

Monroe County Marine Management Strategic Plan

Appendix 5

**No Net Loss Ordinance
Passed by Martin County**

December 2005

Prepared by:
South Florida Regional Planning Council
with

Center for Urban and Environmental Solutions at Florida Atlantic University



BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

| | | |
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| PLACEMENT: Public Hearings | PRESET: | |
| AGENDA ITEM DATES: | | |
| MEETING DATE:12/6/2005 COMPLETE BY:11/9/2005 | COUNTY ATTORNEY:11/14/2005 DCA AND ACA:11/21/2005 | |
| WORDING: | | |
| PUBLIC HEARING TO CONSIDER ADOPTION OF COMPREHENSIVE PLAN AMENDMENT CPA05-14, NO NET LOSS POLICY FOR COMMERCIAL WATERFRONT LANDS | | |
| REQUESTED BY: Nicki van Vonno, Growth Management Director | Growth Management: Nicki van Vonno Growth Management Director | PREPARED BY: David Quigley, Principal Planner |
| DOCUMENT(S) REQUIRING ACTION: Ordinance | | |
| QUASI-JUDICIAL: NO | | |

EXECUTIVE SUMMARY:

The purpose of this public hearing is to determine whether to adopt a text amendment to the Future Land Use Element of the Comprehensive Growth Management Plan to establish a no net loss policy for commercial waterfront lands.

BACKGROUND:

1. Since about 2002, the County has considered various options for ensuring that waterfront residential development does not displace necessary marine service uses such as marinas, boat repair and boat storage facilities. On March 8, 2005, after reviewing the recommendations of the Local Planning Agency from earlier workshops, the Board of County Commissioners (Board) initiated a text amendment to the Comprehensive Growth Management Plan (Plan) to adopt a no net loss policy for Commercial Waterfront lands.

2. Decisions approving or rejecting proposed Comprehensive Plan amendments constitute "legislative" actions because they involve the policy-making function of the Board. They are different from rezoning and site plan decisions, which are "quasi-judicial" actions involving the application of general rules of policy to specific situations.

If the approval of a Comprehensive Plan amendment is challenged, the approval will be sustained if it complies with Florida Statutes regarding (1) procedural requirements (e.g. proper notice, public hearing, sign up sheet at door), and (2) substantive requirements (e.g. adequate data and analysis, internal consistency, complies with Rule 9J-5, F.A.C.). Compliance with the substantive requirements must be "fairly debatable." The "fairly debatable" standard is a highly deferential standard and requires judicial approval of a Board approval if reasonable persons could differ as to whether the approval meets the substantive requirements. For example, if a petitioner were to claim that an amendment adopted a provision that was not consistent with an existing provision of the Comprehensive Plan, the court would strike down the amendment only if the court found that no reasonable person would think that the two provisions are consistent.

Challenges to a denial of a Comprehensive Plan amendment, have an even more difficult burden of the "fairly debatable" standard. Since the Comprehensive Plan is already in place, the County

does not have to meet the statutory procedural or substantive requirements in order to deny an amendment. Thus, challengers (such as Section 28) ordinarily seek a remedy based on constitutional claims or some other basis. Such claims are rare and such successful claims even rarer.

A sign-up sheet is provided at the entrance to the Commission Chambers for people who wish to be notified of Department of Community Affairs action.

ISSUES:

1. A complete review of the proposed amendment is provided in the attached staff report.
2. The Department of Community Affairs (DCA) provided no objections, recommendations or comments in reference to the proposed amendment.
3. On August 9, 2005, the Board agreed to transmit the proposed amendment to DCA but also directed staff to notify all owners of Commercial Waterfront lands. Staff mailed notices to the approximately 125 landowners on September 21, 2005. Staff received only about 10 inquiries and two additional written comments.
4. The Board also directed Staff to present the proposal to the Neighborhood Advisory Committees to obtain their input on the issue of whether the no net loss policy should be superior to the redevelopment overlay districts. The recommendations of the four CRA areas having Commercial Waterfront lands are provided in the attached staff report.
5. One of the issues uncovered by the NAC review is that the proposed no net loss policy would be somewhat more restrictive on vacant parcels that are included in the Marine Service Area solely because they are zoned WGC. For example, an existing boatyard could potentially be allowed to add residential units if such development could be accomplished while maintaining the same amount of Marine Services (e.g., boat storage spaces). However, a vacant parcel has no baseline of Marine Services and would have to either develop exclusively as non-residential or petition to be removed from the Marine Service Area. As currently proposed, there are eight parcels that would be included in the Marine Service Area solely because they are zoned WGC.
6. At the transmittal hearing, the Board directed Staff to design the no net loss policy to become effective immediately upon adoption of the plan amendment itself, as opposed to waiting for the adoption of a subsequent land development regulation ordinance, for example. However, in order to fully implement all aspects of the no net loss policy, Staff intends to follow up with an ordinance amending the Land Development Regulations as soon as possible after the effective date of the no net loss policy.
7. As part of this plan amendment, Staff is proposing to create and maintain a Marine Services Area Map. This would help keep the public informed as to the scope of the "no net loss policy" and also allow staff to track any changes made over time, such as may be accomplished through landowner petitions to be removed from the Marine Service Area. Although Staff is not proposing that this map be formally adopted, this map could be made available to the public in the same manner as the zoning atlas.

RECOMMENDED ACTION:

Recommendation

1. Adopt the ordinance provided in Attachment 1 of the staff report, creating a no net loss policy for Commercial Waterfront lands.

Alternative Recommendations

1. Adopt the no net loss policy but with specific changes as directed by the Board.
2. Do not adopt the proposed amendment.

FISCAL IMPACT:

Recommendation

No demonstrable fiscal impact.

Alternative Recommendations

1. Dependent upon Board direction.
2. None.

APPROVAL:

COUNTY ADMINISTRATOR
ASSISTANT COUNTY ADMINISTRATOR
COUNTY ATTORNEY

ATTACHMENT 1

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

ORDINANCE NUMBER ____

AN ORDINANCE AMENDING THE MARTIN COUNTY COMPREHENSIVE GROWTH MANAGEMENT PLAN PURSUANT TO FLORIDA STATUTES, CHAPTER 163; PROVIDING FOR ADOPTION OF A TEXT AMENDMENT; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, AND APPLICABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Section 163.3161, Florida Statutes, and Chapter 9J-5, Florida Administrative Code, require that each local government prepare and submit a comprehensive plan of the type set out in that Act; and

WHEREAS, the Board of County Commissioners caused a Comprehensive Growth Management Plan to be prepared for the areas of Martin County under its jurisdiction and adopted said Plan by Ordinance Number 373 on February 20, 1990; and

WHEREAS, the Comprehensive Growth Management Plan, Section 1-11, and Section 163.3187, Florida Statutes, permit amendments to the Comprehensive Growth Management Plan and provide for amendment procedures; and

WHEREAS, the Local Planning Agency of Martin County reviewed the proposed amendment to the Comprehensive Growth Management Plan at a public hearing; and

WHEREAS, the Board has considered the coordination and consistency of this amendment with the other elements of the Comprehensive Growth Management Plan; and

WHEREAS, on August 9, 2005 at a duly advertised public hearing this Board considered the proposed Comprehensive Plan amendment and approved such amendments for transmittal to the Florida Department of Community Affairs; and

WHEREAS, on December 6, 2005, at a duly advertised public hearing, this Board considered and addressed the Objections, Recommendations and Comments Report of the Florida Department of Community Affairs; and

WHEREAS, this Board has provided for full public participation in the comprehensive planning and amendment process and has considered and responded to public comments.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA, THAT:

PART I. COMPREHENSIVE GROWTH MANAGEMENT PLAN AMENDMENT #05-14, COMMERCIAL WATERFRONT “NO NET LOSS” POLICY.

Plan Amendment #05-14 is hereby adopted as follows:

Text amendment to Chapter 4, Future Land Use Element, of the Comprehensive Growth Management Plan, Martin County Code, as set forth in Exhibit “A”, attached hereto and incorporated by reference.

PART II. CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to unincorporated areas of Martin County, County ordinances and County resolutions or parts thereof, and other parts of the Martin County Comprehensive Growth Management Plan in conflict with this ordinance are hereby superceded by this ordinance to the extent of such conflict.

PART III. SEVERABILITY.

This ordinance is separate and distinct. If any Part of this Ordinance or any Plan Amendment is held to be inapplicable to any person, property or circumstance, such holding shall not affect its applicability to any other person, property, or circumstance.

PART IV. APPLICABILITY OF ORDINANCE.

This Ordinance shall be applicable throughout the unincorporated area of Martin County.

PART V. FILING WITH DEPARTMENT OF STATE.

The Clerk be and hereby is directed forthwith to send a certified copy of this ordinance to the Bureau of Administrative Code, Department of State, R.A. Gray Building, Room 101, 500 S. Bronough Street, Tallahassee, Florida, 323990250.

PART VI. CODIFICATION.

(appropriate language to be determined by Legal Dept.)

PART VII. EFFECTIVE DATE.

The effective date of the Parts of this Ordinance or Plan Amendment shall be the date a final order is issued by the Department of Community Affairs or Administration Commission finding the amendment in compliance in accordance with Section 163.3184, Florida Statutes, whichever occurs earlier. No development orders, development permits, development agreements or land uses dependent on a Part of this Ordinance or a Plan Amendment may be issued or commence before the Part or Plan Amendment has become effective.

DULY PASSED AND ADOPTED THIS __TH DAY OF _____, 2005.

ATTEST:

**BOARD OF COUNTY
COMMISSIONERS
MARTIN COUNTY, FLORIDA**

**BY: _____
MARSHA EWING, CLERK**

**BY: _____
LEE WEBERMAN, CHAIRMAN**

**APPROVED AS TO FORM
AND CORRECTNESS:**

**BY: _____
STEPHEN FRY,
COUNTY ATTORNEY**

EXHIBIT “A”

Amendment #05-14, Commercial Waterfront “No Net Loss” Policy
(*New language is underlined, deleted language is struck through*)

Section 4.4.M.1.f(4):

- (4) *Marine Waterfront Commercial.* The Land Use Map designates marine waterfront commercial areas which shall accommodate marine resort, marina and water related services along the more highly accessible waterfront sites with the potential to satisfy the unique location, market, and resource needs of the water dependent more intense marine service/industrial uses. Generally, waterfront commercial uses are either water dependent or water related. Specific zoning district regulations shall be drafted and adopted to regulate the nature of marine waterfront commercial operations, and to assist in maintaining the stability of adjacent and nearby residential areas through use restrictions, landscaping and screening, and nuisance abatement standards. The regulations shall also guard against environmentally adverse impacts to biologically active and environmentally sensitive habitats in a manner consistent with the coastal and natural resource protection performance standards of this plan. The Land Development Regulations shall provide for several marine waterfront commercial districts which accommodate the variety of waterfront commercial activities, including transient residential facilities, other marine resort oriented facilities such as restaurants and shops, as approved as a conditional use by the Planning and Zoning Board, and the more intense marine service uses which have their own unique locational criteria to assure compatibility with human and natural resources identified in section 8.4.A.5. of the Coastal Management Element. Marine Waterfront Commercial sites shall have a minimum net lot size of 10,000 square feet, with a residential density not exceeding 10 units per gross acre and a hotel/motel density not exceeding 20 units per gross acre. The intensity of lot use (FAR) shall be governed by the parking standards of the Land Development Regulations. Maximum building coverage is .50 [sic]. Minimum open space is 30 percent and the maximum height is 30 feet for parcels zoned for resort (water related) uses and 40 feet for parcels zoned for general (water dependent) uses.

Residential use shall be allowed in the Waterfront Commercial Land Use designation, as part of a mixed use project as allowed in Goal C within any of the seven CRAs designated in section 4.4.B.2.d., if the mixed use project is within an MUO. Residential densities shall be as provided for in sections 4.4.C.1.b. and 4.5.A. A mixed use project within an MUO located on a parcel designated Waterfront Commercial

(WC) on the Future Land Use Map in an MUO may satisfy its required nonresidential component with nonresidential Waterfront Commercial uses.

While Marine Waterfront Commercial areas allow for a variety of uses, Marine Service Areas shall not be developed or converted to permanent residential uses other than accessory dwelling units (e.g., watchman's quarters). Marine Service Areas shall be primarily used for marine service uses such as marinas and marine repair and storage facilities and shall specifically exclude permanent residential uses. At a minimum, the following shall be considered Marine Service Areas:

- (i) Parcels zoned Waterfront General Commercial (WGC), including areas zoned WGC after the effective date of this Marine Service Area provision, and
- (ii) Parcels or portions of parcels used as marinas or marine repair facilities, including all related boat storage and repair areas, but not including vacant areas or portions of the parcel devoted to uses other than marinas or marine repair.

This restriction on permanent residential use within Marine Service Areas shall take effect upon the effective date of this ordinance. However, Land Development Regulations shall also be adopted to allow landowners to petition for amendments to the Marine Service Area map under certain circumstances. At a minimum, the petition process shall provide for amendments to the map where the landowner can demonstrate one of the following:

- That land equally or more suitable for use as a Marine Service Area can be re-designated as such, so as to ensure that there is no net loss of the total Marine Service Area. To be considered a suitable replacement, the land must be located within the same "Marine Service Relocation Area" as shown in Figure 4-11.
- That the existing marine service uses on the site proposed for conversion to permanent residential uses can be replaced by developing similar marine service uses on the same parcel or on a different parcel not already designated as a Marine Service Area (including combinations of on-site and off-site improvements). Any off-site improvements must be located within the same "Marine Service Relocation Area" as shown in Figure 4-11.
- That a particular parcel of land within a Marine Service Area

cannot reasonably be developed or redeveloped for marine service uses due to changes in the surrounding area or government regulations related to marine service uses.

Where new Commercial Waterfront lands are created via amendments to the Future Land Use map, the Board of County Commissioners shall also determine whether such lands shall be designated as Marine Service Area. Lands that are changed from Commercial Waterfront to another Future Land Use designation shall automatically be removed from the Marine Service Area with no additional action required.

ATTACHMENT 3



**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY**

ORDINANCE NUMBER _____

AN ORDINANCE OF MARTIN COUNTY, FLORIDA, AMENDING THE FOLLOWING SECTIONS OF ARTICLE 3, ZONING DISTRICTS, OF THE LAND DEVELOPMENT REGULATIONS, MARTIN COUNTY CODE: SECTION 3.10, DISTRICT PURPOSES, SECTION 3.80, MARINAS, COMMERCIAL; AND ADOPTING SECTION 3.208.1, MARINE SERVICE AREAS; PROVIDING FOR APPLICABILITY; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (BCC) has adopted the Martin County Comprehensive Growth Management Plan within which are included goals, objectives, and policies related to the process for review and approval of certain development applications; and

WHEREAS, Chapter 163, Part II, Florida Statutes, requires the implementation of these goals, objectives and policies through the adoption of consistent land development regulations; and

WHEREAS, this proposed amendment to Article 3 of the Land Development Regulations, Martin County Code, has received public hearings before the Local Planning Agency and the Board of County Commissioners; and

WHEREAS, The Board of County Commissioners finds the proposed amendment consistent with the goals, objectives and policies of the Comprehensive Growth Management Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, MARTIN COUNTY, FLORIDA, THAT:

PART 1: ADOPTION OF COMMERCIAL WATERFRONT PROVISIONS.

Sec. 3.10. District purposes.

3.10.A. *Zoning district categories.* The zoning districts set forth in this Division are organized into categories in order to distinguish between those zoning districts which were in place prior to the adoption of the CGMP and those which were developed specifically to implement the CGMP. The Category "A" districts are specifically designed to implement the CGMP. The Category "B" and "C" districts were originally adopted by Resolution 05-09-67 and codified in Chapter 33 of the Martin County Code of Laws and Ordinances but have been incorporated into this Article to the extent possible considering the supremacy of the CGMP. Regardless of the origin, the zoning districts used in this Division are designed, or have been modified to be, consistent with the CGMP. Nevertheless, in the event of any conflict between the provisions of this Article and the CGMP, the CGMP shall prevail. The Category "B" and "C" districts shall only be applied to areas where a pattern of development had already been established prior to April 1, 1982 (the date of adoption of the first Comprehensive Plan). The provisions of the Category "C" districts are set forth in Division 7.

3.10.B. *District descriptions.* The Category "A" and Category "B" zoning districts are listed in the following table. For Category "A" districts, the District Purpose statements indicate the Future Land Use category that the zoning district is intended to implement and, where there is more than one zoning district to implement a particular Future Land Use category, may provide guidance as to which may be the most appropriate zoning district. All amendments to the Zoning Atlas involving Category "A" districts shall be consistent with these district purposes.

| CAT. | ZONING DISTRICT | DISTRICT PURPOSE |
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| A | AG-20A (General Agricultural District) | The AG-20A district is intended to implement the policies of the CGMP for lands designated Agricultural on the Future Land Use Map of the CGMP. |
| A | AR-5A (Agricultural Ranchette District) | The AR-5A district is intended to implement the policies of the CGMP for lands designated Agricultural Ranchette on the Future Land Use Map of the CGMP. |
| A | AR-10A (Agricultural Ranchette District) | The AR-10A district is intended to implement the policies of the CGMP for lands designated Agricultural Ranchette on the Future Land Use Map of the CGMP. This district is appropriate for areas where the land has not been subdivided into parcels smaller than ten acres. |
| A | RE-2A (Rural Estate District) | The RE-2A district is intended to implement the policies of the CGMP for lands designated Rural Density on the Future Land Use Map of the CGMP. |
| A | RE-1A (Residential Estate District) | The RE-1A district is intended to implement the policies of the CGMP for lands designated Estate Density - up to one unit per acre on the Future Land Use Map of the CGMP. |
| A | RE- 1/2A (Residential Estate District) | The RE- 1/2A district is intended to implement the policies of the CGMP for lands designated Estate Density - up to two units per acre on the Future Land Use Map of the CGMP. |
| A | RS-3 (Low Density Residential District) | The RS-3 district is intended to implement the policies of the CGMP for lands designated Low Density on the Future Land Use Map of the CGMP. |

(For information only – not intended to be adopted with plan amendment.)

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| A | RS-4 (Low Density Residential District) | The RS-4 district is intended to implement the policies of the CGMP for lands designated Low Density on the Future Land Use Map of the CGMP. |
| A | RS-5 (Low Density Residential District) | The RS-5 district is intended to implement the policies of the CGMP for lands designated Low Density on the Future Land Use Map of the CGMP. |
| A | RS-6 (Medium Density Residential District) | The RS-6 district is intended to implement the policies of the CGMP for lands designated Medium Density on the Future Land Use Map of the CGMP. |
| A | RS-8 (Medium Density Residential District) | The RS-8 district is intended to implement the policies of the CGMP for lands designated Medium Density on the Future Land Use Map of the CGMP. |
| A | RS-10 (High Density Residential District) | The RS-10 district is intended to implement the policies of the CGMP for lands designated High Density on the Future Land Use Map of the CGMP. |
| A | RM-3 (Low Density Residential District) | The RM-3 district is intended to implement the policies of the CGMP for lands designated Low Density on the Future Land Use Map of the CGMP. |
| A | RM-4 (Low Density Residential District) | The RM-4 district is intended to implement the policies of the CGMP for lands designated Low Density on the Future Land Use Map of the CGMP. |
| A | RM-5 (Low Density Residential District) | The RM-5 district is intended to implement the policies of the CGMP for lands designated Low Density on the Future Land Use Map of the CGMP. |
| A | RM-6 (Medium Density Residential District) | The RM-6 district is intended to implement the policies of the CGMP for lands designated Medium Density on the Future Land Use Map of the CGMP. |
| A | RM-8 (Medium Density Residential District) | The RM-8 district is intended to implement the policies of the CGMP for lands designated Medium Density on the Future Land Use Map of the CGMP. |
| A | RM-10 (High Density Residential District) | The RM-10 district is intended to implement the policies of the CGMP for lands designated High Density on the Future Land Use Map of the CGMP. |
| A | MH-P (Mobile Home Park District) | The MH-P district is intended to implement the policies of the CGMP for lands designated Mobile Home Density on the Future Land Use Map of the CGMP. The MH-P district is generally intended for mobile home and other types of single-family dwellings where the land is under common ownership (i.e., operated as a rental park, cooperative or condominium). This district is primarily assigned to mobile home condominiums, cooperatives or rental parks existing prior to February 20, 1990. New mobile home subdivisions or expansions of existing mobile home parks are encouraged to develop pursuant to the provisions for Planned Unit Developments. |
| A | MH-S (Mobile Home Subdivision District) | The MH-S district is intended to implement the CGMP policies for lands designated Mobile Home Density on the Future Land Use Map of the CGMP. This district is primarily assigned to mobile home subdivisions existing prior to February 20, 1990. New mobile home subdivisions or expansions of existing mobile home developments are encouraged to develop pursuant to the provisions for Planned Unit Developments. |
| A | COR-1 (Commercial Office/Residential District) | The COR-1 district is intended to implement the CGMP policies for lands designated Commercial/Office Residential on the Future Land Use Map of the CGMP. This district is generally used as a transition zone between more intense commercial areas and residential areas, particularly in areas that were originally developed as residential but where a gradual conversion to transitional, nonresidential and mixed uses is warranted. |

(For information only – not intended to be adopted with plan amendment.)

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| A | COR-2 (Commercial Office/Residential District) | The COR-2 district is intended to implement the CGMP policies for lands designated Commercial/Office Residential on the Future Land Use Map of the CGMP. This district is generally used as a transition zone between more intense commercial areas and residential areas. |
| A | LC (Limited Commercial District) | The LC district is intended to implement the CGMP policies for lands designated Commercial Limited on the Future Land Use Map of the CGMP. |
| A | CC (Community Commercial District) | The CC district is intended to implement the CGMP policies for lands designated Commercial General on the Future Land Use Map of the CGMP. This district is designed to minimize the potential for negative impacts on surrounding properties. |
| A | GC (General Commercial District) | The GC district is intended to implement the CGMP policies for lands designated Commercial General on the Future Land Use Map of the CGMP. |
| A | WRC (Waterfront Resort Commercial District) | The WRC district is intended to implement CGMP policies for lands designated Commercial Waterfront on the Future Land Use Map of the CGMP. See Section 3.208.1, Marine Service Areas. |
| A | WGC (Waterfront General Commercial District) | The WGC district is intended to implement CGMP policies for lands designated Commercial Waterfront on the Future Land Use Map of the CGMP. This district is similar to the WRC district but is intended to accommodate more intensive water dependent and water related uses. See Section 3.208.1, Marine Service Areas. |
| A | LI-1 (Limited Industrial District) | The LI-1 district is intended to implement CGMP policies for lands designated Industrial on the Future Land Use Map of the CGMP. The site development standards of this district are designed to create a "campus-like" development pattern with substantial open space and landscaping. |
| A | LI (Limited Industrial District) | The LI district is intended to implement CGMP policies for lands designated Industrial on the Future Land Use Map of the CGMP. This district is designed to minimize the potential for negative impacts on surrounding properties. |
| A | GI (General Industrial District) | The GI district is intended to implement CGMP policies for lands designated Industrial on the Future Land Use Map of the CGMP. |
| A | HI (Heavy Industrial District) | The HI district is intended to implement CGMP policies for lands designated Industrial on the Future Land Use Map of the CGMP. |
| A | PR (Public Recreation District) | The PR district is intended to implement the CGMP policies for lands designated Institutional-Recreational on the Future Land Use Map of the CGMP. |
| A | PC (Public Conservation District) | The PC district is intended to implement the CGMP policies for lands designated for Institutional-Public Conservation Areas on the Future Land Use Map of the CGMP. |
| A | PS-1 (Public Service District) | The PS-1 district is intended to implement the CGMP policies for lands designated Institutional-General on the Future Land Use Map of the CGMP. This district is designed to minimize the potential for negative impacts on surrounding properties. |
| A | PS-2 (Public Service District) | The PS-2 district is intended to implement the CGMP policies for lands designated Institutional-General on the Future Land Use Map of the CGMP. |

(For information only – not intended to be adopted with plan amendment.)

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| A | PAF (Public Airport Facilities District) | The PAF district is intended to implement the CGMP policies for lands designated Institutional-General on the Future Land Use Map of the CGMP, specifically those policies of the CGMP related to the publicly owned airport facilities of Witham Field Airport. |
| B | HR-1 (Single-family Residential District) | Not Applicable. |
| B | HR-1A (Single-family Residential District) | Not Applicable. |
| B | R-1 (Single-family Residential District) | Not Applicable. |
| B | R-1A (Single-family Residential District) | Not Applicable. |
| B | R-1B (Single-family Residential District) | Not Applicable. |
| B | R-1C (Single-family Residential District) | Not Applicable. |
| B | R-2 (Single-family Residential District) | Not Applicable. |
| B | R-2B (Single-family Residential District) | Not Applicable. |
| B | R2-C (Single-family Residential District) | Not Applicable. |
| B | R-2T (Single-family Residential District) | Not Applicable. |
| B | RT (Mobile Home Subdivision District) | Not Applicable. |
| B | TP (Mobile Home Park District) | Not Applicable. |
| B | E (Estates and Suburban Homes District) | Not Applicable. |
| B | E-1 (Estates and Suburban Homes District) | Not Applicable. |
| B | WE-1 (Waterfront Estates District) | Not Applicable. |

Sec. 3.80. Marina, commercial.

3.80.A. For marina activities requiring permits from state or federal agencies, copies of such permits shall be submitted to the County prior to the issuance of any development permit. Any conditions contained within such state or federal permits shall be considered conditions of any Martin County development order.

3.80.B. Marinas shall provide sanitary pump out facilities if such are not available within one mile of the site.

3.80.C. No building or mechanical device associated with a commercial or industrial use, other than a fence, shall be located within 100 feet of any residential district. This provision shall not apply to any marina which was lawfully established prior to the effective date of this ordinance.

3.80.D. Fuel dispensers shall be located at least 250 feet from any RE, RS, RM, MH, residential PUD or CATEGORY "B zoning district. This provision shall not apply to any marina which was lawfully established prior to the effective date of this ordinance.

3.80.E. In the WRC district:

1. No repair other than emergency repairs of watercraft or marine accessories shall be permitted.
2. The off-loading or processing of commercial seafood products shall be prohibited.

(For information only – not intended to be adopted with plan amendment.)

3.80.F. In the WGC districts:

1. Major maintenance and repair activities, such as but not limited to the pressure washing, sanding, scraping and painting of boat hulls and major boat engine repair, shall be conducted only within an area enclosed by an opaque fence or wall at least six feet in height.

3.80.G. Conversion of commercial marinas and other marine service uses to permanent residential uses shall be subject to compliance with Section 3.208.1, Marine Service Areas.

Sec. 3.208.1. Marine Service Areas.

3.208.1.A. Identification and tracking of Marine Service Areas. Marine Service Area are those areas most ideally suited to providing marina and marine repair and storage facilities. It is necessary to identify and map these areas to ensure that the total amount of land devoted to marine service uses is not reduced over time. A map of the Marine Service Areas shall be maintained by the Growth Management Department and shall be available to the public in the same manner as the zoning atlas. At a minimum, the following shall be designated as Marine Service Areas except as otherwise provided in subsection C, below:

1. Parcels zoned Waterfront General Commercial (WGC), including areas zoned WGC after the effective date of this Marine Service Area provision, and
2. Parcels or portions of parcels used as marinas or marine repair facilities, including all related boat storage and repair areas, but not including vacant areas or portions of the parcel devoted to uses other than marinas or marine repair.

3.208.1.B. Limitations on permanent residential uses. Lands designated as Marine Service Areas shall not be developed or converted to permanent residential uses other than accessory dwelling units.

3.208.1.C. Petition for removal from a Marine Service Area. Any landowner may file a petition to be removed from a Marine Service Area. Such petitions shall be processed in the same manner as amendments to the zoning atlas, with the final decision on such action being taken by the Board of County Commissioners by resolution.

3.208.1.D. Amendments to Marine Service Areas.

1. The Board of County Commissioners may approve a landowner's petition to remove a parcel from a Marine Service Area only where the landowner can demonstrate one of the following:
 - a. That land equally or more suitable for use as a Marine Service Area can be redesignated as such, so as to ensure that there is no loss of the total Marine Service Area on a County-wide basis. The landowner shall be required to provide such legal agreements as may be necessary to ensure that the owner of the new (replacement) Marine Service Area will not contest any County-sponsored action

(For information only – not intended to be adopted with plan amendment.)

to redesignate the land as Marine Commercial Waterfront on the Future Land Use Map or related amendments to the Zoning Atlas.

- b. That the existing marine service uses on the site proposed for conversion to permanent residential uses can be replaced by developing similar marine service uses on the same parcel or on a different parcel not already designated as a Marine Service Area (including combinations of on-site and off-site improvements). For example, if the owner of an existing marina desires to convert an outdoor boat storage area to permanent residential use, and the existing storage area is capable of storing 1,000 feet of boat length, the owner must demonstrate that the 1,000 feet of boat storage capacity can be replaced through the development of elevated storage racks and/or the development of boat storage space on another site that is not already designated as Marine Service Area. Amendments to the Marine Service Area made pursuant to this paragraph (2) shall only be done in conjunction with a PUD zoning agreement demonstrating compliance with this paragraph (2).
 - c. That a particular parcel of land within a Marine Service Area cannot reasonably be developed or redeveloped for marine service uses due to changes in the surrounding area or government regulations related to marine service uses.
2. Where new Commercial Waterfront lands are created via amendments to the Future Land Use map, the Board of County Commissioners shall also determine whether such lands shall be designated as Marine Service Area. Lands that are changed from Commercial Waterfront to another Future Land Use designation shall automatically be removed from the Marine Service Area with no additional action required.

(For information only – not intended to be adopted with plan amendment.)

PART 2: APPLICABILITY OF ORDINANCE.

This Ordinance shall be applicable throughout the unincorporated area of Martin County.

PART 3: CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to unincorporated areas of Martin County, Martin County ordinances, County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict except for ordinances concerning either adoption or amendment of the Comprehensive Plan, pursuant to Chapter 163, Part II, Florida Statutes, or land development regulations relating specifically to community redevelopment areas established pursuant to Chapter 163, Part III, Florida Statutes.

PART 4: SEVERABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void by a court of competent jurisdiction, such holding shall not affect the remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstances.

PART 5: FILING WITH THE DEPARTMENT OF STATE.

The clerk shall be and is hereby directed forthwith to send a certified copy of this ordinance to the Bureau Of Administrative Code, Department of State, R.A. Gray Bldg., Room 101, 500 S. Bronough Street, Tallahassee, FL 32399-0250.

PART 6: CODIFICATION.

Provisions of this ordinance shall be incorporated into the Martin County Land Development Regulations, except that parts 2 through 7 shall not be codified. The word "ordinance" may be changed to "article," "section," or other word, and the sections of this ordinance may be renumbered or re-lettered.

PART 7: EFFECTIVE DATE.

This ordinance shall take effect upon filing with the Office of Secretary of State.

(For information only – not intended to be adopted with plan amendment.)

PASSED AND DULY ADOPTED THIS _____ DAY OF _____, 2005.

ATTEST:

BOARD OF COUNTY COMMISSIONERS,
MARTIN COUNTY, FLORIDA

MARSHA EWING, CLERK

LEE WEBERMAN
CHAIRMAN

APPROVED AS TO FORM AND
CORRECTNESS:

STEPHEN FRY
COUNTY ATTORNEY

BCC MEETING DATE: December 6, 2005
AGENDA ITEM: 6G

**MARTIN COUNTY, FLORIDA
SUPPLEMENTAL MEMORANDUM**

TO: Honorable Members of the Board of County Commissioners
DATE: December 1, 2005

VIA: Duncan Ballantyne
County Administrator

FROM: Nicki van Vonno
Growth Management Director

REF:

SUBJECT: PUBLIC HEARING TO CONSIDER ADOPTION OF
COMPREHENSIVE PLAN AMENDMENT CPA05-14, NO NET LOSS
POLICY FOR COMMERCIAL WATERFRONT LANDS

Although a summary of the information was provided in the agenda item, the attached staff report was inadvertently omitted from the agenda packet.

Reviewed by Stephen Fry, County Attorney

MARTIN COUNTY COMPREHENSIVE PLAN
AMENDMENT REVIEW

REQUEST NUMBER: #05-14
Commercial Waterfront, “no net loss”

MEMO #: gmp06d.002

APPLICANT:
Martin County Board of County Commissioners

PLANNER-IN-CHARGE:
David Quigley, Principal Planner

DATE: December 1, 2005

| | ORIGINAL MEETING DATE | REVISION DATE |
|----------------------------|----------------------------------|----------------------|
| LPA MEETING: | July 21, 2005 | _____ |
| BCC TRANSMITTAL: | August 09, 2005 | _____ |
| TRANSMITTAL TO FDCA: | August 19, 2005 | _____ |
| ADOPTION HEARING: | December 6, 2005 | December 1, 2005 |
| FINAL TRANSMITTAL TO FDCA: | _____ | _____ |

REQUEST: Create a “no net loss” policy for Commercial Waterfront lands to ensure that residential development does not displace necessary marine service uses such as marinas, boat repair and storage facilities.

STAFF RECOMMENDATION: Adopt the proposed text amendment to the Future Land Use Element as provided in [Attachment “1” of this report](#).

LPA RECOMMENDATION:

On July 21, 2005, the LPA voted 2 to 1 to approve Staff’s recommendation on the proposed text amendment with the following modifications or additions.

1. The Marine Service Area map should be checked for accuracy and revised as necessary.
2. The special exception for additional height for boat storage buildings should apply to new development as well as redevelopment. [*The boat storage height provision was later rejected by the Board*]
3. The no net loss policy should apply within the CRA areas and should supersede CRA overlay regulations to the extent of any conflict.
4. Staff should examine the zoning and CRA overlay regulations and seek to eliminate other provisions that may unduly inhibit the development or redevelopment of marine service areas.

The LPA unanimously passed a second motion to recommend that the Board consider adopting a new commercial waterfront zoning district (one that allows commercial waterfront uses but

COMPREHENSIVE PLAN AMENDMENT REVIEW: CPA #05-14, COMM. WATERFRONT

not residential) and strategically rezoning those lands that are either already used for marine service uses or which are most ideally suited to such use. This would involve an ordinance to create the new zoning category as well as formal rezoning actions. The rezoning actions would presumably involve the 207 acres of commercial waterfront that is currently identified as Marine Service Area or roughly half of the Commercial Waterfront lands.

DEPARTMENT OF COMMUNITY AFFAIRS REVIEW

The Objections, Recommendations and Comments report was issued by the Department of Community Affairs on October 25, 2005 but provided no comments of any kind with regard to the proposed amendment.

BACKGROUND

Since about 2002, the County has considered various options for ensuring that waterfront residential development does not displace necessary marine service uses such as marinas, boat repair and storage facilities. On March 8, 2005, after reviewing the recommendations of the Local Planning Agency from earlier workshops and reviewing a list of policy options, the Board of County Commissioners (Board) initiated a text amendment to the Comprehensive Growth Management Plan (Plan) to adopt a text amendment based on language offered by the Treasure Coast Marine Industries Association, along with additional direction to staff to consider several identified issues.

To control the volume of this report, Staff has not included background documents that have already been submitted to the Board at the transmittal hearing. The following documents are available upon request to the Growth Management Department.

- Local Planning Agency minutes.
- March 8, 2005 staff report, showing the list of policy options considered.
- Meeting notes from an August 25, 2004 informal workshop in which local marina owners and marine industries representatives were invited to participate.
- Executive Summary of the Marine Master Plan, which includes recommendations on this same topic with regard to the Broward County area.
- Florida Senate Report on the “working waterfronts” issue, including legislative recommendations.
- Public comment submitted through August 9, 2005 (the date of the Board’s transmittal hearing).

ISSUES

1. Initiation of the amendment. On March 8, 2005, the Board directed staff to consider the following issues (*staff comments on each issue are provided in bold/italics*).

a. The effects on Community Redevelopment Overlay Districts;

Option 4.1 provided that lands already zoned Waterfront General Commercial (WGC) and lands actually used for marine service uses, such as marinas and boat yards, should not be developed for permanent residential use. However, the Community Redevelopment Area (CRA) overlay zoning regulations that have been adopted over the past few years did not attempt to institute such restrictions on Commercial Waterfront lands. In most of the adopted overlay regulations, Commercial Waterfront lands are typically allowed (but not required) to develop residential or a mix of uses. The existing CRA overlay zoning districts are shown on the Marine Service Area maps. The CRA areas affected are Jensen Beach, Rio, Port Salerno and Indiantown.

Given that more than one-third of the existing marina/boatyards are within CRA overlay areas, Staff recommends that CRA overlay areas be subject to the "no net loss" policy unless specifically excluded by way of the petition process proposed in Section 3.208.1 of the proposed ordinance.¹

Staff reviewed the proposed amendment with each of the affected Neighborhood Advisory Committees (NAC) with the following results:

- | | |
|---------------|--|
| Indiantown: | Discussed but elected to take no action. |
| Jensen Beach: | Discussed but elected to take no action. |
| Port Salerno: | Passed a motion against applying the no net loss policy to the Port Salerno CRA. In particular, the NAC cited the strong desire for mixed use waterfront development and a preference for an incentive-based approach to preservation of Marine Service Areas. |
| Rio: | Passed a motion in favor of the no net loss policy (even if it is superior to the Rio redevelopment overlay districts) but with some concerns about building heights, buffers, and strength of the boat storage units, design regulations and public access. |

- b. The effects on development applications that may be in progress at the time of the adoption of the "no net loss" policy;

At the August 9, 2005 transmittal hearing, the Board directed Staff to design the policy take effect upon the effective date of the plan amendment itself. Staff has amended the proposal to carry this out.² As of the date of this report, there are no applications pending for conversion of any of the proposed Marine Service Areas to permanent residential use.

- c. The minimum size of parcels that should be restricted by the "no net loss" policy;

While the need to make provisions for small parcels was often discussed during the early review of this commercial waterfront issue, the parcels affected by the use of Option 4.1 are either already used for marine service uses or tend to be larger in size. Considering this, and the waiver provision discussed in paragraph "e", below, Staff does not believe that a waiver provision for small lots is necessary.

¹ In order to ensure that it is clear that the "no net loss" policy is superior to the CRA overlay regulations, Staff recommends that the overlay regulations for Jensen Beach, Rio, Port Salerno and Indiantown be amended after the proposed plan amendment becomes effective.

² The original proposal was designed to take effect upon the adoption of new Land Development Regulations.

- d. The possibility of using the capacity of marine services, such as boat storage capacity, as the mechanism for determining whether a proposed residential development would result in a "net loss" of commercial waterfront land.

Staff has incorporated this principle into the proposed amendment.

- e. Provisions for ensuring that the "no net loss" policy does not place undue limitations on the use of any particular parcel of land, such as where government regulations or changes in the surrounding area have made it unreasonable to expect it to be developed for water-dependent or water-related uses.

Staff has incorporated this principle into the proposed amendment.

- 2. **Boat Facilities Siting Plan (BFSP).** While the proposed plan amendment provides for alternative compliance, e.g., allowing the closing of a marina if similar facilities are developed elsewhere, it should be understood that the BFSP, which was adopted on March 5, 2002 and is now incorporated into the Coastal Element of the Comprehensive Plan, restricts the location and expansion of new boating facilities. For purposes of regulating new boating facilities, the BFSP distinguishes the following waterfront areas:

| | |
|--------------------------|---|
| Preferred locations: | Mostly limited to the Manatee Pocket and the Downtown Stuart area on both sides of the river. |
| Conditional locations: | Areas, not identified as "Preferred" locations but which have existing commercial waterfront land uses and proper zoning. |
| Non-preferred locations: | All other waterfront locations not previously covered by the other designations. |

The BFSP limits the conversion of "non-preferred" locations to other classifications, and thus could significantly limit the ability to use the alternative compliance mechanisms identified in the proposed "no net loss" policy.

- 3. Consistency with the existing Comprehensive Plan Policies.** The proposed "no net loss" plan amendment policy would be consistent with the existing policies of the Future Land Use, Coastal Management and all other elements of the Plan.

Section 4.2 provides data and analysis in support of the Future Land Use Element. Note that the discussion of "coastal area land uses" refers to all coastal areas of the County, not just Commercial Waterfront areas, and outlines the need to establish priorities among the various, competing needs for coastal lands. Section 4.4 sets forth the specific regulatory policies that govern the uses allowed within the Commercial Waterfront areas. While permanent residential will continue to be an allowable use within Commercial Waterfront areas, the proposed amendment is simply a "course correction", designed to ensure that necessary commercial waterfront uses are not displaced by permanent residential uses.

The Coastal Management Element includes numerous policies related to marina and other marine-related development which place a high emphasis on environmental protection wherever new facilities are constructed. These coastal management policies, together with the Boat Facilities Siting Plan discussed in item 2 above, illustrate the importance of retaining the existing marine service uses in their existing locations to the maximum extent practicable. At the same time, the petition process proposed along with this amendment would ensure that no one landowner is forced to continue a marine service use if it ceases to be viable at that location.

- 4. Marine Service Area Map.** As part of this plan amendment, Staff is proposing to create and maintain a Marine Services Area Map in order to identify those Commercial Waterfront areas already zoned WGC and those parcels or portions of parcels currently used for marine services uses (marinas and boatyards). This would help keep the public informed as to the scope of the "no net loss policy" and also allow staff to track any changes made over time, such as may be accomplished through landowner petitions to be removed from the Marine Service Area. Although Staff is not proposing that this map be formally adopted, this map could be made available to the public in the same manner as the zoning atlas.

The draft Marine Service Area map, provided in [Attachment 2 of this report](#), shows all Commercial Waterfront lands and identifies Marine Service Areas as defined in the proposed plan amendment. Staff relied upon Property Appraiser's data to initially identify marina parcels but then adjusted the boundaries as necessary to exclude those portions that are not actually used for marina or boatyards. The current map shows that, out of the total of 435.6 acres of Commercial Waterfront land, 207.9 acres would be considered Marine Service Area and thus be protected from residential development.

**During the review of this proposal, some members of the public have questioned the accuracy of the map (without providing specific details). Staff believes that the map is accurate.*

- 5. Draft ordinance to amend the Land Development Regulations.** A draft ordinance to amend Article 3 of the Zoning Regulations is provided in [Attachment 3 of this report](#). Staff is not recommending that the zoning ordinance be adopted at this time but rather that the adoption of the ordinance be coordinated with the effective date of the plan amendment. The draft zoning ordinance is provided here only because it helps to illustrate some of the implementation issues involved with the proposed plan amendment.
- 6. Notice to Commercial Waterfront landowners.** On August 9, 2005, the Board directed staff to notify all owners of Commercial Waterfront lands. Staff mailed the notices on September 21, 2005 to approximately 125 separate owners. Staff received about 10 inquiries regarding the notice but only two additional written comments. Most of the inquiries were simply requests for clarification or additional information.
- 7. Public comments.** Public comments submitted to the Growth Management Department on this item since August 9, 2005 (the date of the transmittal hearing) are provided in [Attachment 4 of this report](#).
- 8. WGC parcels without established marine service uses.** One of the issues uncovered by the NAC review is that the proposed no net loss policy would be somewhat more restrictive on vacant parcels that are included in the Marine Service Area simply because they are zoned WGC. For example, an existing boatyard could potentially be allowed to add residential units if such development could be accomplished while maintaining the same amount of Marine Services (e.g., boat storage spaces). However, a vacant parcel zoned WGC has no baseline of Marine Services and would have to either develop exclusively as non-residential or petition to be removed from the Marine Service Area entirely. As currently proposed, there are eight parcels that would be included in the Marine Service Area solely because they are zoned WGC, two of which are within the Port Salerno redevelopment overlay.

PROPOSED AMENDMENT

A proposed amendment to the Future Land Use Element of the Plan is provided in [Attachment 1 of this report](#).