



THE SUNSET CAPITAL OF FLORIDA

**CITY COMMISSION
WORKSHOP MEETING
CITY OF ST. PETE BEACH**

155 Corey Avenue
St. Pete Beach, FL

**Tuesday, April 21, 2015
9:00 a.m.**

Call to Order
Pledge of Allegiance
Roll Call

1. Presentation

- a. University of Florida Levin College of Law - State of the law**
related to the City's regulation of its beaches.

2. Adjournment

**Note: The University of Florida team will be
available from 1 p.m. -3 p.m. in the City Hall
Conference room to meet with the public.**

APPEAL

If a person decides to appeal any decision made at this meeting, he or she will need a record of the proceeding and, for such purpose, may need to ensure that a verbatim record of the meeting is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105). The City does not furnish verbatim transcripts; interested parties should make the necessary arrangements for verbatim transcripts.

AMERICANS WITH DISABILITIES ACT

In Accordance with the Americans with Disabilities Act and F.S. 286.26, persons with disabilities needing special accommodations to participate in this meeting should contact City Hall at (727) 367-2735 no later than four days prior to the meeting for assistance. The public is cordially invited to attend. All agenda material is available for review at City Hall.



Beach Management Presentation

City of St. Pete Beach City Commission

Tuesday, April 21, 2015

Melissa Fedenko, Student Associate

Jennifer Lombark, Student Associate

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Thomas T. Ankersen, J.D., Director

Purpose of presentation

- Review St. Pete Beach's concerns with beach management issues
- Discuss the state of the law in Florida related to beach management issues
- Present decision points related to drafting updated beach management ordinance

Community context

- Beach as several distinct areas:
 - Large resort district
 - Boutique hotel/condo district
 - Mixed residential district
 - Mixed-use Pass-A-Grille Beach
- Jurisdiction over Gulf of Mexico

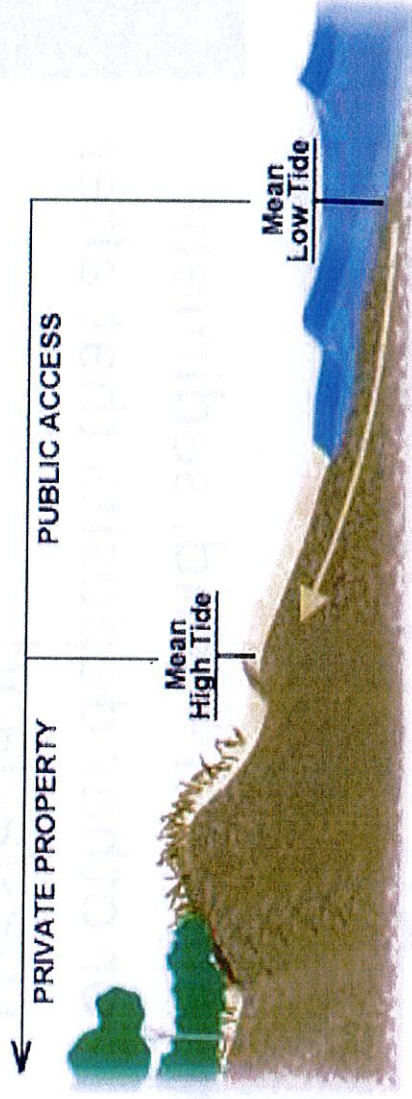


Challenges

- Public safety
- Public access
- Commercial vending of beach furniture
- Attractions (e.g. bounce houses)
- Mobile food and beverage vending
- Solid waste (e.g. glass)
- Structures
- Vagrancy
- Alcohol
- Signage
- Dogs
- Nourishment
- Wildlife

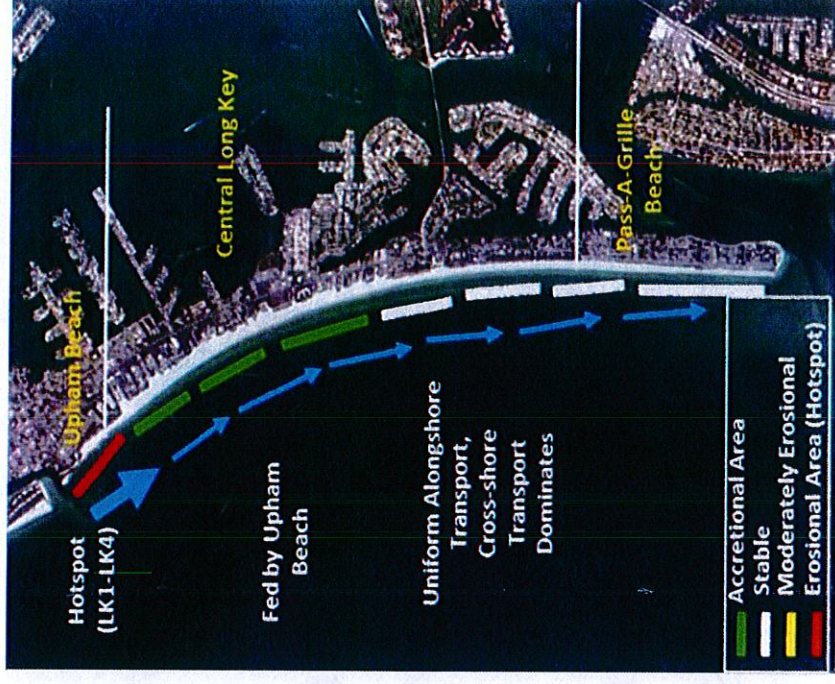
Beach Ownership and Control

- Beach - The zone of unconsolidated material that extends landward from the mean low-water line
- Mean High Water Line - Dividing line between state-owned land and private property



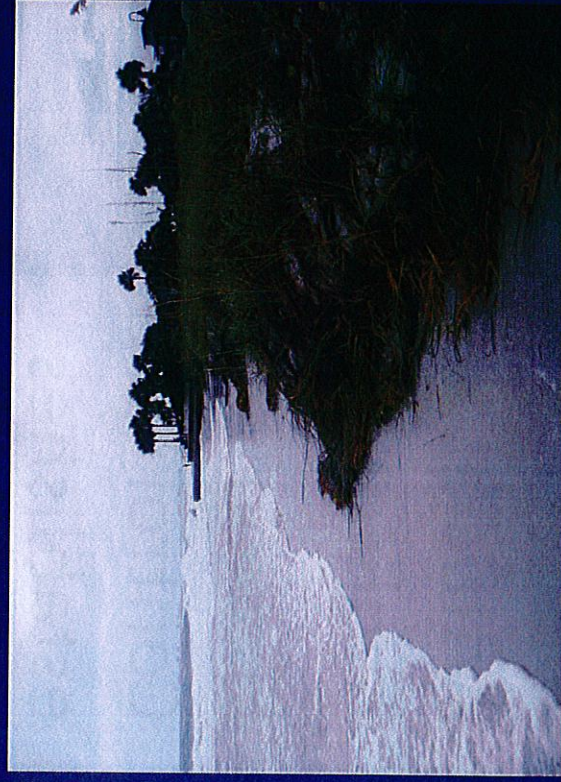
Beach Ownership and Control

- Alluvion - Sand, sediment, or other deposits that alter coastal land
- Accretions - Additions of alluvion to waterfront land that occur gradually and imperceptibly
- Relictions - Lands once covered by water that become dry when the water recedes



Beach Ownership and Control

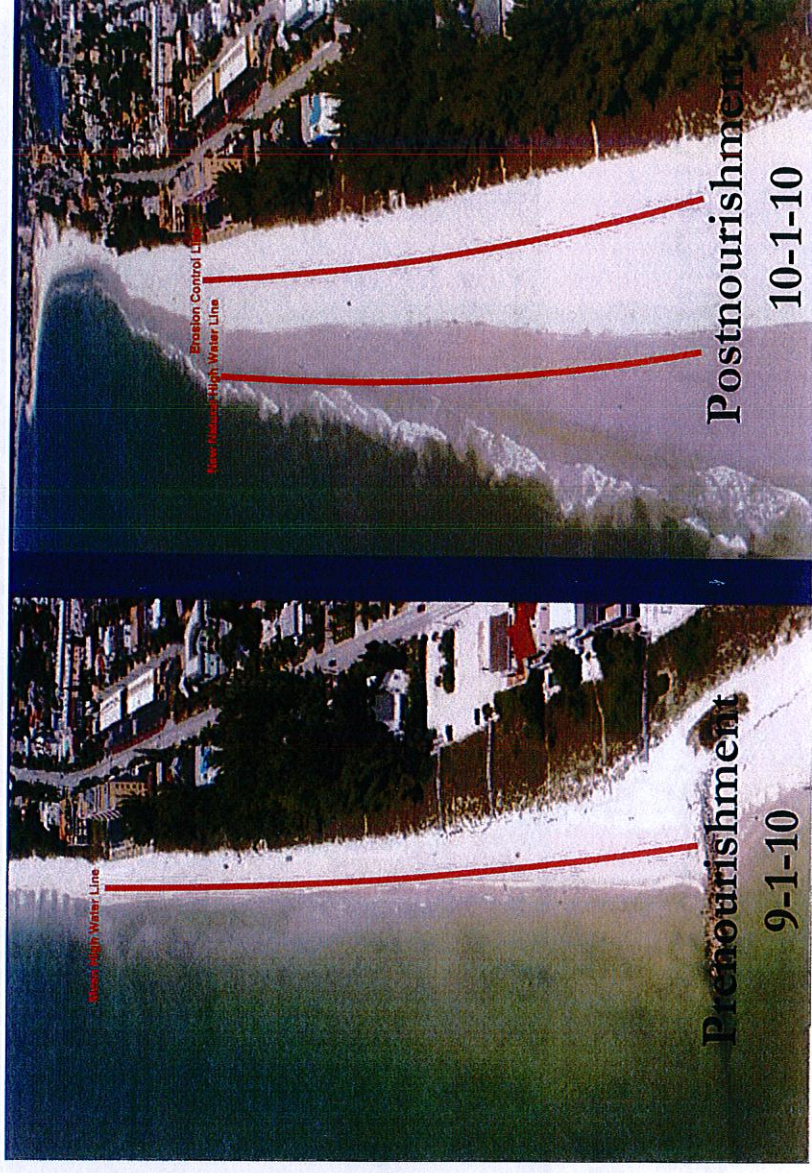
- Avulsion - A sudden loss or addition alluvion to waterfront land



Pass-A-Grille Beach - Tropical Storm Debby 2012

Beach Nourishment

- Artificial Avulsion
- Erosion Control Line establishes property boundary



On-Water Activities

- City has police power, albeit limited, over “waters of the city”
- Subject to state preemption
 - City cannot regulate vessels “in navigation”
- City must seek approval from FWC to address boating safety issues through local ordinance
 - Creates “vessel exclusion zones” and boating restricted areas (Ch. 327.46, F.S.)

Public Access

- State of Florida policy is to ensure beach access
- Lateral and Perpendicular Access
- Methods of Establishing Access:
 - Prescriptive Easement
 - Doctrine of Customary Use
 - Other Methods



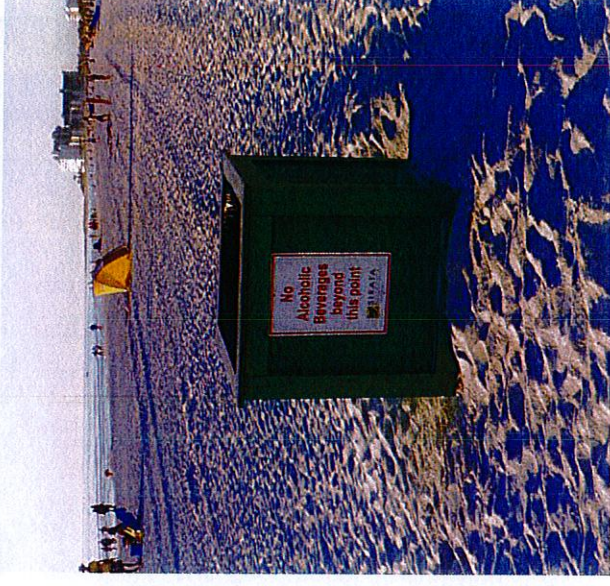
Coastal Construction

- Beach and Shore Preservation Act
 - Coastal Construction Control Line
 - Coastal Zone Protection Act
- Municipal Code Regulation



Alcohol

- No state level open container prohibition
- Regulated at the municipal level
- Broad prohibition in St. Pete Beach



Maintenance

- Litter
 - Florida Litter Law
 - General prohibition on the dumping of litter in any amount and any manner on any public lands or state waters
 - Enforcement authority delegated to municipalities

Public Safety

- When and where are police allowed to patrol?
 - Public land within the boundaries of the municipality
 - Commercial businesses that are open to the public
 - Private property with express or implied consent, in the course of executing a valid search warrant, or in the event of exigent circumstances

Part II: Local Beach Management



ORDINANCES

Purposes:

- Address issues and topics typically included in beach management ordinances
- Analyze the current status of St. Pete Beach's ordinances regarding these topics
- Whether “beach” as used in the Code means private beach, public beach, or both?

Organization:

- Topic/Issue presented
- Relevant St. Pete Beach ordinances (if any)

Overview

- Structures
 - Temporary, semi-permanent, permanent
- Alcohol
- Glass
- Beach Access
- Animals
 - Domestic, wildlife, turtles
- Beach Maintenance
 - Trash/litter, beach raking, beach re-nourishment, landscape conservation

Structures

- Generalized categories, such as the following, allow for inclusion of specific structures, like furniture or tiki huts, while still accommodating for any other structure-related issues that may arise.
 - Temporary
 - Semi-Permanent
 - Permanent
- St. Pete Beach Comprehensive Plan designates all land seaward of the CCCL “Preservation.”
 - Only allows for certain structures within those areas.

Structures: Temporary

- Issue: should temporary structures be allowed on the beach? To what extent? What standards or limitations should be placed on temporary structures?
- SPB
 - Unlawful to construct temporary structures unless permit issued in association with special event (Sec. 58-26: Prohibited Activities in City Parks)
 - Beach furniture is unlawful if it interferes with public use of the beach; unlawful to remain on beach during sunset and sunrise (Sec. 94-68. - Chairs, tables, umbrellas)
 - Unlawful to erect temporary structures unless authorized elsewhere in code (Sec. 94-72. - Temporary structures.)
- Example re: beach furniture
 - FWC: remove nightly; no heavy equipment; stack and arrange furniture at night; arrange to accommodate for turtle nests (after nesting survey done); anchor umbrella sleeve permanently so no need to re-anchor umbrellas nightly

Structures: Semi-Permanent

- Issue: Should semi-permanent structures be allowed on the beach? To what extent and how should they be regulated?
- SPB:
 - Tiki huts prohibited unless there is a permit and the tiki hut is in compliance with code requirements(Sec. 94-71. - Tiki huts.)

Structures: Permanent

- Issue: Should permanent structures be allowed on the beach? To what extent and how should they be regulated?
- SPB:
 - Compliance for seawalls, bulkheads, and retaining walls (Sec. 98-100. - Standards for seawalls, bulkheads and retaining walls not on Gulf of Mexico.; Sec. 98-101. - Standards for seawalls, bulkheads and retaining walls on Gulf of Mexico.)

Alcohol

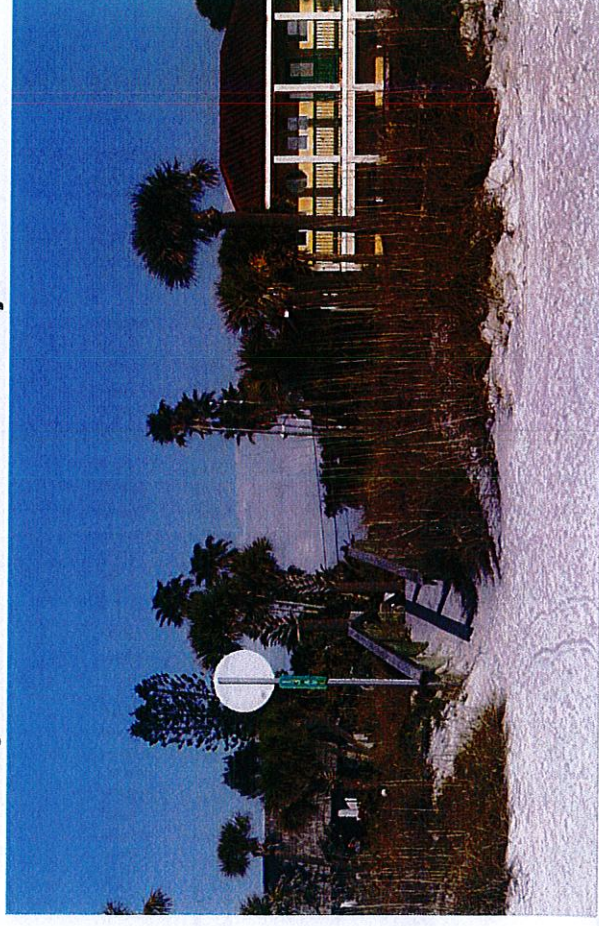
- Issue: Should alcohol be prohibited on beaches? How to indicate where alcohol is/is not allowed (private land versus public land)?
- SPB:
 - Prohibited on all public beaches; signs required; special permits can be granted (Sec. 6-5. - Public consumption or possession.) Sec. 58-30. - Proper use of facilities.
 - Prohibited within city parks (Sec. 58-30. - Proper use of facilities.)
 - Prohibited even in picnic areas (Sec. 94-69. - Picnics and food consumption.)

Glass

- Issue: should glass be prohibited on public beaches? Private beaches? Both?
- Glass on the beach can impact human, environmental, and wildlife health and safety.
- SPB:
 - Prohibited in picnic areas on Pass-a-Grille and Upham Beach (Sec. 94-69. - Picnics and food consumption.)

Beach Access

- Issue: should St. Pete Beach maintain or regulate public beach access points?
- Regulating the maintenance and availability of access points may ensure compliance with State policy and safeguard the public's ability to reach the beach.
- SPB:
 - Addressed in CP but not ordinances.
- Example:
 - No camping or alcohol in beach access areas (Miami Beach)



Animals: Pets

- Issues: Should pets be prohibited on the beach? All beaches? How should service animals be accounted for?
- SPB: (regulates public beach only)
 - Dogs prohibited on public Gulf of Mexico beaches only (Sec. 14-35. - Prohibited on public beaches abutting the Gulf of Mexico.)
 - Domestic pets (but not service or police animals) prohibited on public Gulf of Mexico beaches and swim areas only (Sec. 58-25. - Domestic animals.)

Animals: Wildlife (excluding turtles)

- Issue: Should St. Pete Beach prohibit interaction with wildlife?
- Wildlife can be dangerous to human health and/or protected by law. Human interaction may also affect nesting, feeding, or mating patterns of wildlife. Wildlife may potentially harm human health and safety due to illness or attacks.
- SPB:
 - Feeding wild birds is prohibited on public beaches (Sec. 14-2. - Feeding wild birds in public areas.)
- Examples:
 - No live shelling (Marco Island); no removal of natural resources (Destin)

Animals: Turtles

- Issue: Should St. Pete Beach include provisions regarding turtles, like turtle lighting ordinances?
- Night lighting along the Gulf coast may be incompatible with typical sea turtle hatchling behavior and may result in turtle mortality.
- SPB:
 - Mechanical beach cleaning, if done during turtle nesting season, must be authorized (Sec. 94-102. - Prohibitions.)
- Examples:
 - Turtle lighting (Maderia Beach, Miami Beach, Marco Island)

Beach Maintenance

- Trash/litter
- Beach Raking
- Beach Re-nourishment
- Landscape Conservation



Beach Maintenance: Trash/Litter

- Issue: How should St. Pete Beach regulate litter?
- Litter is highly regulated by the Florida Litter Law and St. Pete Beach ordinances.
- SPB:
 - If someone picnics, they must clean up after (Sec. 94-69.
 - Picnics and food consumption.)
 - Unlawful to litter on any public property (Sec. 70-8. - Littering; placement in cans of another.)
 - Unlawful to deposit litter anywhere that is not designated (Sec. 98-66. - Residential and commercial property maintenance.)

Beach Maintenance: Beach Raking

- Issue: Should St. Pete Beach provide ordinances for beach raking to clean beaches?
- Beach raking is a method which uses machines to clean beaches of debris. St. Pete Beach currently has an ordinance regarding mechanical beach cleaning, which may possibly be considered beach raking.
- SPB:
 - Mechanical beach cleaning, if done during turtle nesting season, must be authorized (Sec. 94-102. - Prohibitions.)

Beach Maintenance: Beach Nourishment

- Issue: Should St. Pete Beach address for beach nourishment?
- Beach nourishment is generally a state activity that results in nourished beaches becoming owned by the state.
- SPB:
 - Beach Stewardship Committee (see 22-301) should review ongoing beach renourishment efforts (Sec. 22-308. - Powers and duties.)
 - Beach renourishment is exempted from noise prohibitions (Sec. 46-134. - Exemptions.)

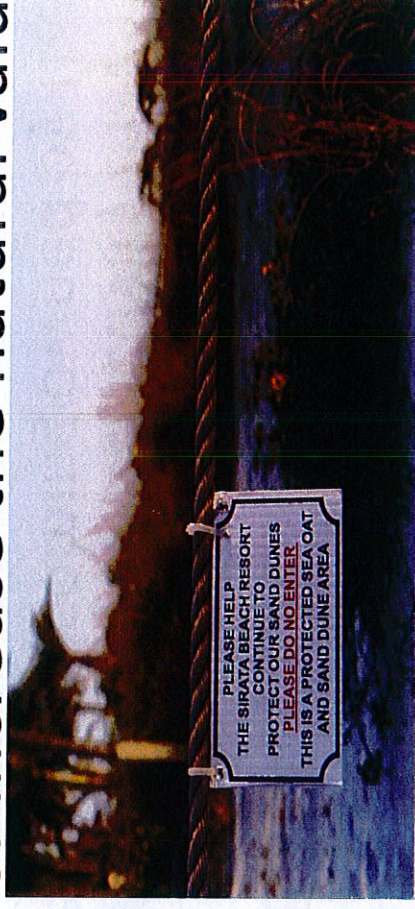
Beach Maintenance: Landscape

Conservation

- Issue: Should St. Pete Beach address the conservation of beach landscapes?
- Landscape conservation can include prohibitions on removing sand, vegetation, etc. It can help to reduce the amount of beach maintenance required by the city or increase the natural value of beaches.

- SPB:
 - No current

ordinance re: landscape conservation



Questions and Discussion

**State of the law related to a Florida local government's regulation of the use
and maintenance of its beaches**

Prepared for the City of St. Pete Beach

April 14, 2015

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I. Introduction

This memorandum reviews the state of the law related to a Florida local government's regulation of the use and maintenance of its beaches. The purpose of this memorandum is to provide background for the City of St. Pete Beach ("City") to consider in its adoption of an ordinance regulating beaches within its jurisdiction. In its appendices, this memorandum also includes examples of beach management ordinances adopted in other communities, comparative information about those ordinances and a review of the City's comprehensive plan policies related to its beaches.

II. City of St. Pete Beach context

A. Community context

The City of St. Pete Beach is a Florida municipality located in Pinellas County on Florida's west coast. The City occupies a barrier island called Long Key that has an area of approximately two square miles. The City of St. Pete Beach was originally incorporated in 1957¹ but currently operates under a city charter adopted in 1976.² As of the 2010 census, 9,346 people lived in St. Pete Beach.³

The majority of the western shore of Long Key is a sandy beach approximately four miles long. The City's Comprehensive plan has given the beach the future land use designation Preservation. The Comprehensive Plan generally prohibits development on land with this designation. The beach has four distinct areas. From north to south they are: a large resort district, a boutique hotel/condo district, a mixed residential district, and the mixed-use Pass-a-Grille Beach.

The large resort district begins at the mouth to Blind Pass and extends approximately one and one third miles south to the St. Pete Beach Access Park, a public park owned by Pinellas County. In this part of the community, Gulf Boulevard is a four lane arterial roadway running parallel to the beach. Many large resorts separate this right of way from the beach. The resorts themselves are separated from the roadway by parking and occasional barriers, such as fencing. Public access from Gulf Boulevard is occasionally provided on walkways between resort developments. The City's Comprehensive Plan designates these large resorts Large Resort. This future land use designation permits relatively dense resort and multifamily development.⁴

The boutique hotel/condo district begins at the county-owned St. Pete Beach Access Park and extends just over one mile south. In this area, Gulf Boulevard is a four lane arterial roadway running parallel to the beach. Resorts which are somewhat smaller than those in the large resort district separate this right of way from the beach. The boutique hotel/condo district is also different from the large resort district in that the City's Comprehensive Plan designates the

¹ *St. Pete Beach, Florida* (accessed March 11, 2015) http://en.wikipedia.org/wiki/St._Pete_Beach,_Florida.

² City of St. Pete Beach, Florida, City Charter, footnote 1.

³ Profile of General Population and Housing Characteristics: 2010 Demographic Profile Data, U.S. CENSUS BUREAU (2010).

⁴ City of St. Pete Beach, Florida Comprehensive Plan, Future Land Use Plan Element, Large Resort District (LR), Policy 9(a).

resorts in this area Boutique Hotel Condo, a category designed to preserve existing boutique hotels.⁵

A mixed residential district lies between the boutique hotel/condo district and the mixed-use Pass-a-Grille Beach. This district itself has three distinct subareas. At the northern end of the mixed residential district, single family homes front the beach for approximately one third of a mile between the boutique hotel/condo district and the Loews Don CeSar Hotel. These homes have a future land use designation of Residential Urban which allows residential densities up to 75 units per acre.⁶ These homes are accessible from El Centro Street, a neighborhood road.

At the center of the mixed residential district is the Loews Don CeSar Hotel, a resort hotel built in 1928. This historic building sits on land with a future land use designation of Resort Facilities Medium. This designation allows residential densities of up to 18 units per acre.⁷

At the southern end of the mixed residential district, multifamily structures front the beach for approximately one quarter mile. These properties have the future land use designation Residential Medium which allows residential development to 15 units per acre.⁸

Pass-a-Grille Beach is the southernmost one and one half mile of beach along the western shore of Long Key. On this part of the island, Gulf Way, a public street, borders the beach. The beach is easily accessible from Gulf Way. Pass-a-Grille is a mixed use historic district that includes bars, restaurants and other businesses operating from commercial buildings. This area of St. Pete Beach also includes single family residences, multi-family residences and hospitality uses—such as bed and breakfasts—operating from residential scale buildings. The Paradise Grille is a bar serving alcoholic beverages and hosting live music immediately adjacent to the sandy beach. The predominant future land use designations in this area are Residential Low Medium, Residential Medium, Community Redevelopment District—Eighth Avenue and Residential/Office/Retail. These designations allow the mixed use development which exists in the area.⁹

B. Applicable comprehensive plan policies

In Florida, the purpose and legal effect of each local government's comprehensive plan is to set binding standards for public and private development.¹⁰ This means that local government decisions to adopt land development regulations or to approve development must be consistent with the adopted comprehensive plan.¹¹ No legal requirement exists that other local government decisions—not specifically related to development—be consistent with a local government's comprehensive plan.

⁵ *Id.* at Boutique Hotel/Condo District (B-HC)(b).

⁶ *Id.* at Policy 2.1.1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Fla. Stat. § 163.3161(6).

¹¹ Fla. Stat. § 163.3194(1).

Despite the limits on the regulatory applicability of an adopted comprehensive plan, it also indicates a local government's policy preferences on the topics which it addresses. The City of St. Pete Beach Comprehensive Plan includes many policies addressing management of the community's beaches. These policies generally relate to one of three beach management issues: environmental conservation, providing public access to the beach and promoting the benefit of beaches to the economy, tourism and resident's quality of life. Appendix B to this memorandum presents these policies.

C. Community challenges

Some uses of the beaches within the City create conflicts between users of the beach and other stakeholders or pose threats to the public safety or welfare. The following are some issues the city desires to address in regulating its beaches:

- ensuring lateral beach access for law enforcement personnel so that authorities have knowledge of beach activities and can ensure public safety;¹²
- public beach access to the beach including lateral access (parallel to the shore) and access the beach from nearby public rights of way;¹³
- commercial vending of beach furniture;¹⁴
- commercial attractions on the beach or in the water such as "bounce houses" and nets for games;¹⁵
- mobile food and beverage vending;¹⁶
- temporary structures;¹⁷
- semi-permanent structures (such as tiki huts);¹⁸
- solid waste management, such as accumulated glass and other refuse.¹⁹
- vagrancy;²⁰
- operation of motor vehicles on the beach;²¹
- consumption of alcohol on the beach;²²
- commercial solicitation and signage;²³
- conflict between City residents and commercial property interests (e.g., hotel owners) regarding development potential of waterfront commercial property;²⁴
- dogs;²⁵

¹² Telephone Interview with Andrew Dickman, City of St. Pete Beach City Attorney (Feb. 18, 2015).

¹³ *Id.*

¹⁴ City of St. Pete Beach proposed beach management ordinance 2 (as considered but not adopted by the City, 2013).

¹⁵ Telephone Interview with Andrew Dickman, City of St. Pete Beach City Attorney (Feb. 18, 2015).

¹⁶ City of St. Pete Beach proposed beach management ordinance 2 (as considered but not adopted by the City, 2013).

¹⁷ *Id.* at 4.

¹⁸ St. Pete Beach, Florida, Municipal Code art. III, § 94-71 (2014).

¹⁹ Telephone Interview with Andrew Dickman, City of St. Pete Beach City Attorney (Feb. 18, 2015).

²⁰ St. Pete Beach, Florida, Municipal Code art. III, § 94-70 (2014).

²¹ City of St. Pete Beach proposed beach management ordinance 4 (as considered but not adopted by the City, 2013).

²² *Id.* at 5.

²³ *Id.* at 6.

²⁴ Telephone Interview with Andrew Dickman, City of St. Pete Beach City Attorney (Feb. 18, 2015).

²⁵ Email from Andrew Dickman, City of St. Pete Beach City Attorney (March 18, 2015)

- beach nourishment;²⁶ and
- conflicts between sea turtles or other wildlife and beach use.²⁷

This memorandum explains the state of the law as it relates to local government management of beaches to addresses these sorts of challenges.

III. Florida law applicable to local government beach management

A. Beach ownership and control

In the state of Florida, the State holds title to all lands under navigable waters within the boundaries of the state in trust for the people.²⁸ This includes the beaches below mean high water line (or mean high tide line).²⁹ The mean high water line, which is generally the dividing line between state-owned land and private property is determined by ascertaining the average height of the high waters over a 19-year period.³⁰ The area landward of the mean high water line is generally referred to as the dry sand beach while the area seaward of the mean high water is generally referred to as the wet sand beach.

In regard to the constantly changing nature of coastal land, a basic understanding of some relevant terms is necessary. Alluvion is sand, sediment, or other deposits that alter coastal land.³¹ Accretions are additions of alluvion to waterfront land that occur gradually and imperceptibly.³² Relictions are lands once covered by water that become dry when the water recedes.³³ Accretions and relictions are often collectively referred to as accretions for the sake of simplicity and this memo will reflect that practice. Alternatively, avulsion is a sudden loss or addition alluvion to waterfront land.³⁴

The owner of littoral property is generally entitled to additions of land resulting from accretions.³⁵ In other words, when shorelines change as a result of accretions, a property's boundary changes as well. Alternatively, when an avulsive event exposes land previously submerged or submerges land previously exposed, the boundary between littoral property and sovereign land does not change.³⁶ Consequently, when a new strip of land has been added to the shore by avulsion, thereby creating a strip of state-owned land between the private land and the water, the littoral owner has no right to subsequent accretions since those accretions are now adding not to his land, but the land owned by the State.³⁷

²⁶ *Id.*

²⁷ *Id.*

²⁸ Fla. Const. art. X, § 11.

²⁹ *Id.*

³⁰ Fla. Stat. § 177.27(14).

³¹ *Stop the Beach Nourishment, Inc. v. Fla. Dep't of Env'tl. Prot.*, 560 U.S. 702, 708 (U.S. 2010).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Board of Trustees of Internal Improvement Trust Fund v. Sand Key Assoc., Ltd.*, 512 So. 2d 934, 937 (Fla. 1987).

³⁶ *Stop the Beach Nourishment* at 709.

³⁷ *Id.*

The law treats alterations in the title to land resulting from both natural and artificial occurrences of accretion and avulsion in the same manner.³⁸ This means that regardless, of whether avulsion results from a hurricane or a beach nourishment project, the boundary between littoral property and sovereign land will not change.

Regarding the issue of control of Florida's beaches, cities like St. Pete Beach have authority to regulate pursuant to their status as incorporated municipalities. Florida's Constitution provides for the establishment of municipalities and grants them the ability to exercise any power for municipal purposes, except when expressly prohibited by law.³⁹ While the exact extent of these powers is not explicitly provided, Florida's Statutes do note that the home rule authority of municipalities should be broadly construed.⁴⁰

Because of home rule, a municipality has both civil and criminal jurisdiction over property within its corporate boundaries and therefore may regulate and restrict certain activities reasonably calculated to protect the public health, safety, and welfare.⁴¹ According to the city of St. Pete Beach city charter, the corporate limits of the city extend about six miles along the length of the key and ten miles into the Gulf of Mexico.⁴² This description puts about four miles of beach and 17.6 square miles of water within the boundaries of St. Pete Beach.⁴³

B. Beach nourishment

The Florida legislature has declared that it is a necessary governmental responsibility to properly manage and protect Florida beaches from erosion and that beach restoration and nourishment projects are in the public interest.⁴⁴ 'Beach restoration' is defined as the placement of sand on an eroded beach for the purposes of restoring it as a recreational beach and providing storm protection for upland properties.⁴⁵ Alternatively, 'beach nourishment' is defined as the maintenance of a restored beach by the replacement of sand.⁴⁶ A coastal construction permit must be obtained from the Department of Environmental Protection (DEP) before the commencement of a beach restoration or nourishment project.⁴⁷ Additionally, the DEP is required to develop a multiyear repair and maintenance strategy that extends the life of beach nourishment projects and reduces the frequency of nourishment.⁴⁸

As discussed above, the law treats natural and artificial occurrences of avulsion the same with respect to how the avulsion affects the location of the property line between sovereign and

³⁸ *Id.* at 732.

³⁹ Fla. Const. art. VIII, § 2(a)-(b).

⁴⁰ Fla. Stat. § 166.021(4).

⁴¹ Fla. AGO 2002-38.

⁴² St. Pete Beach, Florida, Municipal Code Part I, art. II, § 2.01 (2014).

⁴³ *Id.*

⁴⁴ Fla. Stat. § 161.088 (2014).

⁴⁵ Fla. Stat. § 161.021(4) (2014).

⁴⁶ Fla. Stat. § 161.021(3) (2014).

⁴⁷ Fla. Stat. § 161.041(1) (2014).

⁴⁸ Fla. Stat. § 161.091(2)(d) (2014).

private land.⁴⁹ Before conducting a beach nourishment project, the boundary between littoral property and sovereign land is set and identified as the erosion control line. The erosion control line is a line generally located to correspond with the mean high water line. The erosion control line will remain fixed in place after the artificial avulsion resulting from the beach nourishment project.⁵⁰

This means that after a beach nourishment project, the boundary between littoral property and sovereign land will remain fixed at the erosion control line. Generally, this means that a beach nourishment project will result in a strip of state owned, public beach between the private parcels and the actual water such that private parcels that once directly abutted the water, no longer will. In some cases, the state has entered into lease agreements with local governments for the use of these public beaches. Generally, the state does not enter into such lease agreements, but as common practice local governments may allow nonpublic use of the property such as the installation of non-permanent beach furniture.⁵¹

C. Public access

Florida law requires the state to ensure “the public’s right to reasonable access to beaches.”⁵² In order to exercise that right, the public must have a means by which to access the beach. In other words, in order for the public to exercise their right to lateral (or horizontal) access to beaches, or the right to walk alongside the water or mean high water line, they must also have perpendicular access, or the ability to bypass or traverse private parcels at some point in order to get from a public road to the beach. Governmental bodies have utilized an array of legal tools with varying levels of success in order to create and sustain both lateral and perpendicular public access to beaches.

1. Prescriptive easements

The Supreme Court of Florida has recognized that it is possible for the public to acquire an easement in the beaches of the State by the finding of a prescriptive right to the beach land.⁵³ A prescriptive easement “is created by such use of land, for the period of prescription, as would be privileged if an easement existed, provided the use is (1) adverse, and (2) for the period of prescription, continuous and uninterrupted.”⁵⁴

The test for right of access by prescription was initially set forth in the Florida Supreme Court case Downing v Bird. The Downing litigation concerned the city of Homestead paving a road

⁴⁹ See page 4 *supra*.

⁵⁰ Fla. Stat. § 161.151(3).

⁵¹ The Department of Environmental Protection for example manages a lease agreement in Miami-Dade county for the county government to use the state owned beach adjacent to a county owned park for public events. However, such use cannot be inconsistent with public right established by Fla. Stat. Ch. 161 or the purpose for which the beach was nourished. The state has not entered into any such lease agreements for lands within Pinellas County. Telephone Interview with Diane Martin, OMC Manager Upland, Division of State Lands (April 8, 2015).

⁵² Fla. Stat. § 187.201(8)(b)(2) (2014).

⁵³ *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73, 75 (Fla. 1974).

⁵⁴ Restatement (First) of Property § 457 (1944).

that crossed a parcel of land owned by Downing.⁵⁵ Homestead alleged that the unpaved road had been used by the public continuously and uninterruptedly for a period of more than twenty years prior to the beginning of the suit and had thus the public had acquired a prescriptive easement over the roadway.⁵⁶ While the court ultimately found that Homestead had not presented sufficient evidence to establish a prescriptive easement,⁵⁷ in its analysis it laid out the test for right of access by prescription as follows:

In either prescription or adverse possession, the right is acquired only by actual, continuous, uninterrupted use by the claimant of the lands of another, for a prescribed period. In addition the use must be adverse under claim of right and must either be with the knowledge of the owner or so open, notorious, and visible that knowledge of the use by and adverse claim of the claimant is imputed to the owner. In both rights the use or possession must be inconsistent with the owner's use and enjoyment of his lands and must not be a permissive use, for the use must be such that the owner has a right to a legal action to stop it, such as an action for trespass or ejectment.⁵⁸

However the adverse use requirement is often difficult to meet:

In either prescription or adverse possession, the use or possession is presumed to be in subordination to the title of the true owner, and with his permission and the burden is on the claimant to prove that the use or possession is adverse.⁵⁹

In the interest of protecting beach access, Florida has gone so far as to create legislation protecting access ways through private lands to wet sand beaches that the public has established by prescription or prescriptive easement from inference from development or construction.⁶⁰ A developer may only interfere with an established access way if it provides a comparable alternative access way.⁶¹

2. Doctrine of customary use

The Florida Supreme Court established the doctrine of customary use as it relates to beach access in the City of Daytona Beach v. Tona-Rama case. The Tona-Rama company owned and operated an ocean pier as a recreation center and tourist attraction.⁶² When Tona-Rama obtained a building permit and constructed an observation tower as a part of the pier, the plaintiff (operator of an observation tower near the site of the pier) sued alleging that—by continuous use of the beach area for more than 20 years—the public had acquired a prescriptive easement and exclusive

⁵⁵ *Downing v. Bird*, 100 So. 2d 57, 60 (Fla.1958).

⁵⁶ *Id.*

⁵⁷ *Id.* at 66.

⁵⁸ *Downing* at 64.

⁵⁹ *Id.*

⁶⁰ Fla. Stat. § 161.55(5).

⁶¹ *Id.*

⁶² *Tona-Rama* at 74.

rights to its use.⁶³ On that basis the plaintiff alleged that the grant of the permit was improper and the tower had to be removed.⁶⁴

The court ultimately held that the public did not obtain an easement by prescription because the public use was not adverse to the interest of Tona-Rama.⁶⁵ In other words, since the public's use of the land as a recreation center and tourist attraction was consistent with Tona-Rama's intent to operate the pier as a public recreation center and tourist attraction, no adverse use existed to satisfy the test for a prescriptive easement. Instead, the court held that the public may continue to use the dry sand area for their usual recreational activities, not because they had any interest in the land itself, but because of a right gained through custom to use the particular area of the beach as they had without dispute and without interruption for many years.⁶⁶ The court laid out the standard for the establishment of a customary use as follows:

If the recreational use of the sandy area adjacent to mean high tide has been ancient, reasonable, without interruption and free from dispute, such use, as a matter of custom, should not be interfered with by the owner. However, the owner may make any use of his property which is consistent with such public use and not calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area.⁶⁷

However, the right of customary use of dry sand beaches by the public does not create any property interest in the land itself.⁶⁸ Additionally, although the right of use cannot be revoked by the land owner, it is subject to appropriate governmental regulation and may be abandoned by the public.⁶⁹ Applying the doctrine of customary use requires reviewing the facts in each instance on a case-by-case basis.⁷⁰

3. Other methods

A dedication is the donation of land or creation of an easement for public use.⁷¹ Dedications may be either formal (expressly granted) or informal (implied from the acts of the landowner) and may take the form of many types of interests.⁷² The existence of a dedication must be determined on tract-by-tract basis which is intensively time consuming.⁷³ Additionally, if the dedicated interest is a license, then the private landowner may revoke it at any time, which creates a great deal of uncertainty.⁷⁴

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 78.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Reynolds v. County of Volusia*, 659 So. 2d 1186, 1190 (Fla. Dist. Ct. App. 5th Dist. 1995)

⁷¹ *Black's Law Dictionary* (10th ed. 2014).

⁷² *Powell on Real Property* § 84.01(3).

⁷³ *Id.*

⁷⁴ *Powell on Real Property* § 34.24 (desk ed. 2009).

Furthermore, any type of mandatory dedication as part of development review is likely unconstitutional. This proposition is evidenced by the oft cited Nollan case in which the Supreme Court held that an exaction requiring the grant of a public easement across a beachfront parcel of private property, as condition of granting permit to build on the parcel, may be an unlawful exaction in violation of Takings Clause of the Fifth Amendment.⁷⁵ While it is possible for the government to use eminent domain as a method for acquiring land to ensure public beach access, the high cost of coastal property makes this option economically infeasible.

A purpresture is an encroachment on public rights and easements by appropriation to private use of that which belongs to the public.⁷⁶ This would only be applicable in cases where it could be determined with some level of certainty that a public right already existed and then was subsequently impinged by private use. While a case regarding purpresture as a method of protecting public access to beaches has been brought in Florida's Supreme Court, it was dismissed for lack of standing and a substantive ruling was never made.⁷⁷

D. Coastal construction

Coastal construction in Florida is governed by the Beach and Shore Preservation Act (BSPA).⁷⁸ The BSPA directs the Department of Environmental Protection (DEP) to establish coastal construction control lines to define the portion of the beach-dune system which is subject to severe fluctuations based on predictable weather conditions for the purpose of protecting upland properties and controlling beach erosion.⁷⁹ The BSPA generally prohibits certain activities seaward of the construction control line including construction of any structure, excavation, removal of any beach material, driving, or any activity that will damage sand dunes or vegetation.⁸⁰ Some of these activities are allowed pursuant to specific exceptions outlined in the BSPA.⁸¹ The BSPA also provides that coastal counties and municipalities may establish coastal construction zoning and building codes in lieu of the provisions of the BSPA if they are approved by the DEP.⁸²

Additionally, the Coastal Zone Protection Act, a subpart of the BSPA, establishes another type of regulated area called coastal building zones.⁸³ Coastal building zones are the land area from the seasonal high-water line landward to a line 1,500 feet landward from the coastal construction control line.⁸⁴ For coastal areas fronting on the Gulf of Mexico, Atlantic Ocean, Florida Bay, or Straits of Florida, the coastal building zone is the land area seaward of the most landward velocity zone line as established by the Federal Emergency Management Agency and shown on

⁷⁵ Nollan v. Cal. Coastal Com., 483 U.S. 825 (1987).

⁷⁶ Black's Law Dictionary (10th ed. 2014).

⁷⁷ United States Steel Corp. v. Save Sand Key, Inc., 303 So. 2d 9 (Fla. 1974).

⁷⁸ Fla. Stat. § 161 (2014).

⁷⁹ Fla. Stat. § 161.053(1)(a) (2014).

⁸⁰ Fla. Stat. § 161.053(2)(a) (2014).

⁸¹ *Id.*

⁸² Fla. Stat. § 161.053(3) (2014).

⁸³ Fla. Stat. § 161.54 (2014).

⁸⁴ Fla. Stat. § 161.54(1) (2014).

flood insurance rate maps.⁸⁵ The requirements for construction and activities permitted in coastal building zones is dependent upon whether the proposed structures are considered minor or major and whether or not they are considered habitable structures.⁸⁶

E. Alcohol

The Division of Alcoholic Beverages and Tobacco, an agency within the Department of Business and Professional Regulation, has general authority over the premises licensed to serve alcohol in the state of Florida.⁸⁷ The specifics regarding alcohol sale and consumption are generally regulated at the municipal level. The city of St. Pete Beach's alcohol ordinance generally states that it shall be unlawful to drink or consume alcoholic beverages on or upon all public beach lands and all sand beach areas upland of the Gulf of Mexico and adjacent to private property.⁸⁸ Furthermore, the possession of any open container of an alcoholic beverage is considered prima facie evidence of a violation of the ordinance.⁸⁹ The ordinance defines 'beach' as the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form.⁹⁰ While the term 'mean low-water line' is not expressly defined in St. Pete Beach's code of ordinances, the Florida Statutes section governing land boundaries in municipalities defines it as the intersection of the tidal plane of mean low water with the shore.⁹¹ Based on these definitions, in St. Pete Beach the consumption and possession of open containers of alcohol is generally prohibited everywhere landward of the mean low-water line with the exception of private, beach-front properties.

F. Maintenance

The Florida Statute sections governing municipal planning and development regulation require that some municipalities include coastal management elements in their respective local comprehensive plans.⁹² The municipalities subject to this requirement are those that abut the Gulf of Mexico or the Atlantic Ocean, or those which include or are contiguous to waters of the state where marine species of vegetation associated with wetlands⁹³ constitute the dominant plant community.⁹⁴

1. Litter

At the state level, litter is regulated by the Florida Litter Law.⁹⁵ The term 'litter' encompasses "any garbage; rubbish; trash; refuse; can; bottle; box; container; paper; tobacco product; tire;

⁸⁵ *Id.*

⁸⁶ Fla. Stat. § 161.55 (2014).

⁸⁷ Fla. Stat. § 161.02 (2014).

⁸⁸ St. Pete Beach, Florida, Municipal Code Part II, ch. 6, art. I, § 6-5(b)(2)&(5) (2014).

⁸⁹ St. Pete Beach, Florida, Municipal Code Part II, ch. 6, art. I, § 6-5(e) (2014).

⁹⁰ St. Pete Beach, Florida, Municipal Code Part II, ch. 6, art. I, § 6-5(a) (2014).

⁹¹ Fla. Stat. § 177.27(17) (2014).

⁹² Fla. Stat. § 163.3177(6)(g) (2014).

⁹³ Listed by rule as ratified in Fla. Stat. § 373.4211 (2014).

⁹⁴ Fla. Stat. § 380.24 (2014).

⁹⁵ Fla. Stat. § 403.413 (2014).

appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.”⁹⁶ The statute lays out a general prohibition on the dumping of litter in any amount and any manner on any public lands⁹⁷ or state waters.⁹⁸ Regarding enforcement, the state has delegated authority to the counties and municipalities to determine the training and qualifications of any employee of the county or municipality designated to enforce the the Florida Litter Law if the designated employee is not a regular law enforcement officer.⁹⁹ Additionally, employees of counties or municipalities whose duty it is to ensure code compliance or to enforce ordinances may be designated by the governing body of the county or the municipality to enforce the provisions of the Florida Litter Law.¹⁰⁰

2. Beach raking

The Beach and Shore Preservation Act also regulates beach raking or mechanized beach cleaning.¹⁰¹ The Department of Environmental Protection is authorized to grant areawide permits to local governments for beach cleaning activities and may adopt rules to establish criteria and guidelines for use by permit applicants.¹⁰² At the local level, St. Pete Beach requires that beach cleaning activities have a permit issued by the city, be conducted during daylight hours and comply with the applicable BSPA provisions.¹⁰³ Additionally, beach cleaning activities must not disturb sand within five feet of the toe of the dune or any natural beach vegetation, must not penetrate the sand to a depth exceeding two inches and must not take place during turtle nesting season without a special permit from the state Department of Environmental Protection.¹⁰⁴

G. Public Safety

Inherent in the general police power granted to municipalities by the Florida Constitution, police officers have the authority to patrol public land within the boundaries of the municipality.¹⁰⁵ Additionally police officers have the authority to patrol commercial businesses that are open to the public. With regard to private property, police officers may only enter the premises with express or implied consent, in the course of executing a valid search warrant, or in the event of exigent circumstances.¹⁰⁶

⁹⁶ Fla. Stat. §403.413(2)(f) (2014).

⁹⁷ Fla. Stat. §403.413(4)(a) (2014).

⁹⁸ Fla. Stat. §403.413(4)(b) (2014).

⁹⁹ Fla. Stat. §403.413(3) (2014).

¹⁰⁰ Fla. Stat. §403.413(7) (2014).

¹⁰¹ Fla. Stat. § 161 (2014).

¹⁰² Fla. Stat. § 161.053(18) (2014).

¹⁰³ St. Pete Beach, Florida, Municipal Code Part II, ch. 94, art. III, §§ 94-101 (2014).

¹⁰⁴ St. Pete Beach, Florida, Municipal Code Part II, ch. 94, art. III, §§ 94-102 (2014).

¹⁰⁵ Fla. Const. art. VIII, § 2(b).

¹⁰⁶ United States v. Whitney, 633 F.2d 902, 908 (9th Cir. Or. 1980).

In response to an inquiry from the Mayor of Destin, the Florida Attorney General has opined that while private property owners who hold title to dry sand areas of the beach falling within the jurisdictional limits of a municipality may utilize local law enforcement for purposes of reporting incidents of trespass upon their property on a case-by-case basis, local law enforcement officers may not be pre-authorized to act as agents of private landowners for the purpose of communicating orders to leave private property to alleged trespassers pursuant to Florida's statutory prohibition on trespassing.¹⁰⁷ In other words, while police officers can handle instances of trespass at the request of a private property owner who has ordered a trespasser to leave, they cannot take independent initiative to remove suspected trespassers from private parcels.

IV. Description of communities used in comparative analysis

Existing ordinances in beach communities provide examples of different regulatory approaches to beach management. This section of this memorandum provides an overview of cities which are comparable to the City of St. Pete Beach and whose beach management ordinances are reviewed and compared the table attached to this memorandum as Appendix A. That table summarizes the approach of these six cities to the challenges they face with beach management. The table's horizontal axis indicates the seven beach community municipalities studied and the vertical axis includes multiple topics often found in beach management ordinances. The table indicates whether a municipality has addressed the topics listed in the vertical axis of the table. If a municipality does not address a given topic, the corresponding cell is blank. If the municipality does address the topic, a summary of the relevant code section is included. Citations to each code of ordinance are provided inline with the excerpted or summarized text. Each municipality's code of ordinances can be found online at www.municode.com.

A. Overview of selected cities

The six cities are: St. Pete Beach, Florida; Destin, Florida; Madiera Beach, Florida; Marco Island, Florida; Miami Beach, Florida and Treasure Island, Florida. All but St. Pete Beach are describe below.

1. Destin, Florida

Destin, Florida is located in the Florida Panhandle in Okaloosa County. Destin began as a fishing village, was incorporated in 1984, and now has a large tourism industry.¹⁰⁸ It has approximately 12,000 full time residents and a large number of season tourists.¹⁰⁹ Destin claims to have the "largest and most elaborately equipped fishing fleet" in Florida, as well as many options for golf, tennis, and watersports.¹¹⁰ Destin is approximately eight square miles, with approximately half a square mile of water.¹¹¹

¹⁰⁷ Op. Att'y Gen. Fla. 2002-38 (2002).

¹⁰⁸ *History of Destin* (last visited March 14, 2015) <http://www.cityofdestin.com/index.aspx?nid=119>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Profile of General Population and Housing Characteristics: 2010 Demographic Profile Data, U.S. CENSUS BUREAU (2010).

Destin has ordinances regarding: commercial watercraft usage, semi-permanent structures, beach nourishment and maintenance, sleeping on the beach, vagrancy/solicitation, trash, motor vehicles, alcohol, and development.

2. Madeira Beach, Florida

Madeira Beach, Florida is a barrier island located in the Gulf of Mexico north of St. Pete Beach within Pinellas County. Geographically and demographically, it is very similar to St. Pete Beach,¹¹² but is about one sixth smaller. It was incorporated in 1947. Madeira Beach had approximately 4,300 permanent residents in 2010.¹¹³ It is 3.3 square miles, with 2.2 of those miles being water and one mile being land.¹¹⁴ It has a large amount of tourism and an annual seafood festival that attracts 130,000 visitors.¹¹⁵

Madeira Beach has ordinances regarding: commercial watercraft usage, semi-permanent structures, the interaction between beach use and wildlife, including ordinances relating to sea turtles, beach nourishment and maintenance, sleeping on the beach, vagrancy/solicitation, trash, motor vehicles, alcohol, and development.

3. Marco Island, Florida

Marco Island, Florida is a barrier island located near Naples in Collier County in southwest Florida. It is 23 square miles, with approximately 11 square miles of water and 12 square miles of land.¹¹⁶ As of 2010, its population was 16,400 people and demographically similar to St. Pete Beach.¹¹⁷ It has a peak winter population of 40,000.¹¹⁸ Marco Island was originally incorporated as Collier City in 1927 but Collier City was abolished in 1957. Marco Island re-incorporated as Marco Island in 1997.¹¹⁹ Marco Island is mainly a residential and tourism area.¹²⁰

Marco Island is highly concerned with ensuring that it is a desirable and suitable residential and tourism area through well-maintained utilities, waterways, waste collection, and potable water.¹²¹ It has ordinances regarding: temporary structures, wildlife and beach use, including sea turtle ordinances, beach nourishment and maintenance, sleeping on the beach, vagrancy/solicitation, trash, motor vehicles, alcohol, and development.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Madeira Beach (last visited March 14, 2015) <http://www.visitflorida.com/en-us/cities/madeira-beach.html>.

¹¹⁶ Profile of General Population and Housing Characteristics: 2010 Demographic Profile Data, U.S. CENSUS BUREAU (2010).

¹¹⁷ *Id.*

¹¹⁸ Present Day Marco Island (last visited March 14, 2015) <http://www.cityofmarcoisland.com/index.aspx?page=208>

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

4. Miami Beach, Florida

Miami Beach, Florida is located on the east coast of Florida in Miami-Dade County and lies between the Atlantic Ocean and Biscayne Bay. In 2010, Miami Beach had a population of approximately 90,000 people¹²² and a widely diversified economy. Although tourism was the historical basis of Miami's economy, lately the international airport and marine port is commercializing its economy.¹²³ Miami Beach is 19 square miles, with approximately 12 square miles of water and 7 square miles of land.

Miami Beach has ordinances regarding: semi-permanent structures, wildlife and beach use, and motor vehicles.

5. Treasure Island, Florida

Treasure Island, Florida is also a barrier island in Pinellas County, located between Madeira Beach to the north and St. Pete Beach to the South. It is approximately five square miles, with 1.5 square miles of land and 3.5 square miles of water.¹²⁴ As of 2000, there were 7,500 residents with a demographic makeup similar to St. Pete Beach and Madeira Beach.¹²⁵ It was incorporated in 1955.¹²⁶ Tourism is the main industry in Treasure Island and described as "a unique blend of a small town laid back beach community and an internationally known family vacation destination."¹²⁷

Treasure Island has ordinances regarding: semi-permanent structures, wildlife and beach use, beach nourishment and maintenance, sleeping on the beach, vagrancy/solicitation, trash, motor vehicles, alcohol, and development.

B. Other sources of model language related to sea turtles

In addition to Appendix A, many resources provide model beach management ordinance language for the regulation of beaches to benefit sea turtles. For example, the Conservation Clinic at the University of Florida Levin College of Law has undertaken a sea turtle friendly lighting policy initiative that resulted in a model sea turtle lighting ordinance.¹²⁸ Additionally, the Florida Fish and Wildlife Conservation Commission has published marine turtle conservation guidelines which, among other things, establish best practices for beach maintenance.¹²⁹

¹²² Profile of General Population and Housing Characteristics: 2010 Demographic Profile Data, U.S. CENSUS BUREAU (2010).

¹²³ *Major Industries and Commercial Activity* (last visited March 14, 2015) <http://www.city-data.com/us-cities/The-South/Miami-Economy.html>.

¹²⁴ Profile of General Population and Housing Characteristics: 2010 Demographic Profile Data, U.S. CENSUS BUREAU (2010).

¹²⁵ *Id.*

¹²⁶ Treasure Island History (last visited March 14, 2015) <http://treasureislandflorida.org/history.htm>.

¹²⁷ *Id.*

¹²⁸ The model sea turtle friendly lighting ordinance is available, along with other resources resulting from the initiative, on the internet at <http://www.law.ufl.edu/academics/clinics/conservation-clinic/program-areas/coastal-development-ecosystem-change>.

¹²⁹ Florida Fish and Wildlife Conservation Commission, *Marine Turtle Conservation Guidelines* (November 2007, accessed April 14, 2015) http://myfwc.com/media/418106/Seaturtle_Guidelines.pdf,

Appendix A

Pertinent Definitions	PUBLIC PLACE... all waterways 1-2 (PUBLIC LANDS = all waterways 62-26) (PUBLIC PROPERTY = all waterways 74-61) BEACH zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form 6-5 PUBLIC SPACE Public space is any real property or structure thereon that is owned, leased, or controlled by a governmental entity. 46-131 CITY PARKS AND FACILITIES includes piers, shorelines and beaches 58-20	PARKS include beaches in the city and owned by the city 15-33/15-62 Beach means the sandy soil upland of the water line 5-26 Commercial personal waterfront activity means the rental, lease or hire within the city of any personal waterfront 5-26	PUBLIC PLACE shall mean all beaches Sec. 1-2; PARK is any beach in, used by, or owned by the city Sec. 34-31	Public place = all beaches 1-2; Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach. 26-62 Beach means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and landward of the mean high water line. 30-10; 54-32; 54-143 Open space = beach frontage 30-10 Sea turtle (nesting zone) means the region extending from the mean high-tide mark to 100 feet landward of the beginning of the dune vegetation line. For beaches without dune vegetation, the nesting zone will extend 300 feet landward of mean high tide 30-10 Beach means the soft sand portion of land lying seaward of a seawall or rocky shore or line of permanent vegetation and landward of the mean high water line. 54-164	Beachwalk, as used herein, shall mean the public pedestrian pathway located adjacent to the city's beachfront or bayfront, and as may also be referred to as the beachwalk, beachway, baywalk, curwalk or boardwalk. Sec. 18-901 Beach means that area of unconsolidated material that extends landward from the mean low-water line of the Atlantic Ocean, to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation. 46-202 Public place = beach 70-86 City facilities = beach Sec. 82-7	Beach means all property within the city limits, or over which the city has or shall have jurisdiction, that has been dedicated for beach or park purposes. 58-31 Park means beach 18-31 Public place means all parks 18-31 Public parks and beaches means all property within the city limits, or over which the city has or shall have jurisdiction, that has been dedicated for beach or park purposes 24-32
Chairs, Tables, Umbrellas, Etc	Can't interfere with public use; Can't leave overnight 94-68			Cannot store equipment except in permitted areas with permit Exempt from variances and do not require building permits; only applies during turtle nesting season if moved daily Sec. 30-757 Storage on beach prohibited 54-36		

Food	allowed if designated 58-27; 94-69	no glass or ceramic containers Sec. 15-4; picnics allowed in designated areas, must clean up all trash Sec. 15-37(c)	No glass containers Sec. 54-36	No glass or metal Sec. 46-92	no glass containers 58-43; 24-33 no rice or bird seed can be thrown 24-33
Alcohol	Prohibited unless private owner of property upland of beach gets permit; signs required everywhere except single family residential 6-5; allowed with city permit 58-30	none, unless permitted Sec. 15-63 - 15-66; no glass or ceramic containers Sec. 15-4; punishment = fine not more than \$500 Sec. 15-68	Alcohol possession and consumption ordinance not applicable to public beaches Sec. 4-9; No glass containers Sec. 54-36	No glass or metal Sec. 46-92 Prohibited unless designated; signs required Sec. 70-87	No glass containers 58-43; 24-33 regulated but allowed in some places 58-50; Prohibited in parks 18-80
Sleeping	No sleeping overnight 58-26; prohibited unless designated area 58-24	no persons or vehicles overnight except where designated and appropriate facilities Sec. 15-5; PARKS: none Sec. 15-37(d)	Overnight camping prohibited Sec. 54-36	Camping prohibited unless specially allowed Sec. 70-45; Cannot stay between midnight and 5:00 am Sec. 82-2.	no people on the beach at night between 1 - 5 am 58-49 sleeping and camping prohibited ; 18-77
Tiki Huts	Prohibited unless permitted 94-71; Mentioned under City of St. Pete Beach Flood Damage Prevention Ordinance as "accessory structure" 98-120				
Temporary Structures	Prohibited unless specifically allowed by statute or permit 58-26; Prohibited unless allowed otherwise in code 94-72	none, unless can be seen through on 2 sides and is not attached to anything else besides itself Sec. 15-37(a)(3); none without permit 15-34		Prohibited unless specifically allowed by statute Structures prohibited unless otherwise authorized Sec. 82-436	Prohibited without authorization 24-33
Motor Vehicles	Prohibited (not including mobility devices) unless emergency or permit 58-21	none, unless designated Sec. 15-3	Wheeled vehicles prohibited with certain exceptions Sec. 54-36 Unlawful to drive on sand dune Sec. 54-65 Some require permits 54-81; 54-82 Restrictions during turtle nesting 54-87	Generally prohibited Sec. 82-439 Prohibited during turtle nesting Sec. 46-203	prohibited with exceptions for city business 58-38 no aircraft 24-1

Beach Maintenance	Permit and compliance with FS 161; mechanical beach cleaning Sec. 94-101	City is responsible for operating and maintaining public areas Sec. 18-1	City manager must inspect condition of all seawalls, bulkheads, groins, piles, pilings, tie poles or other structures above or in the waters within the city Sec. 14-165	Sand dune maintenance Sec. 26-97	no injury to things on beach by people 58-40
Frisbees/balls		PARKS: no thrown objects except where designated Sec. 15-37(e)			throwing missiles prohibited 58-36
Animals	no dogs on beaches abutting Gulf 58-25	No, unless expressly allowed by sign Sec. 4-7; Public nuisances (a)(6)	prohibited (animals and reptiles) Sec. 10-5	Prohibited unless service animal Sec. 54-36	dogs prohibited 6-40.
Restrooms	public urination or defecation outside of a public restroom is prohibited 54-6; cannot be used as dressing room 54-7 or to shave, shower, bathe 58-26	Must use in sanitary condition; must use appropriate gender 15-34			Urinating and defecating in plain view prohibited Sec. 70-42.
Boats	storage restrictions 94-32; restriction on use of public property 94-33; careless operation 94-34; speed 94-35; restricted zones 94-36; no abandoned property on city owned areas 46-96/98-67; derelict vessels F.S. § 327.02	No unless designated and open or permit given Sec. 15-37(b); 15-3 Restricted areas 5-29/31	abandonment prohibited Sec. 34-128; speed restrictions Sec. 78-33; no waterskiing within 300 feet of beach 78-35	Vessel regulations Sec. 54-37	no parking on beaches 58-42 restricted areas 58-92
Swimming	prohibited in certain areas 94-1; diving or jumping from bridges prohibited 94-2	PARKS: allowed where designated, usually none between sunset and sunrise Sec. 15-37(a) (1-2)	yes, in designated areas Sec. 78-3/4	Allowed in certain areas Sec. 54-36	unlawful from bridges and in John's Pass 58-34
Nudity	not included in nudity prohibitions 26-139	none except in bathing houses Sec. 15-37(a)(4)			Cannot change clothes in vehicle 22-6 Exposure of female breasts prohibited 22-9
Fishing	prohibited in certain areas 94-3; no spear guns 54-4; Spearfishing, F.S. § 370.172		prohibited in certain areas Sec. 78-2	Certain species and methods prohibited Sec. 54-36	Prohibited unless specifically allowed by statute prohibited from bridges 58-35

Regulatory Board	Beach Stewardship Committee 22-301	marine and waterfront protection authority Sec. 2-190.47 (powers described in Sec. 2-190.49)				
			allowed in designated areas 78-4	Defined Sec. 54-32	Sec. 82-440. - Use of surfboards restricted	reckless use prohibited 58-33
		Begging, soliciting, panhandling, prohibited Sec. 14-182(a), licensed vendors allowed Sec. 15-39(a)	prohibited without permit Sec. 46-51; signs limited in size Sec. 102-195	Generally prohibited (permitted vendors allowed) Sec. 54-36		prohibited 58-37 none, with exceptions 26-1
		No removal of natural resources 15-34; protection of vegetation (15-34(b)) and animals (15-34(c))	protect from beach erosion with landscaping Sec. 106-31(b); protect nesting turtles from lighting Sec. 110-501; lighting in beach areas 110-506/7/8; 110-977	disturbance, destruction, or removal of wildlife is prohibited (No taking of sand; No live shelling, no taking crustaceans; Sec. 54-36 sea turtle protection 54-141 manatee protection in docking facilities and marinas 54-117 Dune protection Sec. 54-36 Special lighting requirements during turtle nesting Sec. 30-624 Prohibited to remove any beach material seaward of the coastal construction setback line 30-753	Sea turtle protection (restriction on lighting and other activities that disrupt hatchlings) Sec. 46-201	no injury to things on beach by people 58-40 no injury to vegetation 58-41 no hole digging unless immediately filled 58-47

Construction/ Permanent Structure	Standards for seawalls, bulkheads, retaining walls not on Gulf 98-100; same on Gulf 98-101	No permanent structures without permit 15-34	must conform to regulations if build, construct, repair, raze, or alter any seawall, bulkhead, groin, dock, jetty Sec. 14-161; city will review proposed development for compliance with LDR's like beach lighting Sec 110-51(a)(1)(d); no adult entertainment within 300 feet of beach Sec. 110-857/927	Construction impacts to sea turtles 54-148 Sec. 30-753 - Establishment of setback lines Prohibited to remove any beach material or otherwise alter existing ground elevations seaward of the coastal construction setback line 30-753 Construction variances may be granted during beach renourishment projects Sec. 30-755 coastal construction setback line permit may be required for renovations to, or new, kiosks or vendor huts 30-758 boat docking facilities 54-110	Construction of bulkheads/jetties Sec. 14-287 Sec. 14-326 - Restrictions on construction of structures east of harbor lines Structures prohibited unless otherwise authorized Sec. 82-436	generally prohibited unless city allows 58-48
Commercial Personal Watercraft	Water taxi restrictions 94-133	need beach access permit to transport personal watercraft onto or from the beach Sec. 5-27(3); adequate on-site provisions to avoid any contamination and pollution to the beach or the waters Sec. 5-27(2); All land-based commercial personal watercraft activity must yield to the pedestrian public along beach Sec. 5-27(11)	speed restrictions, Sec. 78-33	Vendor requirements Sec. 54-38		
Fires	prohibited 58-27; 94-69	none, unless designated and appropriate facilities provided Sec. 15-5	unlawful on sand beaches within city limit Sec. 38-5	Open prohibited unless designated area Sec. 54-36	Prohibited during turtle nesting season Sec. 46-203	prohibited unless city consents 58-45

Litter/Trash	Prohibited 70-8 If allowed via picnics, must be cleaned up 94-69	Prohibited 15-35	prohibited unless thrown in approved receptacle Sec. 34-32 - 34-34	Litter prohibited Sec. 54-36	marine and waterfront protection authority foster and maintain a clean, safe, and litter-free beach Sec. 2-190.49 litter (and handbills) prohibited Sec. 46-92 plastic straws from vendors to beach patrons prohibited Sec. 46-92	No confetti can be thrown 24-33 Treatment of garbage 38-2
Beach Renourishment	Reviewed by Beach Stewardship Committee 22-308; exempt from sound regulations 46-134			Construction variances may be granted during beach renourishment projects Sec. 30-755	marine and waterfront protection authority in charge of "investigation, development, and carrying out of plans for the preservation and renourishment" Sec. 2-190.49	
Beach Access				Beach access points are Post-disaster redevelopment priorities. Sec. 6-174. The city may acquire disaster damaged areas as long as it is dedicated to be, among other possibilities, beach access Sec. 6-181 Conditional uses in residential tourist district Sec. 30-164	No camping on beach access areas Sec. 70-45 No alcohol on beach access areas Sec. 70-87	

Appendix B

This appendix presents City of St. Pete Beach comprehensive plan policies which are relevant to management of the City's beaches.

A. Environmental conservation

The following comprehensive plan policies state the city's intent to protect environmental resources, including beaches.

To ensure the highest environmental quality possible, the City of St. Pete Beach shall conserve, protect and appropriately manage the natural resources (aquatic, wetland and terrestrial).¹³⁰

The City shall cooperate with the Tampa Bay National Estuary Program in its implementation of Comprehensive Conservation and Management Plan as a means to conserve and protect marine wetlands and aquatic resources.¹³¹

Consistent with this comprehensive plan, as amended, development activities shall be regulated to ensure the protection of natural resources.¹³²

The City shall ensure that land is developed in such a manner as to protect natural resources through encouraging the planting of native vegetation, restoration of dunes, beach re-nourishment, and regulating construction along the Coastal Construction Control line.¹³³

Unique and/or irreplaceable natural resources such as the City's beaches, shores, dunes and mangroves shall be protected from the adverse effects of development. Sand dunes and mangroves may not be disturbed during development and construction activities.¹³⁴

Through the administration of the LDC coastal vegetative communities, coastal wildlife habitats and dune systems shall be protected from the adverse effects of development. Restoration of dune systems shall be administered through the City's Beach Management Regulations.¹³⁵

Through the on-going enforcement of the City's Beach Management Regulations, beach areas shall be protected and restored to their natural state to the fullest

¹³⁰ City of St. Pete Beach, Florida Comprehensive Plan, Coastal and Conservation Element Goal 1

¹³¹ *Id.* at Policy 1.1.5.

¹³² City of St. Pete Beach, Florida Comprehensive Plan, Future Land Use Plan Element, Objective 2.7.

¹³³ *Id.* at Policy 2.7.1.

¹³⁴ *Id.* at Policy 2.7.2.

¹³⁵ *Id.* at Policy 2.7.7.

extent possible, while only encouraging beach re-nourishment projects that are in the overall public interest.¹³⁶

The land development regulations shall ensure that all development along the coastline is in accordance with the Coastal Construction Control Line as established by the State of Florida, City of St. Pete Beach, or other appropriate governmental agencies.¹³⁷

The City of St. Pete Beach will re-evaluate its Coastal Construction Control Line from time to time in order to measure its effectiveness.¹³⁸

The Beach Management Regulations shall ensure that all development or any other activities which disturb the coastal dune system are prohibited except when a proper permit has been issued that will include provisions to ensure that the dune system is maintained through restoration and enhancement.¹³⁹

The Beach Management Regulations shall be enforced to ensure the restoration and maintenance of the coastal dune system on new developments or redevelopment projects.¹⁴⁰

Sensitive coastal resources shall be protected, through provisions contained in the land development regulations, from degradation and erosion resulting from improper development practices and recreational misuse.¹⁴¹

Beach stabilization projects, using appropriate vegetation as the stabilizing medium, shall be incorporated into development plans, where appropriate.¹⁴²

The land development regulations shall include provisions whereby sand dunes are protected and enhanced, and native vegetation shall be planted to stabilize shorelines and protect upland areas from flooding hazards.¹⁴³

Residents have expressed a need and desire to create a more environmentally friendly sustainable community that will improve the quality of life for residents and visitors... The ultimate objective of certification and implementation is to rebuild a sustainable quality livable community that will:(a) Conserve water and other natural resources;...(f) Maintain public access to our beaches and waterfronts using environmentally sensitive design;(g) Implement land development regulations that protect our waterways, Gulf beaches and Gulf

¹³⁶ *Id.* at Policy 3.1.1.

¹³⁷ *Id.* at Policy 3.1.2.

¹³⁸ *Id.* at Policy 3.1.3.

¹³⁹ *Id.* at Policy 3.1.4.

¹⁴⁰ *Id.* at Policy 3.1.5.

¹⁴¹ *Id.* at Policy 3.1.6.

¹⁴² *Id.* at Policy 3.1.7.

¹⁴³ *Id.* at Policy 3.1.8.

waters from pollutants and debris that can harm natural resources including plant and species habitats;(h) Continue efforts to protect the sea turtle and preserve its habitat by maintaining and improving sea turtle protection regulations;(i) Demonstrate the community's commitment to environmental stewardship and social responsibility.¹⁴⁴

Additionally, the following policy addresses environmental conservation within the city's Community Redevelopment District.

Implement building and site design construction and operation practices that support long-term environmental sustainability by: protecting and conserving water resources; constructing energy efficient buildings; using Florida waterwise and native landscape plant materials and design; recycling construction materials and debris; reducing urban heat through innovative building and site design; reducing pollutant run-off; protecting further degradation of the beach dune system and coastal wildlife species habitat and restoring or enhancing existing conditions through dune restoration measures, lighting and refuse controls and other measures.¹⁴⁵

Finally, this policy relates to environmental conservation for land with the Preservation future land use designation.

Preservation (P), applied to the beaches seaward of the Florida Coastal Construction Control Line, Fuller Island and other environmentally significant natural resource areas; such designated areas shall not be developed except to provide beach access dune walkovers from adjacent developed properties under the provisions of the City's Beach Management Regulations.¹⁴⁶

B. Providing public access to the beach

The follow policies state the city's desire to ensure public access to the beach.

Encourage alternative mobility options through safe, comfortable and continuous pedestrian and bicycle pathways linked to the downtown area, recreational facilities, activity and entertainment centers and public beach access points to reduce reliance on the auto.¹⁴⁷

The City shall work with Pinellas County and other appropriate governmental agencies to ensure and maintain public beach access.¹⁴⁸

¹⁴⁴ City of St. Pete Beach, Florida Comprehensive Plan, Citizen Input on Community Redevelopment (7).

¹⁴⁵ City of St. Pete Beach, Florida Comprehensive Plan, Future Land Use Plan Element, Goals, Objectives and Policies for the Community Redevelopment District, Objective 3.1.

¹⁴⁶ City of St. Pete Beach, Florida Comprehensive Plan, Future Land Use Plan Element, Policy 2.1.1.

¹⁴⁷ *Id.* at Policy 1.3.3.

¹⁴⁸ *Id.* at Policy 2.11.5.

The City shall maintain adequate public access points to all recreation sites including beaches, waterways, and shores.¹⁴⁹

The provision of adequate public beach access shall be considered requisite to any future development or redevelopment. Public access to identified recreation sites shall be maintained and shall be designed to protect the integrity of natural features including, where present, beaches and shores.¹⁵⁰

The provision of adequate public beach access shall be considered requisite to any future development or redevelopment. Public access to identified recreation sites shall be maintained and shall be designed to protect the integrity of natural features including, where present, beaches and shores.¹⁵¹

There is a strong desire by both residents and multi-generational local hotel and motel owners to preserve the heritage of our City as a tourist destination because it is the foundation of our local economy and it offers the residents a diversity of services and amenities as well as public access to our beaches.¹⁵²

Additionally, the following policies address public access to the beach and are only applicable to development of land within the Gulf Boulevard Redevelopment District.

Public beach access will be preserved and expanded through redevelopment of temporary lodging uses.¹⁵³

Public beach access points will be preserved, expanded and improved through redevelopment and coordinated with pedestrian crosswalks, bike lanes and sidewalks, trolley stops and entrances to major residential neighborhoods on the east side of Gulf Boulevard to the maximum extent practical and feasible.¹⁵⁴

Finally, detailed policies in the Future Land Use Plan Element provide explicit standards for the width of public beach access points provided depending on the scale of development on land with the future land use designations of Large Resort District¹⁵⁵ and Boutique Hotel/Condo District.¹⁵⁶

¹⁴⁹ City of St. Pete Beach, Florida Comprehensive Plan, Recreation and Open Space Element Policy 1.1.8.

¹⁵⁰ Recreation and Open Space Element Policy 1.4.3.

¹⁵¹ *Id.* at Policy 1.4.3.

¹⁵² City of St. Pete Beach, Florida Comprehensive Plan, Citizen Input on Community Redevelopment (4).

¹⁵³ City of St. Pete Beach, Florida Comprehensive Plan, Future Land Use Plan Element, Goals, Objectives and Policies for the Gulf Boulevard Redevelopment District Objective 1.7.

¹⁵⁴ *Id.* at Objective 3.2.

¹⁵⁵ City of St. Pete Beach, Florida Comprehensive Plan, Future Land Use Plan Element, Large Resort District (LR) Policies 2, 3, 4, and 5.

¹⁵⁶ City of St. Pete Beach, Florida Comprehensive Plan, Future Land Use Plan Element, Boutique Hotel/Condo District Policies 2.1, 2.2 and 3.

C. The benefit of beaches to the economy, tourism and residents' quality of life

The following policies from the city's comprehensive plan address the benefit of beaches to the economy, to tourism and to residents' quality of life.

The City shall ensure that the residential character of the City of St. Pete Beach is maintained and protected while... [m]aximizing the potential for economic benefit resulting from the tourist trade and the enjoyment of natural and man-made resources by residents and visitors alike. [And m]aintaining the community's recreation, open space and beaches.¹⁵⁷

Those lands lying between the mean high water line and the Florida Coastal Construction Control Line are recognized as protected open spaces, as are any public lands which lie between the mean high water line and the water's edge.¹⁵⁸

The City shall continue to administer the land development regulations in a manner aimed at preserving the access to and view of the beach and other recreational facilities for all residents of and visitors to this community.¹⁵⁹

The promoting of sound coastal management shall be encouraged to ensure that maximum long-term benefits are attained in the use of the coastal zone by the residents of and visitors to the City of St. Pete Beach.¹⁶⁰

The City shall, in cooperation with other governmental agencies, provide and maintain a system of parks and recreation facilities (including beaches and shores) and access to the same, meeting the needs of current and future residents, visitors, and tourists.¹⁶¹

¹⁵⁷ City of St. Pete Beach, Florida Comprehensive Plan, Future Land Use Plan Element, Goal 2.

¹⁵⁸ *Id.* at Policy 2.11.1.

¹⁵⁹ *Id.* at Policy 2.11.3.

¹⁶⁰ *Id.* at Policy Goal 3.

¹⁶¹ City of St. Pete Beach, Florida Comprehensive Plan, Recreation and Open Space Element Objective 1.1.

