HOME JACKSONVILLE, LLC		10475 FORTUNE PKWY, STE 100		JACKSONVILLE, FL 32256
37-10-31-3725-00000-00B0	MATANZAS SHORES OWNERS ASSN		110 E. COLLECTORS ROAD		PALM COAST, FL 32137
37-10-31-1600-00090-0000	6656 OCEANSHORE BLVD LLC		6565 OLD A1A		PALM COAST, FL 32137
37-10-31-1550-00000-0210	6656 OCEANSHORE BLVD LLC		6565 OLD A1A		PALM COAST, FL 32137
37-10-31-1550-00000-0175	6656 OCEANSHORE BLVD LLC		6565 OLD A1A		PALM COAST, FL 32137

I hereby affirm mailed notice to each owner on 1 / 31 /2023 for the Planning Dev Bd meeting on 2 / 14 /2023 at 6:00 pm and BCC hearing on 3 / 20 / 2023 at 5:30 p.m.

  
Gina Lemon, Development Review Planner III



**Growth Management Department**  
**Planning & Development**  
1769 E. Moody Blvd, Bldg. 2  
Bunnell, FL 32110



[www.flaglercounty.gov](http://www.flaglercounty.gov)  
Phone: (386)313-4009  
Fax: (386)313-4109

January 31, 2023

TIMIS MARIUS  
237 N HIDDEN TREE DRIVE  
ST AUGUSTINE, FL 32086

RE: Application #3339 – Modification of Special Exception in the R/C  
(Residential/limited commercial) District

Dear Property Owner:

As owner of property within 300' of the property referenced herein, the Flagler County Planning Department, in accordance with Section 2.07.00 of the Flagler County Land Development Code, advises you that:

A request has been made by Michael D. Chiumento, III, Esquire, as Agent for owner Consolidated Capital Funding II, LLC, for property located at 6645 N. Oceanshore Boulevard, identified as Parcel Number: 37-10-31-1550-00000-0220, for modification of an approved Special Exception for fourteen (14) three story townhomes on the 3.87± acre parcel to create sixteen (16) single-family detached lots.

You are hereby notified that public hearings will be held as follows:

FLAGLER COUNTY PLANNING AND DEVELOPMENT BOARD – for recommendation to Board of County Commissioners on February 14, 2023 at 6:00 p.m. in the Flagler County Government Services Building, Board Chambers, 1769 E. Moody Blvd., Building 2, Bunnell, Florida, 32110.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS – March 20, 2023 at 5:30 p.m. in the Flagler County Government Services Building, Board Chambers, 1769 E. Moody Blvd., Building 2, Bunnell, Florida, 32110 for final decision.

**Andy Dance**  
District 1

**Greg Hansen**  
District 2

**David Sullivan**  
District 3

**Leann Pennington**  
District 4

**Donald O'Brien, Jr.**  
District 5

You are welcome to attend both hearings and express your opinion.

Sincerely,

A handwritten signature in purple ink that reads "Gina Lemon". The signature is written in a cursive, flowing style.

Gina Lemon  
Development Review Planner III

NOTE: PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF A PERSON DECIDED TO APPEAL ANY DECISION BY THE BOARD, AGENCY OR COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS AND THAT, FOR SUCH PURPOSE, HE OR SHE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

Network: Jan 23, 2023 at 1:52

Local: Jan 23, 2023 at 1:52

N 29° 38' 36.751", W 81°

6645 N Ocean

Palm Coa

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