



LAW OFFICES
BOONE, BOONE & BOONE, P.A.
P. O. BOX 1596
VENICE, FLORIDA 34284

ESTABLISHED 1956

E.G. (DAN) BOONE
JEFFERY A. BOONE
STEPHEN K. BOONE
JACKSON R. BOONE
STUART S. BOONE
ANNETTE M. BOONE

JAMES T. COLLINS, LAND PLANNER
(NOT A MEMBER OF THE FLORIDA BAR)

STREET ADDRESS:
1001 AVENIDA DEL CIRCO 34285
TELEPHONE (941) 488-6716
FAX (941) 488-7079
e-mail: adm@boone-law.com

July 23, 2020

SENT VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Honorable Debbie McDowell, Mayor
City of North Port
4970 City Hall Boulevard
North Port, Florida 34286

Re: Petition For Relief; Creighton Development and Weedon North Port

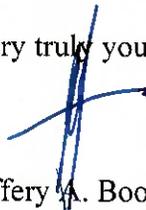
Dear Mayor McDowell:

We represent Weedon North, LLC and Creighton Development of FL, LLC, in connection with a proposed development at the Cranberry Blvd./W. Price Blvd. intersection.

On behalf of our clients, enclosed please find a Petition for Relief, pursuant to Section 70.51, Florida Statutes.

Kind regards,

Very truly yours,



Jeffery A. Boone

JAB/laf

cc: Amber Slayton, North Port City Attorney (via electronic mail)

Enclosure

C191-16569/LtrMcDowell07.23.20

TO THE CITY OF NORTH PORT, FLORIDA
PETITION FOR RELIEF PURSUANT TO SECTION 70.51, FLA. STAT.

Weedon North Port LLC, and Creighton Development of FL, LLC (collectively referred to as “Petitioner”), by and through its undersigned counsel, hereby petitions the City of North Port, Florida (the “City”), for relief pursuant to Sec. 70.51, Florida Statutes, the Florida Land Use and Environmental Dispute Resolution Action (the “Act”), and states:

1. Weedon North Port LLC, a Florida Limited Liability Company (“Weedon”), is the property owner and Creighton Development of FL, LLC, a Florida Limited Liability Company (“Creighton”), is the contract purchaser of approximately 4.15 acres of land located within the City of North Port, Florida at 2900 W. Price Boulevard (the “Property”). Weedon and Creighton (both qualify as an “owner” of the Property, as defined in the Act, with standing to petition for relief. The City is a “governmental entity” as defined in the Act.
2. The Property is zoned Neighborhood Commercial High Intensity (“NCHI”). The Property has a designation of Commercial on the City’s Future Land Use Map. The NCHI zoning district permits a convenience store as a permitted use by right. The NCHI zoning district permits the uses of fuel pumps and car wash as special exception uses.
3. Petitioner filed a Development Master Plan Petition with requested waivers (“DMP-19-280”), a Special Exception Petition for fuel pumps (“SPX-19-269”) and a Special Exception Petition for a car wash (“SPX-19-270”) to develop a convenience store with fuel pumps and a car wash on the Property. As required for Development Master Plan petitions, Petitioner filed a Development Master Plan locating the convenience store, fuel pumps, car wash, and associated structures on the Property (attached as Exhibit 1)(the “DMP”). The DMP constitutes the Owners’ “Proposed Use” of the Property as defined in the Act.
4. On May 7, 2020, DMP-19-280, SPX-19-269 and SPX-19-270 (collectively referred to as the “Applications”) were heard before the City of North Port Planning and Zoning Advisory Board. Petitions SPX-19-269 and SPX-19-270 both received a 5-1 vote recommending approval to the City Commission, and Petition DMP-19-280 received a 4-2 vote recommending approval to the City Commission. The City Commission public hearing was scheduled for May 26, 2020.
5. On June 15, 2020, the City Commission voted to deny Petitions SPX-19-269 and SPX-19-270, and voted to approve Petition DMP-19-280 with conditions and with a denial of waiver requests for 24-hour operation and fuel price signage. On June 25, 2020, the City drafted the written orders denying Petition SPX-19-269 and Petition SPX-19-270 (the “Orders of Denial”), and on July 7, 2020, the City drafted the written order approving Petition DMP-19-280 with conditions (the “Order of Approval). The Orders of Denial and Order of Approval shall hereinafter be referred to collectively as the “Orders.” The Orders of Denial were received via certified mail on July 6, 2020. The Order of

Approval was received on the same date, but only via email. This Commission action is officially established in the Orders. The Orders are “development orders” as defined by the Act, and copies of the Orders are attached to this Petition for Relief as Exhibit 2.

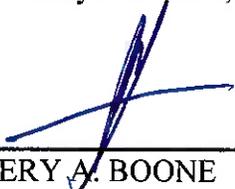
6. On May 26, 2020, after more than 4 hours of public hearing, which included all Petitioner, City staff, and aggrieved party presentation and rebuttal testimony, the City Attorney made a determination that, out of an abundance of caution, the City Commission would pause the public hearing and continue the remainder of the public hearing to June 15, 2020, to allow the City to provide another mailed notice to the residents in the surrounding area of the Property. At this time in the public hearing, all that remained were closing arguments for the applicant, aggrieved parties, and staff, and City Commission’s discussion and votes on the Applications.
7. On June 15, 2020, the City Commission voted to restart the public hearing on the Applications from the beginning and determined that none of the testimony and evidenced entered into the record during the May 26, 2020, City Commission public hearing should be considered. At the conclusion of the June 15, 2020, public hearing, the City Commission voted 4-1 to deny both SPX-19-269 and SPX-19-270, and voted unanimously to approve DMP-19-280 with conditions and with a denial of waiver requests for 24-hour operation and fuel price signage.
8. During the City Commission public hearing it was mentioned that the City had conducted a workshop to examine the NCHI zoning designation and formed a consensus that the special exception uses of fuel pumps and car wash should no longer be available. This workshop was held subsequent to the filing of the Applications and while they were under review. This was also stated in emails exchanged between City Commissioners and members of the public prior to the May 26, 2020, City Commission meeting.
9. The City’s determination that the intent and intensity of the proposed fuel pumps and car wash uses were contrary to the NCHI zoning designation and Future Land Use Designation of Commercial is erroneous. The Orders equate to an application of what the City Commission desires the City’s future NCHI zoning designation to allow, as opposed to what the current NCHI zoning designation in effect permits. Contrary to the decision made by the City Commission, the staff reports for both SPX-19-269 and SPX-19-270 recommended approval to the City Commission, and the City’s Planning & Zoning Advisory Board recommended approval to the City Commission with votes of 5-1.
10. The DMP submitted with DMP-19-280 provided a substantial separation of the car wash, fuel pumps, and convenience store from the neighboring residential lots, setting aside more than half of the approximately 4.15 acre parcel to remain undeveloped and/or

provide stormwater retention. The separation proposed by the DMP is far in excess of the required setbacks for the NCHI zoning designation. Moreover, the Property is located on Price Boulevard, the City's main arterial east/west roadway, which is approved to be widened to 5 lanes in the near future.

11. Petitioner provided expert testimony on the record to demonstrate compliance with applicable local, state and federal requirements and regulations for the fuel pumps and fuel storage tanks proposed on the Property. Petitioner also provided expert testimony to demonstrate the positive impact of the substantial separation area, as opposed to the minimal setbacks and buffer required by the Code, the proposed Development Master Plan offers to the adjacent residential lots. This expert testimony was the only expert testimony placed on the record during the June 15, 2020, City Commission public hearing. Further, Petitioner provided expert testimony to rebut claims that the development proposal under the Applications would adversely impact the general health, safety and welfare of the public.
12. The City's determination that the proposed fuel pumps and car wash special exception uses cannot comply with the NCHI zoning designation and the Comprehensive Plan at this location, and as set forth on the DMP, amounts to a prohibition of the fuel pumps and car wash uses on all NCHI zoned property in the City. The dialogue during the City Commission public hearing supports this conclusion, despite those uses being permitted via special exception approval in the NCHI zoning district.
13. The Orders are unreasonable and unfairly burden the Property because they are erroneously based on an interpretation that the fuel pumps and car wash special exception uses are not consistent with the intent, goals, objectives, policies and programs of the NCHI zoning district and City's Comprehensive Plan. This interpretation of the Code and the Comprehensive plan denies Petitioner the ability to achieve a use of the Property contemplated by the NCHI zoning district and the Commercial Future Land Use Designation of the Comprehensive Plan.
14. The Order of Approval together with the Orders of Denial are unreasonable and unfairly burden Petitioner's use of the Property. Although the Order of Approval approves a convenience store use on the property with certain conditions, those conditions along with the Orders of Denial prohibiting fuel pumps and car wash preclude the viability of Order of Approval for Petitioner's development proposal.

WHEREFORE, Petitioner, invokes its rights under the Act, and demands the City to commence the required proceedings.

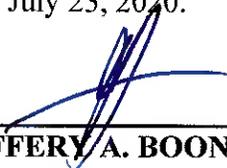
Respectfully submitted, July 23, 2020,



JEFFERY A. BOONE
Florida Bar No.: 0371051
Primary Email: jboone@boone-law.com
Jackson R. Boone
Florida Bar No.: 0119726
Primary Email: jackson.boone@boone-law.com
Second Email: lfosco@boone-law.com
Boone, Boone & Boone, P.A.
1001 Avenida Del Circo
Venice, FL 34285
T: (941) 488-6716 / F: (941) 488-7079

CERTIFICATE OF SERVICE AND FILING

I hereby certify that a true and correct copy of the foregoing Petition has been filed with Hon. Debbie McDowell, Mayor of the City of North Port, by electronic mail to dmcowell@cityofnorthport.com and sent overnight FedEx delivery to 4970 City Hall Boulevard, North Port, Florida 34286 on July 23, 2020.



JEFFERY A. BOONE
Florida Bar No.: 0371051

cc: Amber Slayton, City Attorney, aslayton@cityofnorthport.com



City of North Port

Office of the City Attorney

4970 City Hall Boulevard
North Port, Florida 34286
(941) 429-7260
aslayton@cityofnorthport.com

June 25, 2020

Via CMRRR # 7020 0090 0001 5716 0080

Weedon North Port LLC
C/O Jeffrey A. Boone, Esquire
Boone Law Firm
P.O. Box 1596
Venice, Florida 34284-1596

Via CMRRR # 7020 0090 0001 5716 0103

Stacy Tynan Tracy
3013 Lucaya Avenue
North Port, Florida 34286

Via CMRRR # 7020 0090 001 5716 0097

City of North Port, Florida
Planning Division
C/O Jennifer R. Cowan
Bryant Miller Olive, P.A.
201 North Franklin Street, Suite 2700
Tampa, Florida 33602

Via CMRRR # 7020 0090 0001 5716 0110

Maria and John Leslie
3184 West Price Boulevard
North Port, Florida 34286

Re: Orders Denying Special Exceptions

Dear Parties:

Pursuant to the North Port Unified Land Development Code Section 2-83(D)(1), enclosed are:

1. Order Denying Special Exception (SPX-19-269); and
2. Order Denying Special Exception (SPX-19-270).

Thank you for your attention to this matter.

Sincerely,

Amber L. Slayton
City Attorney

Enc: As stated



City of North Port

Office of the City Attorney

ORDER DENYING SPECIAL EXCEPTION

Application No.: SPX-19-269

Proposed Resolution: Resolution No. 2020-R-11

Proposed Use: Convenience store with fuel pumps in the Neighborhood Commercial High Intensity (NC-HI) Zoning District, pursuant to Unified Land Development Code Sections 53-179 and 53-259

Property Address/Location: 2900 West Price Boulevard, North Port, FL, 34286

Parcel ID: 0981-04-1212, Tract G, of Block 412, Ninth Addition to Port Charlotte Subdivision, according to the Plat thereof, as recorded in Plat Book 12, Page 21, of the Public Records of Sarasota County, Florida) (Section 23, Township 39 South, Range 21 East)

Property Owner: Weedon North Port, LLC

Applicant: Jeffery A. Boone, Esq.

PROCEEDINGS

This matter came before the City Commission initially on May 26, 2020 and upon the City Commission's determination that proper notice had not been issued in compliance with the City of North Port Unified Land Development Code Section 53-258, the City Commission suspended proceedings and continued the hearing to June 15, 2020. On June 15, 2020, the City Commission authorized a new quasi-judicial hearing; determined that the May 26, 2020 hearing and evidence would not be considered; and determined that any public comments that had been properly submitted for either hearing would be provided for the record. On June 15, 2020, the parties were provided a new and complete opportunity to present evidence, and to refute and respond to evidence in accordance with federal, state, and local laws and procedures for the quasi-judicial proceedings.

MOTION AND FINDINGS

After conducting the hearing on this matter, based on the testimony and evidence provided by the parties, the City Commission voted 4-1 to:

DENY Resolution No. 2020-R-11 and find that, based on the testimony and evidence provided, granting the special exception will adversely affect the public interest, health, safety and general welfare; all of the 16 standards listed in section 53-259(3) of the

Unified Land Development Code have not been met; and the competent substantial evidence does not show that:

- (a) The proposed use shall be consistent with the intent, goals, objectives, policies and programs of the City of North Port Comprehensive Plan and the intent of the zoning district as defined in this Unified Land Development Code for the area in which the property is located;
- (b) The density or intensity of the proposed use shall be consistent with the intended future use of the designated land use area in which the property is located, in accordance with the provisions of the Future Land Use Plan Map contained in the Comprehensive Plan;
- (c) The proposed use, singularly or in combination with other previously approved special exceptions, must not be detrimental to the health, safety, welfare, morals, order, comfort, convenience, appearance or prosperity of the neighborhood or adjacent uses; and shall be an economic benefit to the economy of the City; and
- (d) The intensity of the proposed use shall be harmonious with the character of other uses in the neighborhood.

Reasons primarily in each of those being that the intent and intensity of the development is contrary to it, but the remaining of the standards were met.

LIMITATIONS

Upon the City Commission's denial of a special exception, the application is deemed void. No special exception application for any property applied for will be accepted within one (1) year of the denial.¹

HEARING RECORD

The clerk shall maintain custody of all recordings of testimony, evidence, and documents submitted into evidence at the hearing. This shall include the official file in the matter, as well as any document presented at the hearing or demonstrative exhibit seen by the quasi-judicial body while making its decision. Nothing herein shall be deemed to prohibit any party from providing a court reporter for the proceedings. Any party wishing to appeal the decision of a quasi-judicial body shall have the responsibility to ensure compliance with F.S. § 286.0105.²

RIGHT TO APPEAL

Any person aggrieved by the City Commission's decision may appeal to the Circuit Court of Sarasota County, Florida, within thirty (30) days of any decision being appealed. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the decision removes all reasonable use of the property. The granting of any appeal shall not be in conflict with State Statutes and City Codes and Ordinances. Based upon the evidence submitted to the department responsible for land development services, the appeal shall include the City Commission's decision and staff finding(s).³

¹ See § 53-261.B, Unified Land Development Code.

² See § 2-83(e), Code of the City of North Port, Fla.

³ See § 1-27.F (1), Unified Land Development Code.

THIS ORDER IS ISSUED IN COMPLIANCE WITH SECTION 2-83(D)(1) OF THE CODE OF THE CITY OF NORTH PORT, FLORIDA.



AMBER L. SLAYTON, CITY ATTORNEY
Legal Counsel to the City Commission

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing order has been furnished to the parties by certified mail/return receipt requested on June 25, 2020 as follows:

Via CMRRR # 7020 0090 0001 5716 0080

Weedon North Port LLC
C/O Jeffrey A. Boone, Esquire
Boone Law Firm
P.O. Box 1596
Venice, Florida 34284-1596

Via CMRRR # 7020 0090 0001 5716 0103

Stacy Tynan Tracy
3013 Lucaya Avenue
North Port, Florida 34286

Via CMRRR # 7020 0090 001 5716 0097

City of North Port, Florida
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C/O Jennifer R. Cowan
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201 North Franklin Street, Suite 2700
Tampa, Florida 33602

Via CMRRR # 7020 0090 0001 5716 0110

Maria and John Leslie
3184 West Price Boulevard
North Port, Florida 34286



AMBER L. SLAYTON, CITY ATTORNEY



City of North Port

Office of the City Attorney

ORDER DENYING SPECIAL EXCEPTION

Application No.: SPX-19-270

Proposed Resolution: Resolution No. 2020-R-12

Proposed Use: Convenience store with car wash in the Neighborhood Commercial High Intensity (NC-HI) Zoning District, pursuant to Unified Land Development Code Sections 53-179 and 53-259

Property Address/Location: 2900 West Price Boulevard, North Port, FL, 34286

Parcel ID: 0981-04-1212, Tract G, of Block 412, Ninth Addition to Port Charlotte Subdivision, according to the Plat thereof, as recorded in Plat Book 12, Page 21, of the Public Records of Sarasota County, Florida) (Section 23, Township 39 South, Range 21 East)

Property Owner: Weedon North Port, LLC

Applicant: Jeffery A. Boone, Esq.

PROCEEDINGS

This matter came before the City Commission initially on May 26, 2020 and upon the City Commission's determination that proper notice had not been issued in compliance with the City of North Port Unified Land Development Code Section 53-258, the City Commission suspended proceedings and continued the hearing to June 15, 2020. On June 15, 2020, the City Commission authorized a new quasi-judicial hearing; determined that the May 26, 2020 hearing and evidence would not be considered; and determined that any public comments that had been properly submitted for either hearing would be provided for the record. On June 15, 2020, the parties were provided a new and complete opportunity to present evidence, and to refute and respond to evidence in accordance with federal, state, and local laws and procedures for the quasi-judicial proceedings.

MOTION AND FINDINGS

After conducting the hearing on this matter, based on the testimony and evidence provided by the parties, the City Commission voted 4-1 to:

DENY Resolution No. 2020-R-12 and find that, based on the testimony and evidence provided, granting the special exception will adversely affect the public interest, health, safety and general welfare; all of the 16 standards listed in section 53-259(3) of the

Unified Land Development Code have not been met; and the competent substantial evidence does not show that:

- (a) The proposed use shall be consistent with the intent, goals, objectives, policies and programs of the City of North Port Comprehensive Plan and the intent of the zoning district as defined in this Unified Land Development Code for the area in which the property is located;
- (b) The density or intensity of the proposed use shall be consistent with the intended future use of the designated land use area in which the property is located, in accordance with the provisions of the Future Land Use Plan Map contained in the Comprehensive Plan;
- (c) The proposed use, singularly or in combination with other previously approved special exceptions, must not be detrimental to the health, safety, welfare, morals, order, comfort, convenience, appearance or prosperity of the neighborhood or adjacent uses; and shall be an economic benefit to the economy of the City; and
- (d) The intensity of the proposed use shall be harmonious with the character of other uses in the neighborhood.

The remainder are compliant.

LIMITATIONS

Upon the City Commission's denial of a special exception, the application is deemed void. No special exception application for any property applied for will be accepted within one (1) year of the denial.¹

HEARING RECORD

The clerk shall maintain custody of all recordings of testimony, evidence, and documents submitted into evidence at the hearing. This shall include the official file in the matter, as well as any document presented at the hearing or demonstrative exhibit seen by the quasi-judicial body while making its decision. Nothing herein shall be deemed to prohibit any party from providing a court reporter for the proceedings. Any party wishing to appeal the decision of a quasi-judicial body shall have the responsibility to ensure compliance with F.S. § 286.0105.²

RIGHT TO APPEAL

Any person aggrieved by the City Commission's decision may appeal to the Circuit Court of Sarasota County, Florida, within thirty (30) days of any decision being appealed. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the decision removes all reasonable use of the property. The granting of any appeal shall not be in conflict with State Statutes and City Codes and Ordinances. Based upon the evidence submitted to the department responsible for land development services, the appeal shall include the City Commission's decision and staff finding(s).³

¹ See § 53-261.8, Unified Land Development Code.

² See § 2-83(e), Code of the City of North Port, Fla.

³ See § 1-27.F (1), Unified Land Development Code.

THIS ORDER IS ISSUED IN COMPLIANCE WITH SECTION 2-83(D)(1) OF THE CODE OF THE CITY OF NORTH PORT, FLORIDA.


AMBER L. SLAYTON, CITY ATTORNEY
Legal Counsel to the City Commission

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing order has been furnished to the parties by certified mail/return receipt requested on June 25, 2020 as follows:

Via CMRRR # 7020 0090 0001 5716 0080
Weedon North Port LLC
C/O Jeffrey A. Boone, Esquire
Boone Law Firm
P.O. Box 1596
Venice, Florida 34284-1596

Via CMRRR # 7020 0090 0001 5716 0103
Stacy Tynan Tracy
3013 Lucaya Avenue
North Port, Florida 34286

Via CMRRR # 7020 0090 001 5716 0097
City of North Port, Florida
Planning Division
C/O Jennifer R. Cowan
Bryant Miller Olive, P.A.
201 North Franklin Street, Suite 2700
Tampa, Florida 33602

Via CMRRR # 7020 0090 0001 5716 0110
Maria and John Leslie
3184 West Price Boulevard
North Port, Florida 34286


AMBER L. SLAYTON, CITY ATTORNEY



**CITY OF NORTH PORT
ORDER OF APPROVAL
4970 City Hall Boulevard, North Port, FL 34286
941-429-7156**

PROJECT: 7-ELEVEN FULL-SERVICE CONVENIENCE

STORE

FILE NO.	DMP-19-280	Related Project Number:	SPX-19-269 SPX-19-270	Application Type:	DMP – Development Master Plan
SDR Approval:	April 6, 2020		Department:	Neighborhood Development Services - Planning	
PZAB:	May 7, 2020		Prepared By:	Alison Christie, AICP, Senior Planner	
City Commission:	June 15, 2020		Date:	July 7, 2020	
Other:	Development Master Plan to include a 3,454 sq. ft. convenience store on 1.91 acres and a 2.24-acre conservation/park area		Expiration Date:	July 7, 2022	
			Legal Description:	TRACT G BLK 412 9TH ADD TO PORT CHARLOTTE	
APPLICANT/PROJECT: WEEDON NORTH PORT LLC/ 7-ELEVEN FULL-SERVICE CONVENIENCE STORE					

The Development Master Plan was approved by City Commission on **June 15, 2020** with the following waivers and conditions:

WAIVERS GRANTED:

1. ULDC Sec. 25-7A: A waiver to install bollards at parking spaces where wheel stops are required.
2. ULDC Sec. 53-182A: A waiver to leave Lot 2 as a conservation area between proposed development and adjacent residential lots to serve as a buffer where a 20-foot buffer zone and 8-foot wall are required.

CONDITIONS GRANTED:

1. The allowable flow from the site that can be discharged into Price Boulevard cannot exceed the flow permitted in the drainage model that was approved by SWFWMD in Permit 43044411.000 issued February 13, 2020.
2. The allowable flow from the site that can be discharged into Cranberry Boulevard cannot exceed the existing condition flow into Cranberry Boulevard.
3. The driveway connections to Price Boulevard and Cranberry Boulevard shall have structural channeling devices to limit right-in/right-out access.
4. The Price Boulevard driveway connection and storm drainage discharge connectivity may need to be revised to existing conditions of Price Boulevard if the proposed development is constructed before the Price Boulevard Widening Project construction phase is completed. Refer to Stormwater Manager comments regarding stormwater discharge volume and flow rate in Condition 1.
5. The construction phase of the Price Boulevard Widening Project is anticipated to last several years from start to finish and the development shall except associated business impacts.
6. The 7-Eleven design standards would be for the nearest activity center while keeping the 7-Eleven coloring and branding.
7. A buffer wall with landscape buffer will be constructed for the homes adjacent to the two points of ingress/egress on the property on Price and Cranberry Boulevards.

PLANNING MANAGER: Nicole Galehouse
Nicole Galehouse, AICP, Planning Division Manager

Date: 7-7-20

PROJECT MANAGER: Alison Christie
Alison Christie, AICP, Senior Planner

Date: 7/7/20

The car wash and fuel pumps shown on the plan were denied as special exceptions by City Commission at the June 15, 2020 hearing. These must be removed from the approved Development Master Plan and a revised Development Master Plan in conformance with Commission approval must be received by the Planning Division prior to the submittal of a Major Site and Development Plan.

A copy of this form must be submitted with the next development application or permit. When resubmitting the form, please indicate which conditions have been met, show the date completed, and explain how the conditions were met.

This Order of Approval will expire on **July 7, 2022**.