

LDC Amendment Request

ORIGIN: Board of County Commissioners

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DEPARTMENT: Land Development Services

AMENDMENT CYCLE: 2009 Cycle

LDC PAGE: LDC5:28-5.30

LDC SECTION(S): 5.05.02

CHANGE: To clarify how the County will treat the length of shoreline within conservation easements when calculating the amount of wetslips according to the Manatee Protection Plan.

REASON: The rating system used in calculating the maximum number of wetslips in accordance the Manatee Protection Plan, uses the amount of shoreline to calculate the maximum number of wetslips. Although the LDC specifies that the purpose of the marina siting criteria is to help determine the maximum wet slip densities in order to improve existing Manatee protection, neither the LDC nor the Manatee Protection Plan specifically addresses shoreline within conservation easements.

State agency staff from the Florida Fish and Wildlife Conservation Commission, have advised County staff that the total length of shorelines, including that which is within conservation easements, is used in the calculations for maximum allowable wetslips where the purpose of the conservation easement is vegetation management. However, where the conservation easement prohibits “in-water structures”, the length of shoreline within the conservation easement is excluded from the calculations and thus, the number of allowable wetslips are reduced in proportion to the length of the excluded shoreline. State staff indicate that “in-water structures” can be characterized as the construction and operation of future docks, wet or dry slips, piers, launching facilities or structures other than existing on the property, or activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking, dredging, and fencing.

In January 2006 during evaluation of a project, staff from the Office of the County Attorney reviewed various documents including the existing conservation easement on the project, the GMP, LDC, Manatee Protection Plan, State Statutes, and State cases in order to determine whether shoreline length in the conservation easement area should be excluded from the calculation to determine the number of allowable boat slips. The result of this review essentially provided staff with a procedure that specified that staff should review the actual language of a conservation easement to determine if the easement language includes or excludes the use of the easement shoreline to calculate the amount of wetslips. Inspecting the conservation easement to determine its prohibitions is also consistent with the State’s application.

During the April 22, 2008 BCC meeting, item 8B, the BCC provided direction to staff on how to treat shoreline within conservation easements in calculating the number of wetslips pursuant to the Manatee Protection Plan. The Board direction was to exclude shoreline within County required preserve areas and State and Federal conservation easements which do not allow wetslips within their conservation easements when calculating the maximum allowable number of wetslips pursuant to the Manatee Protection Plan and add a Conditional Use to allow more boat slips if you provide public access (50%) available to the public. The proposed amendment is in accordance with the BCC's direction.

Meetings were held with stakeholders on May 22, 2008, June 17, 2008 and May 13, 2009, with no common ground among the stakeholders.

The Environmental Advisory Council (EAC) approved the amendment with the following changes:

1. Replace the words "50 percent or more of their" with "some", in the second sentence under subsection "G" in the amendment.
2. Replace the word "ordinance" with "subsection" in the last sentence under subsection "G" in the amendment. Also to request from the County Attorney Office to define what is meant by "existing and vested right" in the sentence.
3. Add the following sentence immediately before the last sentence under subsection "G" in the amendment: "This ordinance is not intended to allow publically owned wetslips within a NRPA."

The Development Services Advisory Committee (DSAC) recommended that the language in subsection "G" in the amendment be replaced with the following language:

"The definition of shoreline for the purpose of the Manatee Protection Plan shall be the interface of land and water at mean high water, as established using standard survey techniques. All of the shoreline will be used for calculating the maximum allowable number of wetslips pursuant to the Manatee Protection Plan, except for shoreline within conservation easements where the conservation easement expressly and specifically excludes the use of the easement shoreline to calculate the amount of wetslips."

The Collier County Planning Commission (CCPC) recommended the following:

1. Drop the LDC amendment entirely since it would apply to very few projects within the County. The amendment was also based on a prior staff interpretation which was never codified.
2. Review the number of slips allowed, in accordance with the Manatee Protection Plan, on a case by case basis. The number of slips could then be evaluated during PUD or BD extension process, both of which are required to go through public hearings.
3. Staff will be required to review the County's Manatee Protection Plan in accordance with recommendations from the State. The Florida Manatee Management Plan approved in December 2007 requires the Florida Fish and Wildlife Conservation Commission to review all existing Manatee Protection Plans to assess whether revisions are needed.

FISCAL & OPERATIONAL IMPACTS: Staff will need to review the language of the conservation easement in order to determine if it includes or excludes the shoreline from calculating maximum allowable wet slips. Obtaining and evaluating the conservation easement for applicable language should take no more than one hour of staff time.

RELATED CODES OR REGULATIONS: None

GROWTH MANAGEMENT PLAN IMPACT: None. The County has incorporated the Manatee Protection Plan within Conservation and Coastal Management Policy 7.2.1 and Policy 7.2.3.

OTHER NOTES/VERSION DATE: Created April 14, 2010. Amended May 6, 2010, May 24, 2010

Amend the LDC as follows:

5.05.02 Marinas

- A. The following standards are for the purpose of manatee protection and are applicable to all multi-slip docking facilities with ten slips or more, and all marina facilities.
- B. Proposed developments will be reviewed for consistency with the Manatee Protection Plan ("MPP") adopted by the BCC and approved by the DEP. If the location of the proposed development is consistent with the MPP, then the developer will submit a "Manatee Awareness and Protection Plan," which shall address, but not be limited to, the following categories:
 - 1. Education and public awareness.
 - 2. Posting and maintaining manatee awareness signs.
 - 3. Information on the type and destination of boat traffic that will be generated from the facility.
 - 4. Monitoring and maintenance of water quality to comply with state standards.
 - 5. Marking of navigational channels, as may be required.
- C. A rating system is established to evaluate proposed marina facilities. The purpose of the marina site rating system is to help determine the maximum wet slip densities in order to improve existing Manatee protection. The marina site rating system gives a ranking based on three (3) criteria: water depth, native marine habitat, and manatee abundance. In evaluating a parcel for a potential boat facility, a minimum sphere of influence for the boat traffic must be designated. For the proposed marina facility, an on-water travel distance of five (5) miles is considered the sphere of influence.
 - 1. A preferred rating is given to a site that has or can legally create adequate water depth and access, will not impact native marine habitats, and will not impact a

high manatee use area (See Table 5.05.02(C)(5)).

2. A moderate ranking is given to a site where: there is a adequate water depth and access, no impact to a high manatee use area, but there is an impact to native marine habitat; there is adequate water depth, no impact to native marine habitat, but impacts a high manatee use area; and when the water depth is less than four (4) feet mean low water (MLW), no impact to native marine habitat, and no impact to a high manatee use area.
3. A protected ranking is given to a site where: there is adequate water depth and access, but there is an impact to native marine habitat and there is an impact to a high manatee use area; there is not adequate water depth, there is impact to or destruction of native marine habitat, and there is impact to a high manatee use area; there is not adequate water depth, no impact to marine habitat, but there is impact to a high manatee use area; or there is not adequate depth, there is impact to marine habitat, and no impact to a high manatee use area.
4. The exact areas will depend on site specific data gathered during the site development process reviews.
5. Table of Siting Criteria

	Water Depth (Measured at MLW)		Native Marine Habitat		Manatee Use	
	4 ft. or more	Less than 4 ft.	No Impact ¹	Impact	Not High	High
Preferred	X		X		X	
Moderate	X		X			X
Moderate	X			X	X	
Moderate		X	X		X	
Protected	X			X		X
Protected		X		X		X
Protected		X	X			X
Protected		X		X	X	

¹ For shoreline vegetation such as mangroves, "no impact" is defined as no greater than five (5) percent of the native marine habitat is disturbed. For sea grasses, "no impact" means than no more than 100 square feet of sea grasses can be impacted.

D. Allowable wet slip densities.

1. *Preferred sites.* New or expanded wet slip marinas and multi-family facilities shall be allowed at a **density** of up to eighteen (18) boat slips for every 100 feet of shoreline. Expansion of existing and construction of new dry storage facilities is allowed. Expansion of existing and construction of new boat ramps is allowed.
2. *Moderate development sites.* New or expanded wet slips and multi-family facilities shall be allowed at a **density** of up to ten (10) boat slips for every 100 feet of shoreline. Expansion of existing dry storage facilities is allowed. Construction of new dry storage facilities is prohibited. Expansion of existing boat ramps is allowed. Construction of new boat ramps is prohibited.

3. *Protected sites.* New or expanded wet slip marinas and multi-family facilities shall be allowed at a **density** of one (1) boat slip for every 100 feet of shoreline. Expansion of existing dry storage facilities or construction of new dry storage facilities is prohibited. Expansion of existing boat ramp or construction of new boat ramps is prohibited.

- E. If a potential boat facility site is ranked as moderate or protected because of its proximity to a high use manatee area, its ranking can be increased if slow speed zones are established that account for a significant portion of the expected travel route of the boats using the proposed facility. In that case, the manatee criteria in the three (3) way test (see Table 5.05.02(C)(5)) would not affect the outcome of the ranking. If such slow speed zones are not existing, the County may establish, with DEP approval, additional slow speed zones in order to mitigate the proposed additional boat traffic.

- F. Existing facilities and facilities which had state or federal permits prior to adoption of the MPP shall be exempt from these provisions, but will be subject to all other requirements of this Code.

- G. The definition of shoreline for the purpose of the Manatee Protection Plan shall be the interface of land and water at mean high water, as established using standard survey techniques. Shoreline within County required preserves or within State and Federal conservation easements which do not allow wetslips within their conservation easements shall not be used in calculating the maximum allowable number of wetslips pursuant to the Manatee Protection Plan, except that projects which make 50 percent or more of their wetslips available for public use may request additional boat slips as a Conditional Use. Any existing or vested right with respect to wetslips shall be exempted from this ordinance.

(Ord. No. 05-27, § 3.FF)