



THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To: Chair and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Mario Duron, AICP, The Corradino Group

Meeting Date: August 18, 2022

Agenda Item: **Major Development Plan and Conditional Use** – 1405 Duval Street (RE# 00036280-000000 & 0036370-000000) – A request for approval of a major development plan and conditional use to construct a floating barrier anchored to submerged land on property located within the Historic Commercial Tourist and Conservation-Outstanding Waters (HCT & C-OW) zoning districts pursuant to Section 180-91.A, Section 122-62, and Section 122-129 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: To allow construction of a floating seaweed barrier anchored to submerged land, within tidal water zoned C-OW, and adjacent to property zoned HCT.

Applicant: Smith/Hawks Attorneys at Law, c/o Barton W. Smith, Esq.
City of Key West

Property Owners: Sunset City, LLC & Matilde Generosa Ramos Rev. Trust
City of Key West

Location: RE# 00036280-000000 & RE #00036370-000000

Zoning: Conservation Outstanding Water (C-OW) & Historic Commercial Tourist (HCT)



Background:

The Application is a request for approval of major development plan and conditional use to install a floating seaweed barrier anchored to submerged land owned by the Applicant and by the State of Florida. The "Subject Property" is located at the southernmost end of Duval Street, at approximately 1405 Duval Street. The zoning designation for the dry land properties surrounding the Subject Property is Historic Commercial Tourist (HCT), while the seaweed barrier will be installed within tidal waters designated Conservation Outstanding Waters of the State (C-OW).

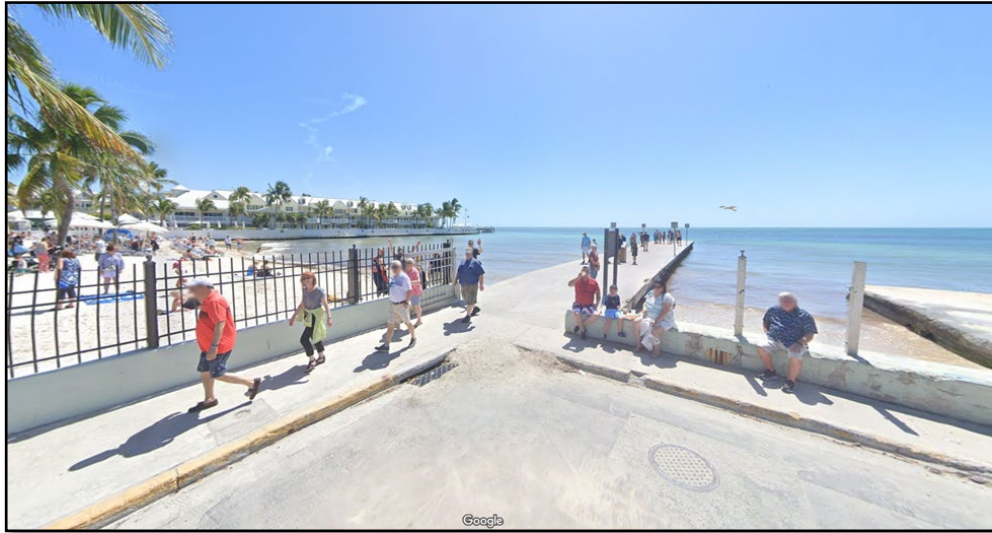


Figure 1. Street View from southernmost point of Duval Street looking towards the Atlantic Ocean.

The request is being made due to the significant build-up of Sargassum seaweed that accumulates along the beach shoreline and dry lands surrounding the beach. The seaweed buildup is partially caused by the unusual shape of the shorelines near the Subject Property preventing the seaweed from naturally flowing. Per the Applicant, seaweed buildup on the shore and shallows near the site has for years created a nuisance to people and wildlife in the area. Once the seaweed lands on the beach, it begins decomposing and emits hydrogen sulfide, which has an unpleasant odor, and has been linked to respiratory issues, nausea, and irritation of the eyes. Per the Florida Department of Health, the tiny sea creatures that live in Sargassum can irritate skin with direct contact. Additionally, the seaweed buildup makes the shallows near the shoreline thick with seaweed making them unsafe and unpleasant to swim in.



The proposed barrier will closely resemble a natural shoreline, allowing seaweed to flow westward along the natural littoral drift with the changing tides while avoiding the unpleasant and unnatural buildup on the current shoreline. A similar seagrass barrier system was installed in Marathon, FL.



In order to allow the proposed barrier system, several development approvals would be necessary:

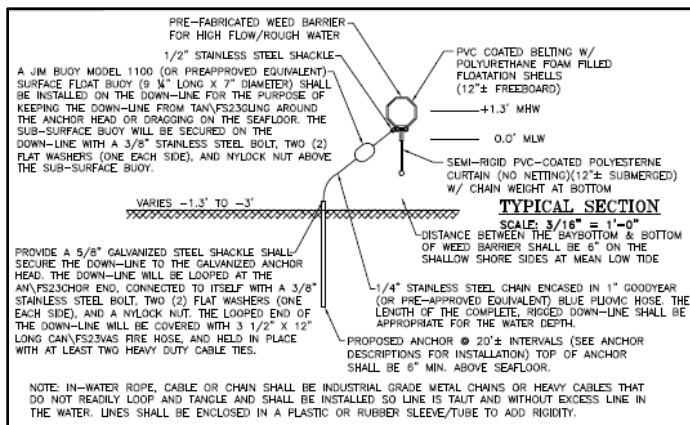
- Major Development Plan review is required for the seaweed barrier, because the proposed development will be located within tidal waters extending 600 feet seaward of the corporate city limits, pursuant to Section 108-91.A.2.(d) of the Land Development Regulations (LDRs) of the Code of Ordinances (the “Code”) of the City of Key West (the “City”).
- The applicable zoning district is Conservation Outstanding Waters of the State C-OW. Conditional use review is required for any development in land zoned Conservation, pursuant to City Code Section 122-129.

Proposed Development

The proposed seaweed barrier is designed to prevent the significant accumulation of waterborne marine debris, primarily the floating marine algae Sargassum, that accumulates at this location. In the past few years quantities of sargassum throughout the Caribbean has significantly increased due to a likely combination of warmer waters associated with climate change, high ocean nutrient levels and deforestation.

Proposed Site Plan

The seaweed barrier is a floating system anchored to the seafloor by 30 anchors, extending 495 linear feet across the open water area at the terminus of Duval Street, an area approximately 61,791 square feet. The following is the site plan for the proposed seaweed barrier system, prepared by Glen Boe and Associates. Included is a Typical Section drawing showing the floating system consisting of a PVC coated belting with flotation shells, anchored to the seafloor with a steel chain and anchors.



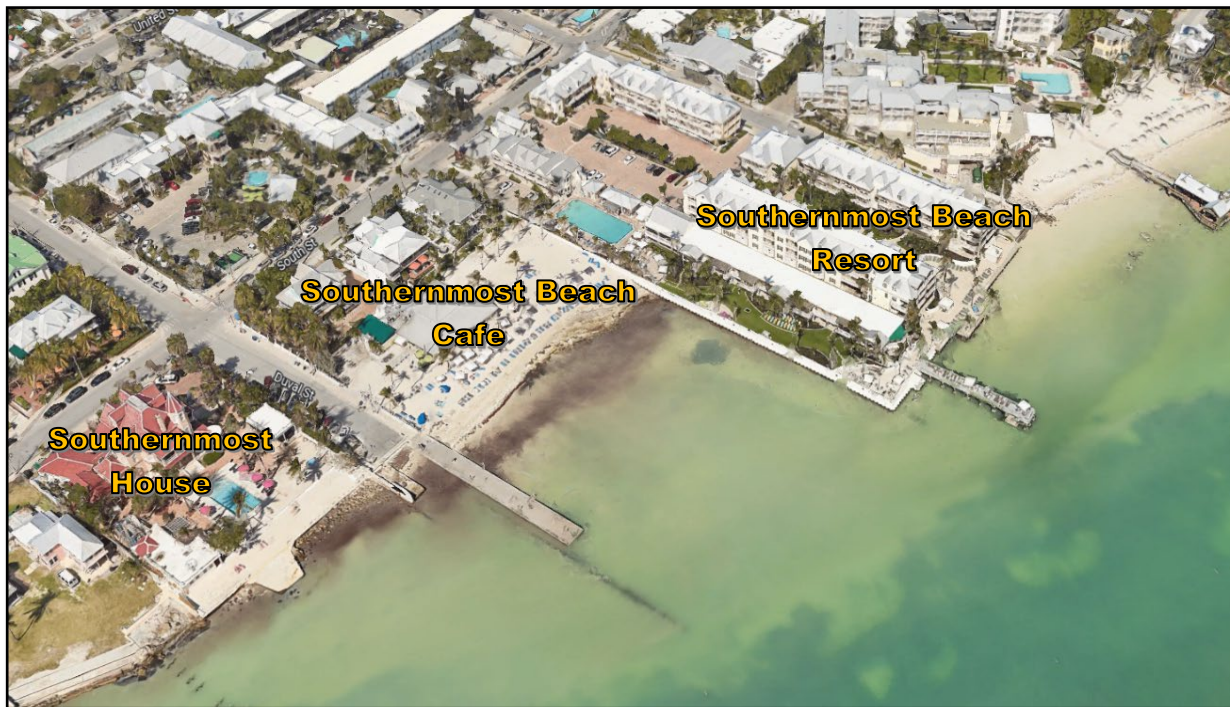
Surrounding Zoning and Uses: The location of the barrier system falls within the tidal waters designated C-OW by the City's zoning map. The surrounding dry land properties are zoned Historic Commercial Tourist and are developed with beachfront commercial and lodging accommodations primarily oriented to tourist uses and services. The Duval Street Pocket Park is situated at the end of Duval Street, between the Southernmost House and the Southernmost Beach Café.

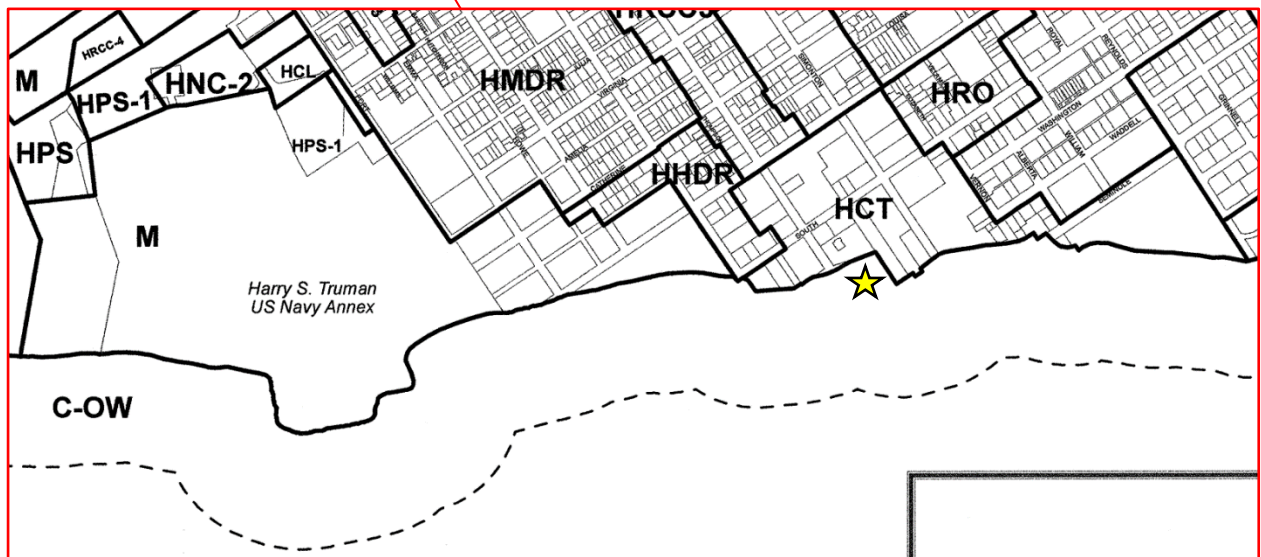
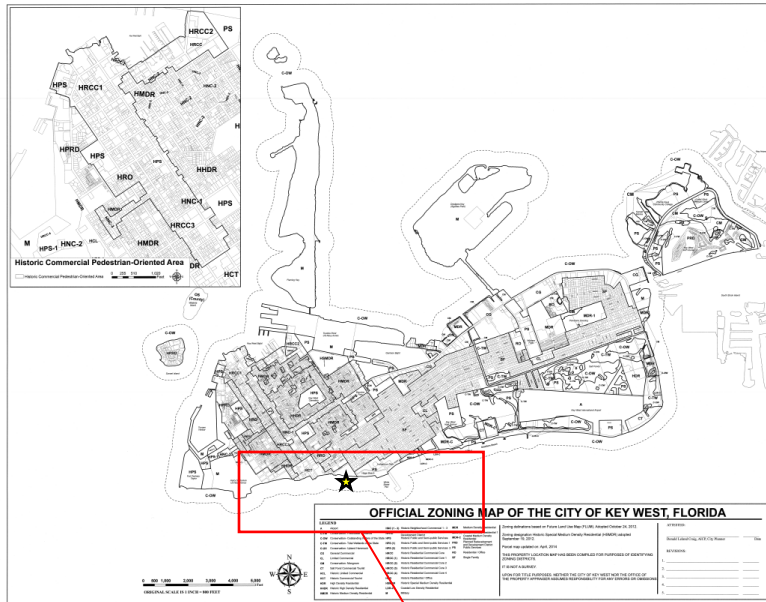
North: HCT- Commercial, Hotels and Tourist Accommodation Uses

South: Atlantic Ocean

East: HCT- Commercial, Hotels and Tourist Accommodation Uses

West: HCT- Commercial, Hotels and Tourist Accommodation Uses





Process:

Development Review Committee:
 Tree Commission Meeting:
 Planning Board Meeting:
 HARC Commission Meeting:
 City Commission:
 Local Appeal Period:
 Planning renders to DEO for review:

May 27th, 2021
 NA
 September 15th, 2022
 NA
 TBD
 10 Days
 Up to 45 days

Evaluation for Compliance with the Land Development Regulations (LDRs) and Comprehensive Plan-MDP

City Code Section 108-91. A.2.(d) requires any development located within tidal waters extending 600 feet seaward of the corporate city limits shall be reviewed as a Major Development Plan. City Code Section 108-196(a) states after reviewing a Major Development Plan or a Minor Development Plan for a property and staff recommendations therefor, the Planning Board shall act by resolution to approve, approve with conditions, or disapprove it based on specific development review criteria contained in the LDRs and the intent of the LDRs and comprehensive plan. The Planning Board resolution shall provide written comments documenting any conditions of approval that the Planning Board finds necessary to effectuate the purpose of Development Plan review and carry out the spirit and purpose of the Comprehensive Plan and the LDRs. If the Development Plan is recommended for disapproval, the Planning Board resolution shall specify in writing the reasons for recommending such denial.

Concurrency Facilities and Other Utilities or Services (City Code Section 108-233): Comprehensive Plan Objective 9-1.5 directs the City to ensure that public facilities and services needed to support development are available concurrent with the impacts of new development. The analysis considers potable water, sanitary sewer, solid waste, drainage, roadway level of service and recreation. City Code Section 94-36 requires a concurrency review determination to be made concerning the proposed development. The Applicant did not provide a concurrency analysis as part of the Major Development Plan application because there are minimal to no impacts to public facilities or services anticipated by the proposal.

Intergovernmental coordination (Sec. 108-232): The proposed seaweed barrier requires coordination with regional, State and Federal Agencies, including the following:

- State Department of Environmental Protection (DEP)
- Army Corps of Engineers (ACOE)

Appearance, design and compatibility (City Code Section 108-234): The property is located adjacent to the historic district. Compatibility of the proposed barrier with surrounding properties, particularly those located to the west, is likely to be contingent on adherence to the referenced Weed Barrier Management Plan. Provisions of the Plan requiring successful continual removal of floating debris and seagrass from the barrier to prevent larger accumulations from becoming a nuisance to adjacent properties is critical.

City Code Chapter 102 (historic preservation): The property is located adjacent to the historic district however there are no specific guidelines to review the proposed seaweed barrier to evaluate its appropriateness to the historic district and tidal waters. However there will be a visual impact as the barrier will be visible from Duval Street. The City's HARC staff recommends that the color of the exposed portion of the barrier be harmonious with the ocean. Continuous maintenance and sargassum removal from the barrier is also recommended.

City Code Section 108-956 (potable water and wastewater): Not applicable.

Article II (archaeological resources) of City Code Chapter 110 (resource protection): There are no known surveyed underwater archaeological sites or any known historic submerged artifacts in the area of review. No impacts to archeological resources are anticipated by the proposal.

Articles III (site plan), IV (traffic impacts) and V (open space, screening and buffers) of City Code Chapter 108 (planning and development): Not applicable.

Site location and character of use (City Code Section 108-235):

(a) Compliance. The submitted development plan has been reviewed for compliance with all applicable performance criteria set forth in Code Chapter 94 (concurrency management), Code Chapter 102 (historic preservation), Code Chapter 106 (performance standards), Articles I and III through IX of Code Chapter 108 (planning and development), Code Chapter 110 (resource protection) and Code Chapter 114 (signs).

(b) Vicinity map. The site of the proposed barrier is within the tidal waters fronting the Southernmost Beach Cafe property. The ends of the barrier will be anchored to the Southernmost House property and to the seawall of the property developed with the Southernmost Beach Resort.

(c) Land use compatibility. Uses within 300 feet include the Duval Street Pocket Park, a variety of commercial amenities, and lodging/resort accommodations, primarily consisting of tourist-oriented uses and services. No unincorporated parts of the county are located nearby, nor would any be impacted by the proposed development.

(d) Historic and archeological resource protection. No impacts to historic or archeological resources except for visual impact from Duval Street and the public beach at the foot of Duval Street.

(e) Subdivision of land. No subdivision of land is proposed.

Appearance of site and structures (City Code Section 108-236): The applicant provided photographs showcasing similar barrier structures to the one proposed under this request. The appearance of the structures associated with the proposal are minimal, however historic preservation staff recommend that the color of the barrier be similar to the ocean.

Site plan (City Code Section 108-237): The Applicant submitted a site plan pursuant to City Code Section 108-237, which is analyzed in greater detail below.

Architectural drawings (City Code Section 108-238): The Applicant submitted drawings prepared by a professional engineer registered in Florida pursuant to City Code Section 108-238.

Site amenities (City Code Section 108-239): Existing site amenities are included on the site plan. No additional site amenities are anticipated by the proposed seaweed barrier.

Site survey (City Code Section 108-240): The Applicant submitted a site survey pursuant to City Code Section 108-240.

Soil survey (City Code Section 108-241): A benthic resource assessment was completed for the south end of Duval street waters on June 15, 2020. The benthic habitats identified along the seaweed barrier alignment consist of uniformly loose sand and occasionally scattered small rubble lacking a defined benthic community. The hard structure to which the two ends of the barrier will be anchored to were also surveyed for coral, none were observed. The study concluded no negligible impacts to the marine environment are anticipated as the result of the installation.

Environmentally sensitive areas (City Code Section 108-242): The proposed work area is located in open waters of the Atlantic Ocean adjacent to a shoreline area consisting of a public beach, seawalls, and a pier structure. Several State and Federally listed endangered species are known to occur in these waters (West Indian manatee, the American crocodile, the green sea turtle, the loggerhead sea turtle, the hawksbill sea turtle, the Kemp's ridley sea turtle, leatherback sea turtle, smalltooth sawfish and Nassau grouper). The ACOE is also currently coordinating

with the National Marine Fisheries Service (NMFS) regarding their determination that no substantial adverse impact will occur to essential fish habitat with the installation of the seagrass barrier.

Land clearing, excavation and fill, tree protection, landscaping and irrigation plan (City Code Section 108-243)

- (a) *Land clearing, excavation and fill.* The proposed development does not involve land clearing.
- (b) *Tree protection.* No trees to be impacted.
- (c) *Landscaping plan.* None provided. Not applicable. No environmentally sensitive areas exist.
- (d) *Irrigation plan.* None provided. Not applicable.

On-site and off-site parking and vehicular, bicycle, and pedestrian circulation (City Code Section 108-244): Not applicable.

Housing (City Code Section 108-245): Not applicable.

Economic resources (City Code Section 108-246): Not applicable.

Special Considerations (City Code Section 108-247)

- (a) The relationship of the proposed development to the City's land use plans, objectives and policies is being evaluated as part of this analysis. The relationship of the proposed development to public facilities was evaluated above and no conflicts were identified.
- (b) The project is located adjacent to a historic zoning district and is located within tidal waters zoned for conservation.
- (c) No unincorporated portions of the county would be impacted by the proposed development.
- (d) The proposed barrier is located within the tidal waters fronting the shoreline. The existing access will not be impacted by the proposal.
- (e) No special facilities are proposed to accommodate bus ridership.
- (f) Passive recreation space is not proposed.
- (g) Coordination with applicable agencies is being facilitated through the DRC, the State of Florida, and the Army Corps of Engineers.
- (h) The benthic assessment provided concluded no negligible impacts to the marine environments are expected as the result of the seaweed barrier. Permitting information with FL DEP and the ACOE has been provided by the applicant.

Construction management plan and inspection schedule (City Code Section 108-248): The proposal is to be completed in one phase. A condition of approval is included requiring daily inspections of the barrier system to ensure there are no marine entanglements or repairs required.

Truman Waterfront Port facilities (City Code Section 108-249): Not applicable.

Site plan (City Code Chapter 108, Article III): The City shall not approve a site plan unless a finding is made that such site plan conforms to all applicable sections of the LDRs, pursuant to City Code Section 108-276, as analyzed below.

Site location and character of use (City Code Section 108-277): The proposed barrier system is situated in an appropriate location and enhances the surrounding spaces. The tourist-oriented uses in this area will benefit from the cleaner spaces created by the seaweed barrier.

Appearance of site and structures (City Code Section 108-278): The floating barrier system's design is minimal and will serve to improve the appearance of the surrounding sites and structures that are currently impacted by

the accumulation of seaweed on the beach and surrounding properties.

Location and screening of mechanical equipment, utility hardware and waste storage areas (City Code Section 108-279): No mechanical equipment or utility hardware anticipated. However, a condition of approvals is included requiring: All materials associated with construction and placement of the barrier shall be contained in an upland storage area. No materials shall be temporarily stored on the beach area near the shoreline.

Front-end loaded refuse container location requirements (City Code Section 108-280): Not applicable.

Roll-off compactor container location requirements (City Code Section 108-281): Not applicable.

Utility lines (City Code Section 108-282): No new utility lines. Not applicable.

Commercial and manufacturing activities conducted in enclosed buildings (City Code Section 108-283): Not applicable.

Exterior lighting (City Code Section 108-284): No exterior associated with the proposal. Not applicable.

Signs (City Code Section 108-285): Not applicable.

Pedestrian sidewalks (City Code Section 108-286): Not applicable.

Loading docks (City Code Section 108-287): None proposed. Not applicable.

Storage areas (City Code Section 108-288): No exterior storage areas are proposed.

Land clearing, excavation or fill (City Code Section 108-289): No land clearing, exaction or fill. No adverse impacts to conservation areas anticipated by the proposed seaweed barrier.

Landscaping (Code Chapter 108, Article VI): A landscape plan is required as part of a development plan review, pursuant to City Code Section 108-411. The City's Urban Forester reviewed the provided Landscape Plan against the Code requirements and determined the proposal follows the City's LDRs. The analysis prepared by Karen DeMaria, City of Key West Urban Forestry Manager is provided below:

An application has been submitted to install a floating, seaweed barrier in waters of the Atlantic Ocean, below mean high water within 600 feet of the shoreline starting at the end of Duval Street, with anchoring points at 1400 Duval Street and 508 South Street. The purpose of the floating barrier is to prevent sargassum seagrass from piling up onto the beach and shoreline areas of 1400, 1405, and 1450 Duval Street.

The project is undergoing a development plan review. Since it is a water dependent activity, a landscape plan is not required and no tree removal is involved with the project. Therefore, review by the Tree Commission is not required and a Landscape Plan review is not needed. A review of the land development regulations regarding potential impacts to the shoreline, open water, and endangered species, is below.

Review of Section 108:

1. *Sec 108-232, Intergovernmental Coordination: The project requires reviews from the State and Federal environmental regulatory agencies. An environmental Resource Permit and Submerged Lands Authorization has been granted by the State Department of Environmental Protection (May 12, 2022, permit #0388535- 001 EI).*

Email Coordination with Florida Fish and Wildlife Conservation Commission (FWCC-November 2020) regarding sea turtle nesting areas determined that this beach area is not included on the FWCC sea turtle patrol maps but is considered marine turtle habitat and there is a potential for its use as a nesting area. FWCC staff reviewed the project for potential impacts to marine turtles and manatees and concluded that access to the sandy beach would not be impacted by the barrier. A management plan to inspect and maintain the integrity of the barrier and report any entrapments or entanglements and inclusion of this beach area into the FWCC Sea Turtle Patrol is required.

An Army Corps of Engineer (ACOE) permit review is in process. At this time, permit application no. SAJ-2020-01959-(SP-GGM) is open for a comment period. ACOE review usually involves comments from the Florida Keys National Marine Sanctuary (FKNMS), U.S. Fish and Wildlife (USFWS), and the National Marine Fisheries Service (NMFS). In addition, the State Historic Preservation Office is included under the review process relative to cultural and historic resource impact under Section 106.

2. *Sec 108-242, Environmentally Sensitive Areas: The proposed project is located in waters of the Atlantic Ocean. A benthic survey has been submitted that indicates no hardbottom, benthic areas including seagrass or corals, will be impacted.*

Review of Section 110:

1. *Sec 110-181, Coastal Shoreline Impact: Information has been submitted that indicates no adverse impacts shall occur to living marine resources. A management plan to daily inspect the barrier for possible entrapments or entanglements and monitoring of sea turtle nests is required.*
2. *Sec 110-183, Living Marine Resources: The project has been reviewed and permitted by the State Department of Environmental Protection (FDEP) with conditions regarding the use of turbidity curtains and monitoring for endangered species during installation. ACOE review is still pending.*

A Benthic Resource Assessment was conducted by Terramar Environmental Services in June 2020. This report stated that the benthic community along a 10 ft wide area at the proposed weed barrier location consisted of loose sand and rubble.

The seawall and pier areas where the barrier will be attached and anchored, did not contain any coral only limited macroalgae. The area surrounding the project site was also surveyed.

3. *Sec 110-185, Impacts of Coastal Development on Tidal Flushing and Circulation Patterns: Tidal flushing and circulation patterns will not be altered by this project. No alteration of tidal flow will occur. The project incorporates a floating boom that rests on the surface of the water. A semi-rigid pvc coated polyester curtain (no netting) type material with a chain will hang down approximately 1 foot into the water column and will not touch the sea bottom. The boom with curtain will be anchored to the sea bottom by a chain every 20 feet therefore, tidal flow and circulation will not be impacted.*
4. *Sec. 110-191, Impacts of Development on Coastal Waters: The installation of the floating seagrass barrier is in the public interest as it will deflect large mats of sargassum seagrass from being trapped on the shoreline. It is documented that excess seagrass on the beaches and nearshore areas degrade water and air quality and cause an unpleasant experience to those using the beach, pier, and park area. Installation of the seagrass boom could improve water quality in this nearshore area by allowing the seagrass mats to move along the shoreline. Impacts might*

occur “downstream” of this area. A review of aerial shoreline imagery, some seagrass might get caught along the shoreline of the federal property or beach area of Ft Zachary Taylor due to the natural littoral drift to the west along the coast.

5. Sec 110-221 to 224, Wildlife Habitat Preservation and Protection of Flora and Fauna: The nearshore water area immediately adjacent to this project does not include any critical habitat for endangered or critically important species. The beach area is an important habitat for nesting sea turtles as stated by the FWCC and the open water area does support numerous fish and sea mammal species that traverse the area. It is not anticipated that movement of these species will be impacted by the barrier and all should be able to migrate through the area.

All conditions regarding endangered species monitoring during installation (manatees, sea turtles, and sawfish) should be included in any building permits, as stated on the FDEP permit. A plan to monitor the barrier daily for any possible entanglements or entrapments is required.

Other reviews and comments:

Sec 122-126, Conservation District: A benthic survey has been submitted into the file and coordination with State and Federal regulatory agencies has/is being done. The State of Florida (Clean Water Act-water quality and submerged lands lease reviews) has issued a permit for the project. The Federal review, ACOE (River and Harbors Act- structures in waters) is still being reviewed.

State Statutes 166.033 (5 & 6) says that a municipality can not hold processing of a development plan until State or Federal agencies have processed their permit. A condition should be placed that requires issuance of a ACOE permit prior to submittal of a building permit.

Off-street parking and loading (Code Chapter 108, Article VII): Not applicable.

Stormwater and surface water management (Code Chapter 108, Article VIII): No impacts to stormwater or surface water management anticipated by the proposed seaweed barrier.

Utilities (Code Chapter 108, Article IX): No impacts to utilities are anticipated.

Art in Public Places (City Code Section 2-487): Not applicable.

Evaluation for Compliance with the Land Development Regulations (LDRs) and Comprehensive Plan-CU

Conditional Use Review: The purpose of conditional use review, pursuant to City Code Section 122-61, is to ensure that a conditional use shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity. City Code Chapter 122, Article III sets forth provisions and criteria for consideration of conditional uses on specific sites. Conditional uses shall be permitted only upon a finding that the proposed use satisfies this article.

Conditional Use Specific Criteria pursuant to Code Section 122-62:

(a) Findings

Code Section 122-62(a) provides, in part, that “a conditional use shall be permitted upon a finding by the Planning Board that the proposed use, application, and, if applicable, development plan comply with the criteria specified in this section, including specific conditions established by the Planning Board and/or the City Commission during review of the

respective application in order to ensure compliance with the comprehensive plan and land development regulations.” This section also specifies that “a conditional use shall be denied if the city determines that the proposed use does not meet the criteria provided in this section and, further, that the proposed conditional use is averse to the public’s interest.”

(b) Characteristics of Use Described

The Historic Commercial Tourist zoning district is defined as a district comprised of areas having high concentration of hotels, motels, and/or transient lodging facilities together with primary tourist-oriented commercial services. The proposed seaweed barrier system will enhance the area by mitigating the accumulation of sargassum seaweed that builds up on the beach shoreline and adjacent lands.

- (1) Scale and intensity of the proposed conditional use as measured by the following:
 - a. Floor area ratio (FAR): Not Applicable.
 - b. Traffic generation: Not Applicable.
 - c. Square feet of enclosed space for each specific use: Not Applicable.
 - d. Proposed employment: Not Applicable.
 - e. Proposed number and type of service vehicles: Not Applicable.
 - f. Off-street parking needs: Not Applicable.
- (2) On- or off-site improvement needs generated by the proposed conditional use and not identified above including the following:
 - a. Utilities: None expected.
 - b. Public facilities, especially any improvements required to ensure compliance with concurrency management as provided in City Code Chapter 94: None expected. Compliance with any building and life safety codes would be required prior to building permit issuance.
 - c. Roadway or signalization improvements, or other similar improvements: Not applicable.
 - d. Accessory structures or facilities: None proposed.
 - e. Other unique facilities/structures proposed as part of site improvements: Beyond the seaweed barrier system, no other facilities or structures are proposed.
- (3) On-site amenities proposed to enhance site and planned improvements, including mitigative techniques such as:
 - a. Open space: Not applicable.
 - b. Setbacks from adjacent properties: Not Applicable.
 - c. Screening and buffers: Not Applicable.
 - d. Landscaping berms proposed to mitigate against adverse impacts to adjacent sites: Not Applicable. No landscape berms proposed.
 - e. Mitigative techniques for abating smoke, odor, noise, and other noxious impacts: See section C below.

(c) Criteria for conditional use review and approval

Pursuant to City Code Section 122-62(c), applications for a conditional use shall clearly demonstrate the following:

- (1) **Land use compatibility:** The seaweed barrier system will have positive impacts on the immediately adjacent land uses, which are restaurant, hotel, beach, pier, and other hospitality. The current negative effects of the sargassum build up and decay adversely impacts the land use and activities in the immediate vicinity. The proposed barrier is designed to alleviate those negative effects from the area. Compatibility of the proposed barrier with surrounding properties, particularly those located to the west, or downstream, is likely to be contingent on adherence to the referenced USACE Weed Barrier Management Plan. Provisions of the Plan

requiring successful continual removal of floating debris and seagrass from the barrier to prevent larger accumulations from becoming a nuisance to adjacent properties is critical.

- (2) **Sufficient site size, adequate site specifications and infrastructure to accommodate the proposed use:** The proposed site of the barrier system is appropriate and has been designed to catch the incoming seaweed and allow it to process off the barrier with the changing tides. The site also has a uniformly sandy bottom as demonstrated in the Benthic Resource Assessment
- (3) **Proper use of mitigative techniques:** The proposed USACE Weed Barrier Management Plan provides some mitigative techniques for the proposed seaweed barrier related to floating debris removal and daily monitoring for any potential marine life impacts/entanglements due to weed accumulation. In their public notice dated July 25, 2022, for Permit Application Bo. SAJ-2020-01959-(SP-GGM), the U.S. Army Corps of Engineers has determined that endangered species that may be affected by the project but are not likely to be adversely affected include the West Indian manatee, the American crocodile, the green sea turtle, the loggerhead sea turtle, the hawksbill sea turtle, the Kemp's ridley sea turtle, leatherback sea turtle, smalltooth sawfish and Nassau grouper.

The purpose of the system is to benefit the immediately adjacent properties. The health, safety and welfare of the commercial areas and public pocket park and beach may improve because of the decrease in sargassum accumulation on the beach and surrounding land.

- (4) **Hazardous waste:** The proposed use will not generate hazardous waste. The system functions like a natural beach front and will allow the sargassum to return to the open ocean. A condition of approval is proposed that will require daily inspections of the system to ensure no marine entanglements or damages to the barrier.
- (5) **Compliance with applicable laws and ordinances:** The Florida Department of Environmental Protection reviewed the Applicant's proposal. The Applicant is pending permitting by the United States Army Corps of Engineers. A condition of approval has been recommended to require the applicant to follow any conditions listed on the FDEP and ACOE permits.
- (6) **Additional criteria applicable to specific land uses:** Applicants for conditional use approval shall demonstrate that the proposed conditional use satisfies the following specific criteria designed to ensure against potential adverse impacts which may be associated with the proposed land use:
 - a. **Land uses within a conservation area:** The site is located in a conservation area. No impacts to marine resources within the conservation zoned areas were identified by the benthic resource assessment provided.
 - b. **Residential development:** No residential development is proposed.
 - c. **Commercial or mixed-use development:** The proposed use may be the first of its kind in the tidal waters of the City of Key West. The adjacent and nearby shorelines that are downwind (prevailing southeasterly winds) are comprised of commercial, residential properties, a federal military installation and a state park.
 - d. **Development within or adjacent to historic district:** The conditional use application is adjacent to the historic district. There may be some negative visual impacts from the historic beach toward the ocean.
 - e. **Public facilities or institutional development:** No development of public facilities or institutions are proposed.
 - f. **Commercial structures use and related activities within tidal waters:** The site is located within tidal areas.
 - g. **Adult entertainment establishments:** Not applicable.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request for the Master Development Plan and Conditional Use be **APPROVED WITH CONDITIONS** as follows:

General conditions:

1. The conditional use shall match the approved plans signed sealed dated: July 11, 2022 by Glen Boe and Associates, Inc.
2. The outfall pipe location is approximate. Anchors on the side of the pier with the outfall may need to be adjusted to avoid impact to the pipe. The applicant shall advise their contractor to locate the outfall pipe and make adjustment to placement of the anchors to avoid damage to the outfall pipe.
3. All conditions listed on the FDEP and ACOE permits (when issued) shall be followed. ACOE permit is required prior to submittal of a building permit.
4. There are provisions of the USACE Weed Barrier Management Plan that address floating debris and seagrass removal from the barrier. The applicant shall coordinate with appropriate state and federal agencies to identify frequency of removal to ensure no impact to adjacent properties/shorelines from excess accumulations of floating debris/seagrass.
5. The applicant shall provide notice to the City of Key West of any complaints associated with nuisance accumulation of floating debris/sargassum on adjacent properties attributable to the barrier. The barrier design and placement shall be modified in coordination with the City, and may include removal of the barrier, if impacts to surrounding properties or public areas are substantiated.
6. All materials associated with construction and placement of the barrier shall be contained in an upland storage area. No materials shall be temporarily stored on the beach area near the shoreline.
7. Best management practices for erosion control and turbidity shall be followed. Any materials that accidentally fall into the water shall be immediately retrieved.
8. Endangered Species protective measures for manatees, sea turtles, and sawfish shall be followed.
9. The barrier, once installed, shall be inspected on a daily basis to insure there are no marine entanglements and all repairs that are required will be performed in a timely manner.
10. Monitoring for sea turtle nests shall be done during the turtle nesting season. Coordination with the local sea turtle club shall be initiated for the monitoring patrols and reports sent to the FWCC.