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**MARINE USE  
REGULATORY STUDY**

**FOR**

**CHARLOTTE COUNTY, FLORIDA**

by

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and  
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# BACKGROUND

Florida has the fastest growing coastal population of the Lower 48 (1). This population, between 1960 and 1991, grew by 169 percent. Charlotte County is a microcosm of such population growth and coastal settlement. Eighty percent (88,951) of its inhabitants reside along the shores of Charlotte Harbor, the Peace and Myakka rivers, Lemon Bay, and Gasparilla Sound. This coastal population includes about 50,000 mostly single-family homes in Port Charlotte (north of the Peace River and west to the Myakka River), City of Punta Gorda, Gulf Cove (west shore of Charlotte Harbor), Englewood and Cape Haze (2). The 1995 county population is 130,397. With a projected annual average rate of change of + 4,263 persons, the Charlotte population will be 198,600 in 2010 and 243,800 in 2020 (3).<sup>1</sup>

The County's area covers 451,000 acres: 95% is either vacant (47%), in agricultural uses (30%), or in conservation uses (18%); about 2% is developed for residential use (4). There are over 300,000 platted lots and 90% are located in the western coastal portion. Two-thirds of the existing population resides in single-family housing. There are over 24,000 undeveloped acres between the Peace and Myakka rivers. Under the prevailing pattern of development – low-density, single-family homes – about 24,000 new dwellings could be built, housing over 51,000 people. With the highest allowable density of residential single-family development – 5 units/acre – over 120,000 units could be built, housing 258,000 persons, the projected population growth for the planning period. There are another 34,000 vacant platted lots in the Cape Haze area, west of the Myakka River. Development of these lots could help sustain projected growth.

The major planning issue facing Charlotte County is how to balance population growth and coastal development with conservation and management of estuarine resources. The County is committed to achieve sustainable development as embodied in its Comprehensive Plan (CCCP)(6). Such development planning – to be consistent with state-mandated requirements – should give priority to water-dependent and water-related activities in designating future land uses along shorelines (7). Charlotte County must plan wisely for future marine use. The Future Land Use (FLUE) and Coastal Management (CME) elements of the plan set out a number of objectives and policies to guide community leaders in achieving this goal. This Marine Land and Water Use Siting Study provide specific guidelines for achieving this goal.

Charlotte County must consider the impacts of growth on both the natural and the built environments, particularly public services, and either plan to maintain acceptable service levels or set growth limits in order to maintain acceptable quality of life standards. Land development regulation is a comprehensive, public policy planning tool that has been used to limit future land use activities that, left unregulated, might otherwise adversely affect the community's health, safety and welfare. Zoning, another

tool, has been used almost entirely to limit impacts on individual building sites, typically uplands, through devices such as minimum setback requirements , height restrictions on structures, parking, landscaping, and lighting, as well as by specifying acceptable types of uses within zoning districts. There has been little use of zoning, however, to regulate over-the-water uses.

Since most county residents live or will reside near the coast, barrier islands, bays and rivers, it is anticipated there will be increased on-the-water recreation and added pressure for marine recreational facilities. Increased use intensifies competition which adds pressure for public regulation to prevent conflicts among competing users, to insure privacy and to protect scarce resources and sensitive habitats.

The CCCP/CME proposes to address the regulation of these water-related uses. The following objectives and policies are illustrative:

- (1) Objective 6 addresses establishment of criteria or standards for determining, within appropriately designated shoreline areas, priorities for water-dependent and water-related uses.

Policy 6.1 states:

In accordance with the State mandate to give priority to water dependent and water related uses along the shoreline, local government shall complete, by 1990, a "Marine Land and Water Use Siting Study" that identifies potential marine zones. Upon completion of the study, the Future Land Use Plan will be amended to include marine uses areas, and these areas will be identified on the Future Land Use Map. The zoning regulations also will be amended to provide for a "marine use" zoning classification.

Policy 6.2 defines the "Marine Land and Water Use Siting Study" to prioritize allowable uses in the marine use areas, including:

- 1) public use marinas;
- 2) other water-oriented recreation;
- 3) commercial fishing;
- 4) water-dependent industries or utilities;
- 5) water-related uses; and
- 6) high density residential with marinas and other water uses.

Policy 6.3 states:

The designation of marine use areas shall recognize existing and maintainable navigation access as a scarce and high priority component of providing for water access and for water dependent businesses and industries. Local government shall, therefore, capitalize upon water access opportunities by seeking to provide

land side infrastructure and zoning supportive of marine use areas in these locations.

Policy 6.4 states:

The designation of marine use areas along natural shoreline where non-private, water dependent uses do not presently exist, shall reflect the potential for FDEP/USACOE permits and FDEP leases.

- (2) Objective 7 calls for an increase in public access to shoreline and coastal waters of the County and Punta Gorda in proportion to population growth.

Policy 7.2 states:

Local government shall provide sufficient areas to accommodate the projected need for water-dependent and water-related uses by designating marine zones, as described under Objective 6.

- (3) Objective 12 establishes appropriate service standards for beach and public boat ramp access, and marina wet and dry storage capacity.

Policy 12.2 provides standards which have been converted to approximate county requirements (Table 1):

Table 1. Facility Capacity Requirements for Boating Use (8)

FACILITY	PER CAPITA DEMAND	REQUIREMENT
Beach access	7 parking spaces/1,000 persons	913 spaces
Boat ramp access	1 ramp/2,000 county registered boats	8-9 ramps
Parking for vehicles with boat trailers	10 spaces/1,000 county registered boats	173 spaces
Wet and dry storage	170 spaces/1,000 county registered boats	2,929 slips and spaces
Fishing pier	45 linear feet/1,000 residents	5,868 linear feet
Access parking at piers	2 spaces/1,000 residents	261 spaces

The "Marine Land and Water Use Siting Study" is intended to identify and prioritize activities allowable in marine use areas. Such uses include public use marinas, other water-oriented recreation, commercial fishing, water-dependent industries or utilities, water-related uses, high density residential development with associated water-oriented accessory activities.

## OBJECTIVES

The global objectives of this Marine Use Regulatory Study are: (1) identify regulatory policies that affect development and use of the county's marine resources; and (2) assess current regulatory limits to permitting water-dependent and water-related uses in Charlotte County.

There are 5 specific objectives: (1) collect and review cartographic materials characterizing county marine resources; (2) identify and examine public policies that affect coastal use; (3) review and analyze the CCCP and land development regulations used to permit water-dependent and water-related use; (4) map key regulatory boundaries directly related to future permitting of expanded water-dependent and water-related use; and (5) recommend specific over-the-water zoning policies.

## ENVIRONMENTAL LAND USE LAW AND COASTAL DEVELOPMENT

Though environmental conservation history can be traced to the creation of public parks in the late 19th century, federal protection for natural resources began, in earnest, in the 1960s, and resulted from post WWII population growth with its impacts on our rivers, forests, wetlands, beaches and indigenous animal life. Public concern with technologically-driven resource depletion prompted Congress, state and local governments to enact legislation to protect the environment. The legislation, however, also limited development and restricted private property rights. Key challenges to land use regulation have focused on the Fifth and Fourteenth Amendments and constitutional prohibition against "taking" private property rights without compensation (1). Conflicts between land development and environmental preservation are complicated by the uncertainty of defining a "taking." This recently has become a national political issue as Congress reconsiders the proliferation of several decades of environmental legislation and the problems of fragmented land use regulations at federal, state and local levels.

Zoning history, until the 1960s, was virtually a local instrument for land use control (2,3). However, beginning in the 1970s, this authority began to be reallocated from local governments to regional and state agencies. Expansion of the state role in land use regulation, through review of local decisions in "critical areas" and for major developments (i.e., developments of regional impact), led to planned unit development, open space zoning, and transfer of development rights concepts in planning (4). The 1970s environmental movement created a public awareness of the need to regulate in order to protect the environment. The public perception was that property was a



resource, not a commodity, that should be conserved not exploited. State controls were sought to fulfill this need. Recent court decisions show a shift towards less prescriptive federal interpretations and more delegation to state and local authority (5).<sup>1</sup>

### **Coastal Management and Private Property Rights**

When a state zones to protect and conserve its coastal areas, it regulates growth and restricts development. Since 1979, there has been limited assurance that such taking is constitutional, though there has been no set formula for determining the economic injury caused by governmental action so long as property still could earn a reasonable return (7). More recent Supreme Court rulings on takings claims make it easier to demonstrate when the property owner's "right to develop" has been infringed upon.<sup>2</sup> The issue is the extent of deprivation that constitutes a taking. Recent rulings appear to protect property rights at the expense of preserving environmental resources. Today, the right of the public's access is less likely to withstand a taking challenge (1). Other property rights issues are: 1- 5th and 14th Constitutional Amendment rights that require government interest to withstand compelling tests in order to invoke the nuisance exception to the takings clause; and 2- whether only the regulated part, or the whole property, should be considered in determining whether all economically feasible use has been extinguished by government regulation (1).

The three strategies used in Courts of Claims and Courts of Appeals, to determine whether a partial taking requires compensation, are: 1- the property owner will seek to prove a complete taking under "Lucas" (9), but the success of this claim will depend upon the court's characterization of the whole parcel and the public rights that are to be protected; 2- the "Florida Rock" case (10) will be used to measure the reduction in value; and 3- if a complete taking occurs, the "Lucas" (10) nuisance exception approach will be used. Most court decisions, currently, are based on the "whole" parcel, i.e., either the parcel directly affected by government regulation, or the property dimensions at the time of purchase. Other unresolved issues are the concepts of nuisance and reasonable investment-backed expectations (1).

The most effective preservation method, if not by outright acquisition, is by land use controls. Local authorities, and to a lesser extent state governments, historically, have enacted and enforced such regulations, especially to protect sensitive inland ecosystems, such as wetlands, from development impacts. Effective control sometimes requires complete prohibition of development. This becomes a takings issue that puts environmental preservation legislation in conflict with private property rights.

### **Challenge to Land Development Regulations in Florida**

Congress has taken the position that environmental protection is better left to state legislatures which are closer to the pulse of the electorate. Ten states, including

Florida, have passed property rights legislation which require taxpayers to compensate private property owners when environmental restrictions reduce the property's fair market value. The Florida Legislature, after 3 years of debate, passed such legislation (11). The Harris Bill, while it does weaken growth management, particularly in the areas of concurrency and environmental protection, does recognize that regulatory control is necessary, that government has the "right" to control development in the public interest, but also that government has the "responsibility" to do so in a "balanced" manner.

There are two important provisions in this legislation: 1- protection of existing uses of property, of vested rights to a specific use of property, and of foreseeable, non-speculative, future uses of property<sup>3</sup>; and 2- creation of a mediation process, as an alternative to civil suit, to seek relief from government decisions which reduce private property value.<sup>4</sup>

Any action by a state, regional or local government, taken on or after May 11, 1995, which has the effect of granting, denying or putting conditions on a development permit, is subject to the Special Master hearing.<sup>5</sup> Landowners, furthermore, must be offered mediation or some other dispute resolution option, to contest denials on their applications for amendments to comprehensive plans.

Special Master judgements are not enforceable. However, an agency can offer to change permit requirements, exchange or buy land, relocate development of the site, transfer development rights, grant variances or special exceptions, or seek other steps to remedy the situation.

There must be judicial interpretation of the Act's "inordinate burden" provisions before the legislation's impact is assessed. Governments will have to formulate new ordinances based upon the "inordinate burden" standard. Ultimately, it may cause communities to become more cooperative in the development process. The vesting issue of reasonable expectations of development approval, based upon substantial investment already made, will require the inclusion of vested rights determination procedures within local comprehensive plans. Once mediation provides a reasonable solution, developers will be vested to complete their projects.

## COASTAL REGULATORY POLICIES AND PROGRAMS

Several federal and state regulatory programs are intended to protect Florida's coastal waters, shoreline and adjacent uplands. This section describes these federal and state policies and programs.

## Federal

### Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), enacted by Congress in 1972 and amended in 1980 and 1990, provides federal revenues to states, to preserve, protect, develop, and restore or enhance, coastal resources consistent with federal standards.<sup>1</sup> CZMA is administered by National Oceanic and Atmospheric Administration (NOAA). State coastal management programs can be funded under CZMA-authorized grants.<sup>2</sup>

Participating states with approved management programs, such as Florida, are empowered to review federal activities within and adjacent to the states' coastal zone and to determine whether a proposed federal project or activity complies with the requirements of the respective state. A CZMA amendment in 1990 created the Coastal Zone Enhancement Grant Program to protect wetlands, eliminate development in high hazard areas, increase public access to coastal areas (for recreational, historical, aesthetic, ecological, or cultural values), reduce debris, develop procedures to contain impacts of coastal development, prepare and implement special management plans for important coastal areas, plan the use of ocean resources, and adopt enforceable regulations on siting of coastal energy and government facilities.<sup>3</sup> The 1990 amendments also created the National Estuarine Reserve Research System which encourages the establishment of sanctuaries within a state coastal management plan, which are open to the public for low intensity recreation and interpretative ecological activities.<sup>4</sup> Charlotte Harbor is a designated national estuarine reserve.

### Protection of Coastal Barriers

The Coastal Barrier Resources Act (CBRA) of 1982, administered by the U.S. Department of Interior, provides coordination of federal fiscal policy with environmental preservation, and effectively ends federal funding for barrier island development. CBRA recognizes that federal revenues have unwittingly financed prior development in this hazardous coastal zone (at great risk to natural disasters), and underscores the importance of barrier islands as natural obstacles to the damage, by wind and storm surge, of mainland shores. The Coastal Barrier Improvement Act (CBIA) of 1990 establishes a basis for federal funding or assistance to coastal barriers for flood insurance coverage as well as maintenance of highways, bridges and existing navigable waterways.<sup>5</sup>

### National Flood Insurance Program

Charlotte County participates in the National Flood Insurance Program administered by the Federal Emergency Management Agency (FEMA). This includes adoption of floodplain management measures. Flood insurance rate maps (FIRMS) provide the

basis for identifying both special hazard-prone areas and risk premium areas, the latter being certified for federally subsidized flood insurance.<sup>6</sup> FIRMS set standards for complying with the National Flood Insurance Program.

## State

### Florida Coastal Management Act

The state's Coastal Management Act (FCMA), amended in 1985, restricts infrastructure development on coastal barrier islands which were not accessible by bridges or causeways before October 1, 1985.<sup>7</sup> It provides for planning, at the local level through a coastal zone management element (7), to protect human life, but restricts development which would damage or destroy coastal resources, and limits public investment in areas subject to natural disasters.<sup>8</sup> Under changes, beginning in November 1995 – in the state's process of monitoring local progress in achieving comprehensive planning goals and objectives – local authorities are required to assess the location of development in relation to its compatibility with safety and evacuation policies in the local plan's coastal zone management element (8). This planning element designates discrete "coastal planning areas", which in Charlotte County includes Bocilla Island and Port Charlotte Beach State Recreation Area. The state issues an annual status report on efforts to comply with the FCMA which promote consistency between state and local policies (9).

### Florida Coastal Management Program

The Florida Coastal Management Program (FCMP) coordinates and integrates federal, state, regional and local coastal zone management projects and programs (10).<sup>9</sup> Federal funds from NOAA require that coordination with local comprehensive plans governing coastal areas be demonstrated.<sup>10</sup> The Florida Department of Community Affairs (DCA) is the state agency responsible for FCMP. DCA coordinates 15 agencies which have statutory interest in FCMP as well as the regional planning councils and the local governments impacted by the program.

Coordination is a two-way process: between DCA and local governments, and between DCA and the federal agencies. DCA notifies local governments, such as Charlotte County, when any FCMP decision may conflict with local zoning authority. The notification includes requests for local written comments, including recommendations or alternative actions, on a proposed FCMP decision during a 30-day comment period. The state administrative review, for consistency of both the state and local management program regulations, includes all development projects, special exceptions, and variances. DCA advises a federal agency whether its proposed activity is consistent with the FCMP. Proposed federal projects, that are inconsistent with state or local regulations, must be stopped.<sup>11</sup>

### Water Management Districts

Florida's Water Resources Act, adopted in 1972, created five water management districts and charged them with providing an adequate water supply to serve future needs. District plans include water supply assessment, determination of minimum flows and levels of lakes and streams, flood protection, management of water control structures, and maintenance of water quality and natural habitats. The Surface Water Improvement and Management (SWIM) Act (1987) and implementation plan is illustrative of WMD programs designed to improve quality of surface waters.<sup>12</sup> Charlotte Harbor was designated a priority water on the Southwest Florida Water Management District's SWIM list and a SWIM plan has been adopted for the region. One SWIM task, which has special relevance for this marine Land and water siting study, concerns residential canals and their environmental impacts on surrounding waterbodies. WMD programs, such as SWIM, provide local governments with baseline information to evaluate proposed projects and to recommend comprehensive plan amendments.<sup>13</sup>

### Regional Planning Councils

The state legislature created 11 regional planning councils, giving each responsibility to conduct certain state planning activities. These agencies provide information and technical assistance, such as with grant applications for coastal management projects, to local governments. Results of their efforts are the basis for coordinated, multi-jurisdictional strategic plans for managing regional coastal resources.

### Land Use and Water Planning Task Force

The Land Use and Water Planning Task Force (ELMS), created in 1993 by the state legislature, has considered the land use - water planning linkage to growth management and identified intergovernmental coordination as a key to successful resource management. The committee noted that the local comprehensive planning process provides an opportunity for effective integration of land and water planning. However, there is no formal link between the decisions of the water agencies (DEP and the water management districts) and local government comprehensive planning (13).

### Classes of Waters of the State

Florida waters have been classified as: 1- potable water (receives the most stringent regulation); 2- approved for shellfish harvest; 3- regulated for recreation and the propagation and maintenance of healthy, well-balanced fish and wildlife populations; 4- for agricultural uses; and 5- for navigation, utilities and industrial uses. Classes 1-3 share standards protecting recreation, fishing, and wildlife, along with the associated habitats.<sup>14</sup> Charlotte County water bodies are classified as 1, 2 and 3 waters.<sup>15</sup>

## Outstanding Florida Waters

The federal Clean Water Act provides for the identification of Outstanding National Resources Waters (ONRW), which at the state level have been designated Outstanding Florida Waters (OFW) by the Environmental Regulation Commission.<sup>16</sup> No state permits may be issued for either direct or indirect discharges which would degrade water quality. Dredging and filling for water-access and marine facilities would be scrutinized to determine the public interest before permitting was allowed.

## Aquatic Preserves

Three of the state's 33 aquatic preserves are located in Charlotte County.<sup>17</sup> The aquatic preserve designation identifies exceptional state sovereign submerged lands, and their associated water bodies and other lands acquired for recreation uses, which have unusual habitats. Preserves are maintained in a natural state for the propagation of fish and wildlife and for public recreation uses. Use of these submerged lands requires permission from the Board of Trustees of the Internal Improvement Fund.

The DEP is responsible for maintaining the quality of the waters and habitat in the aquatic preserves, and reviews permits for activities and facilities within its borders. Any use must be in the public interest and demonstrate social, environmental, and economic benefits which clearly exceed all economic, social and environmental costs. Aquatic preserves promote conservation-oriented use, and permission may be authorized, on a case-by-case basis, for structures necessary to perform water-dependent activities that must have access to sovereign lands and waters because the activity requires it (e.g., recreation, transportation) and where the use of state land or water is an integral part of the activity.<sup>18</sup> In determining the *public good test* for a proposed activity within an aquatic preserve, the requirement is to show that the activity *is in the public interest* (as opposed to the public interest). The impacts of a proposed activity can be considered both from its impacts as well as from the cumulative impacts of all other such activities on the preserves' resources. The more pristine the preserve, the more difficult it is to demonstrate that the environmental costs of development can be outweighed by the public benefits for water access. When management plans exist, such as for Lemon Bay and Charlotte Harbor, however, careful consideration is given to local planned population growth and resulting expanded recreation demands.

Aquatic preserves may be classified, by habitat quality, into the following Resource Protection Areas (RPA): 1- highest quality<sup>19</sup>; 2- transition zones, where habitats and wildlife are either declining or pioneering; and 3- areas which have no significant natural resource attributes. RPAs are similar to land use categories and take into account upland future land use to guide future activities within the preserves.<sup>20</sup> Use standards vary by RPA class, from most stringent (Class 1) to least stringent (Class 3).

For example, most of Lemon Bay Aquatic Preserve (except for the Cape Haze Basin and its immediate uplands) is designated RPA-1. Dock and access channels, in this area, generally are allowed for private, single or multi-family residences.

Restrictions also apply on the area of the sovereign submerged land that can be preempted for a dock. A conservation easement must be placed on the riparian shoreline used to calculate the proportion (10:1) to conserve and protect the habitat from further encroachments. Similar restrictions apply to commercial docks. A lease is required and is dependent upon a locally adopted plan and/or policies that address such facilities.

Marinas cannot be sited in state-designated manatee sanctuaries. Though none of the aquatic preserves in Charlotte County are so designated, manatees do inhabit preserve waters, and are found along the western side of Charlotte Harbor from the southern tip of Cape Haze to the Myakka River, and along the eastern side of the Harbor from the southern border of Charlotte County to Punta Gorda and up the Peace River (15).

As a policy, DEP considers the siting of new facilities less preferable to expanding existing facilities when expansion would otherwise be consistent with federal, state and local regulations.

#### Lemon Bay Aquatic Preserve Management Plan

This plan (16) contains a conservation element which prohibits construction of new non-water dependent structures in order to control loss of habitat and minimize water pollution. It also includes other policies which recognize that water-dependent recreational uses, such as boat ramps, slips and boating services, are beneficial to the public.<sup>21</sup> Nine management areas are identified, 7 of which are in Charlotte County. Manatee sightings, depending upon frequency, restrict activities within these areas.

The Lemon Bay Aquatic Preserve has 3 boat ramps, at Placida, Lemon Bay and El Jobean Park, with parking for 80 vehicles, and 20 marinas with 1,368 wet and dry slips (16). Within the larger region, there are 11 marinas and 5 public boat ramps. The marinas are located in Englewood, Placida, Grove City, Punta Gorda Beach, and in Sarasota County. Three more boat ramps and 55 parking spaces and 2,420 boat slips will be needed through the planning period (17).

#### Charlotte Harbor Aquatic Preserve Management Plan

This plan is older than the Lemon Bay plan and predates the county comprehensive plan (18). The preserve includes Cape Haze, Gasparilla Sound-Charlotte Harbor, Matlacha Pass and Pine Island Sound. The siting of marinas and their related uses was of major importance in the plan.<sup>22</sup>

# COMPREHENSIVE PLANS

## State

The State Comprehensive Plan provides long-range policies for the orderly social, economic and physical growth of Florida (1). Specific policies direct physical resource management in coastal areas.<sup>1</sup>

## County - City

The Charlotte County - City of Punta Gorda Comprehensive Plan, through the goals, objectives and policies in its Future Land Use, Coastal Management, Recreation and Open Space, and the Conservation and Natural Groundwater Aquifer Recharge elements, provides direction for water-dependent and water-related development (2). The County must adopt and enforce local land development regulations that are consistent with these planning elements.

## Future Land Use

The Future Land Use Element (FLUE) includes objectives and policies to ensure adequate access by the population, of existing urban land and future changes in land use, for development and redevelopment. The Urban Service Area (USA) designation provides for a primary population concentration in the western half of Charlotte County, and a secondary USA along the southeastern shore of the harbor, north of the county line.<sup>2</sup> These areas will be the focus of all intensive residential, commercial and industrial development, and will have the full range of urban services, by the year 2010. In-fill development is encouraged by allowing transfer of development rights and use of flexible zoning strategies, such as planned unit development, mixed use zoning and redevelopment. The FLUE directs intensive land development activities into the USA and away from non-urban service areas. Barrier island development is restricted by prohibiting settlement densities or use intensities that exceed existing zoning.

The FLUE encourages *appropriately located* industrial development by stressing that such development be compatible with economic resources and surrounding land uses, and protective of environmentally sensitive lands. Provisions are made to restrict uses that stress resources, by providing for Special Surface Water Protection Districts (which require appropriate development standards), and requiring that all development be subject to and consistent with the Charlotte Harbor Surface Water Improvement and Management Plan. Environmentally sensitive lands can only be used for Limited Development, Preservation and Agriculture/Conservation.<sup>3</sup> A Conservation Overlay is to include standards for the review of development and redevelopment applications within Conservation Areas, to minimize impacts on natural resources.<sup>4</sup>



The FLUE encourages the effective use of innovation in land development regulations. Included are planned developments and other mixed development concepts, that allow flexibility and efficiency in site design, to reduce infrastructure costs, minimize impact on natural systems, and promote convenience in the location of related uses and amenities, thereby reducing travel costs. The following examples are illustrative.

A Planned Development optional land use overlay designation is allowed in any future land use without amendment to the Future Land Use map (except in Agriculture FLU). The land development regulations include standards to demonstrate unity of control and management, compatibility with planned and existing development in the vicinity of the proposed Planned Development, preservation of natural features by flexible setback and parking requirements, landscaping, access control, provision of open space, and demonstrated consistency with adopted levels of service standards.

The FLUE allows density or intensity bonuses in the underlying zoning district standards up to the limits imposed by the future land use designation. Awards of density or intensity beyond these limits require a future land use amendment. Additional bonuses can be specified for particular features of significant public benefit. Transfer of development rights are to be considered, with Planned Developments considered as receiving sites for additional intensity or density. Finally, impact fee credits are to be available for non-site-related public improvements, including recreational facilities.

### Coastal Management

The Coastal Management Element (CME) calls for determining standards for propriety of shoreline uses, with priority given to water-dependent and water-related uses within appropriately designated areas. CME calls for specific policies to increase public access to shoreline and coastal waters in proportion to population growth. It recommends establishing appropriate levels of service standards for beach access, public boat ramps, marine and dry storage, and non-boating fishing access.<sup>5</sup> It identifies the need for this "Marine Land and Water Use Siting Study," and states the intention that local government plan for sufficient areas to accommodate the projected need for water-dependent and water-related uses by designating marine use zones.

### Conservation and Groundwater Aquifer Recharge

This comprehensive plan element, amended in 1990, provides for the adoption and implementation of land development regulations which delimit the Special Surface Water Protection Overlay district on the Future Land Use Map.<sup>6</sup>

## Recreation and Open Space

The purpose of the Recreation and Open Space Element (ROSE) is to plan for a comprehensive system of recreational facilities and open spaces to the year 2010. ROSE contains survey results of existing recreational facilities in the county and city which include: 11 public boat ramps (9 county, 2 city), 9 public fishing piers (8 county, 1 city). Most facilities (e.g., condominiums, golf and country clubs, campgrounds, RV parks) are privately owned, particularly those dedicated to boating activities (boat clubs, yacht clubs, marinas), including 95% of the boat slips.

There were 229.1 acres of developed parks in 1988. A county goal is to develop and maintain an accessible park and recreation system that will provide leisure opportunities to all persons, both resident and visitor. The County estimated, at the time the Comprehensive Plan was adopted, a need for an additional 243.5 acres of developed park land in the unincorporated area, in order to provide 2.07 acres per 1,000 persons for unincorporated Charlotte County and 5.0 acres per 1,000 for Punta Gorda.

Investment in capital facilities should be directed toward correcting deficiencies where they exist, through the Capital Improvements Element and the 5-Year Improvements Plan, as well as through land development regulations. Specific funding sources are not identified beyond impact fees and state or federally funded land acquisitions.

ROSE requires that new park lands be suitable for recreation and open space uses. It specifies that the county and city include, within their land development regulations, criteria (e.g., environmental impact, accessibility, cost) for evaluating site suitability for parks, recreation, and open spaces. It encourages, through impact fees, that developers of subdivisions, developments of regional impact, and planned unit developments, maintain a park as part of their development. Land development regulations are to provide procedures for assuring the long-term use as a park within these developments. Adequate on-site parking, pedestrian and bicycle access, and adjacent location to collector and arterial roads, are other stipulations.

In 1995, Charlotte County retained the services of a consulting firm, Wallace, Roberts and Todd, to develop a parks master plan. Upon completion in early 1996, the Plan will implement many of the ROSE above-referenced requirements, including establishment of needs-oriented levels-of-service for recreational facilities.

# PERMITS

## Federal

The Rivers and Harbors Act (1899, amended in 1968) historically gives the U.S. Army Corps of Engineers (COE) jurisdiction over inland navigable waters (1).<sup>1</sup> The Water Pollution Control Act (amended in 1972) expands COE regulatory authority (2). Such permitting authority, in addition to maintaining navigable waterways, now includes protection of fish and wildlife resources, pollution control, conservation, aesthetics, and general ecology. EPA has jurisdiction over state surface waters under the authority of the Clean Water Act (3).

### Corps of Engineers

A COE permit is required before any activity obstructs a navigable waterway or alters the "course, location, condition, or capacity" of any navigable waters (5). Dredge-and-fill permitting requires public interest reviews of applications. There are two types of COE permits: Section 404(e) "general" permits, for activities having minimal adverse environmental effects, separately and cumulatively, which are limited to a 5-year project life span<sup>2</sup>; and Section 10 permits, for dredging, filling, excavating-type projects on navigable waters, which may have a larger environmental impact. The U.S. Fish and Wildlife Service (FWS) coordinates with the COE on permit evaluations by commenting on anticipated impacts on endangered species, migratory birds and other animals and related habitats. The FWS prepares environmental impact statements for the COE projects in Florida waters.<sup>3</sup>

### Environmental Protection Agency

An EPA permit is required for all discharges by point source of dredged or fill material into navigable waters. Both the COE and EPA have broad authority over navigable waters, but exemptions to their regulations include: discharges from normal farming; maintenance and reconstruction of breakwaters, dams, irrigation and drainage ditches; temporary roads and temporary construction sediment basins; and state-approved non-point source management activities.

## State

Every coastal state regulates tidal wetlands. Florida controls use of tidal and freshwater wetlands by permitting through comprehensive planning (4), the regulatory authority of the water management districts (5), Critical Areas legislation (6), and legislation providing for water quality protection (7). The permitting process is through the DEP and water management districts (SWFWMD in the case of Charlotte County).

## Department of Environmental Protection Jurisdiction

DEP permits may be divided into two types, based on location of the proposed coastal construction, *either seaward or landward of the MHWL*. These include: sovereignty submerged lands (SSL) and shore areas to the Coastal Construction Control Line (CCCL), respectively.<sup>4</sup>

### Water Area (Sovereignty Submerged Lands)

Florida, upon achieving statehood, acquired sovereignty to tidal lands, islands, land seaward of the MHWL, and beneath navigable freshwater or tidally-influenced waters. The state maintains title in trust for the people of Florida. The governor and cabinet, acting as the Board of Trustees of the Internal Improvement Trust Fund (IITF), have been designated as the trustees for all SSL. Part of the trustees' responsibility is to exert ownership authority over these lands and their uses to insure that the lands and associated aquatic resources are conserved for future generations. DEP functions as staff to the IITF and review proposals, by private or public entities, for use of these SSLs. DEP has proprietary responsibility to determine whether a consent of use<sup>5</sup>, lease<sup>6</sup>, or easement<sup>7</sup> can be allowed, for such use.

The consent of use permit over SSL provides waterfront property owners with reasonable access to waterways and estuaries (for water-dependent recreational uses and their structures), while the state conserves the natural environment, ensuring that private uses do not preempt other, public interests and the continued public use of the same waters (11,12). Activities on SSL are limited to water-dependent uses unless there is no reasonable alternative and adequate mitigation is proposed.<sup>8</sup>

DEP regulations, imposed on development and use of SSL, vary based on location outside or within aquatic preserve jurisdictions. The following general rules prevail outside aquatic preserves:

1. Boat ramps open to the public are allowed where a navigation channel already exists and where ramp construction is contained (< 30 ft width, < 25 yd<sup>3</sup> removed material, no water pollution, spoil removed to upland site).
2. No permit is required, outside aquatic preserves, for Dredge-and-fill associated with installation of private docks < 500' long (or <1,000 ft<sup>2</sup> area) over landward extent of state waters.
3. Private, single dock standards differ depending upon location inside or outside the preserves.<sup>9</sup>
4. Private, multi (2)-slip dock facility is eligible for a consent of use permit.
5. Multi (>2)-slip dock facility requires a lease agreement.<sup>10</sup> DEP standards for multi (>2)-slip docking facilities, associated with residential upland developments, are found in Appendix 3.
6. Commercial docking facilities, larger than 15 slips, and all marinas, require a site plan.<sup>11</sup>

7. Dock width cannot exceed 25% of the waterway width.<sup>12</sup>

The standard annual lease fee is 7% of the rental value of the wet slip rental area, or a base fee, whichever is higher. An initial surcharge is levied for owner-oriented facilities with 10 or more wet slips: this is 3X the value of a 1-year lease, but a 30% discount is available where such facilities are open to the public on a first-come-first-serve basis.

Several types of dock regulations are administered completely by local codes or by a combination of local and state statutes. They include riparian setbacks, maintenance of unobstructed shoreline, boat shelters, parking, and accessory uses.

There are exceptions and waivers for docking facility permit standards. Where there is insufficient area to comply with the setbacks and where reasonable use of the adjacent waterway for the construction of the docking facility would be prevented, the local building and zoning official may grant a permit to build 1 non-commercial, single-family or single establishment docking facility, at the minimum length necessary to provide boat access to the waterway. Such a waiver can be appealed to the Board of County Commissioners (BCC) within 30 days of the award or denial of permit.

A single permit application can be made for docking facilities of  $\leq 50$  slips, a preempted area of  $\leq 50,000^2$  ft, or  $\leq 5$  acre private easements (14). Mangrove protection has been delegated, in some part, to local permitting except for certain standards applicable state-wide which authorize any property owner to hire professionals to alter mangroves.

#### Shore Area (from MHWL to CCCL)

The intent of the legislation has changed over the years from prohibiting construction to regulating construction between MHWL and the CCCL (defined as the limit of storm surge and storm waves), in order to protect beach and dune ecosystems (15).<sup>13</sup> CCCL establishes permit limits, seaward of this line, for construction, excavation, removal of beach material, and vehicular use, unless such activities are in the public interest. DEP considers proposed construction relative to historical beach erosion and shoreline migration patterns and other factors, especially where all property uses may be denied.

The CCCL is established on a county-by-county basis and surveys are recorded in the office of the County Clerk of the Circuit Court. Projects, located within the MHWL-CCCL zone, must receive construction permits.<sup>14</sup> A DEP permit is required prior to initiation of any work or activity, between MHWL and CCCL, which is likely to have a material, physical effect on existing coastal conditions or natural shore or inlet processes.<sup>15</sup> Although DEP may determine that a project requires a permit, the department will not contravene county or municipal requirements, zoning, or building codes, which are equal to, or more strict than, DEP rules.<sup>16</sup>

Permit exemptions include: structures intended for shore protection (17); structures located on vegetated, non-sandy shores, not subject to tidal erosion; alteration, repair and maintenance to an existing structure (within the limits of an existing foundation); grand fathered structures (existing, or under construction, prior to CCCL establishment in Charlotte County, January, 1985).

### Environmental Resource Permits

DEP is responsible for the statewide regulation of surface water management systems, including wetland resources, stormwater drainage and water quality, through the Environmental Resource Permit (ERP) program. The department shares this regulatory authority and implementation with the water management districts (WMD).<sup>17</sup>

A property owner may request a determination by DEP or WMD-permitting staff to understand the rules regarding activities which affect surface waters of the state.<sup>18</sup> The ERP includes general permits (either noticed general or standard general) for activities with minimal adverse impacts on water resources, and conceptual and individual permits (for construction, operation, and formal determinations of wetland boundaries), issued by DEP or the WMD Governing Board.<sup>19</sup>

#### General Permits

General environmental resource permits are limited to activities which have been determined to minimally impact (on an individual or cumulative basis) water resources. There are two types: "no notice" or "noticed general" permit, where no mitigation is required, and "standard general" permit, where noticed general standards are exceeded but where more stringent measures (individual permit) are not warranted.

#### *No Noticed Permit*

Application is submitted at least 30 days before the activity is commenced. If DEP (or WMD) determines that the project qualifies for a noticed general permit, the project is authorized and work can begin.<sup>20</sup> The permit authorizes the construction, operation, maintenance, alteration, abandonment, or removal of certain surface water systems after notice is approved by state.<sup>21</sup> Approved activities must meet stipulated criteria and cannot violate water quality standards.<sup>22</sup> Best management practices must be used to prevent erosion, turbidity and pollution. Following submittal of the ERP for noticed activities, DEP provides review copies to COE and the Florida Game and Fresh Water Fish Commission (GFWFC). No noticed (noticed general) permits include:

*Boat Ramps and Accessory Docks Permitting.* Construction, alteration and maintenance of a boat ramp, and the associated accessory docks, is authorized under the noticed general ERP,<sup>23</sup> but must meet stipulated standards.<sup>24</sup>

*Piers and Associated Structures Permitting.* The general permit for certain piers and associated structures is authorized, but is limited to 1 pier per parcel.<sup>25</sup>

*Minor Activities.* These include: construction of piling-support structures < 1,000<sup>2</sup> ft over wetlands or other surface waters<sup>26</sup>; dredge and fill to <100<sup>2</sup> ft; ≤4,000<sup>2</sup> ft of impervious surface subject to vehicular traffic (i.e., parking lot) and ≤9,000<sup>2</sup> ft of all impervious surface in uplands; and maintenance dredging ≤50<sup>3</sup> yds. Assurances must be provided that navigation will not be significantly affected, that state water quality standards will not be violated, and that the structure is not located in or over a submerged grass bed community.

### *Standard General Permit*

This permit type is required where a proposed activity exceeds noticed general ERP standards, but where the issuance of a more limiting (individual) permit is not demanded. Standard general project are small-scale endeavors: <10 acres in size, < 2 acres of impervious surface on site, will require <100<sup>2</sup> ft of dredge and fill impacting wetlands. These permits also may be issued for 10-100 acre size projects, but any construction in or on wetlands must be contained to ≤ 1 acre and to ≤ 9 boat slips.<sup>27</sup> The standard general ERP requires that a portion of the permit application be sent to the Florida Division of Historic Resources (DHR), COE and GFWFC.<sup>28</sup>

### *Conceptual and Individual Permits*

These permits are required for activities that exceed general ERP conditions. The conceptual permit, a type of individual ERP, is valid to 2 years. It approves only the concept of a phased development master plan; it binds DEP or WMD and the permittee to conditions set forth in the permit. However, the conceptual ERP does not authorize any construction, operation or maintenance of a surface water management system. An individual ERP, which is valid for 5 years, does authorize operations and maintenance activities.

A property owner may seek a formal determination of the landward extent of wetlands or other surface waters. This may include a certified survey, an approximate delineation, or some combination. A noticed general ERP, however, must be obtained before any construction occurs which exceeds state standards (19).

### Department of Environmental Protection Review

ERP permit applications are filed with the local district office.<sup>29</sup> The size and type of activity determines where the permit review occurs; some are reviewed by the DEP district office and others are referred to the Division of Environmental Resource Permitting. If the application will require mitigation, if the proposed activity involves review by COE, or crosses district boundaries, if it is a proposed expansion to a permitted use previously approved by the division, then, the application is reviewed at the state DEP level. If the application involves activities located in, on, or over,

wetlands or other surface waters, DEP will provide copies to COE, GFWFC, State Division of Historical Resources (SDHR), DEP Office of Protected Species (where potential impact is determined), and to DEP Division of State Lands (when state-owned lands are involved).<sup>30</sup> Appendix 4 lists activities subject to district (4A) and division (4B) reviews.

### Water Management District

The WMD evaluates and permits stormwater management systems, major water consumption users, and certain dredge and fill activities. The permitting process protects waterbodies and their watersheds from excessive water withdrawals, excessive impacts of improper dredge and fill activities, and inadequately treated stormwater produced by new development. Charlotte County is divided between SWFWMD and SFWMD, with the entire coastal area within the jurisdiction of SWFWMD.<sup>31</sup>

General water use permits, dredge and fill activities, dewatering, oil drilling, mining, public water supplies, agricultural irrigation water use, landscaping, nursery and golf course irrigation, industrial water use, water well construction, etc., all projects with potentially significant impacts on wetlands and other surface waters, require the filing of a notice of intent with the WMD before commencing work. Notice of intent describes the proposed project and includes documentation to demonstrate qualification for the requested general permit. Standard general environmental resource permits can be issued for certain surface water management systems determined to be not harmful to water resources and consistent with the objectives of the district. The rules governing the standard general ERP apply to incidental site activities in uplands which may be done in conjunction with work impacting wetlands or other surface waters authorized in an individual ERP. Such work is permitted under the standard general ERP.

Individual ERP applications are reviewed by WMD staff but final action is taken by the district's Governing Board. General ERP applications also are reviewed by WMD staff, but the approval or denial is issued by the WMD staff. WMD will weigh the effect of the activity on wetlands in comparison with the value of the wetland. A design modification will not be required to reduce impacts when the ecological value of the function of the wetland or other surface water is low, and the proposed mitigation will provide greater long-term ecological value.

There is flexibility in the application of the standards. The WMD may determine that the impacted wetland is of minimal value to fish and wildlife. Compliance with the standards is not required for regulated activities in isolated wetlands <1/2 acre, unless the habitat is home to threatened or endangered species, is in an area of critical state concern, is connected to a wetland at seasonal high water level and the combined area is >1/2 acre.



WMD considers wetland quality in assessing impacts, including any prior alterations in hydrology, water quality, or vegetation, the rarity of wetland flora and fauna in relation to regional ecology, its importance to nesting and denning wildlife, and its location in relation to areas of high ecological value.

The applicant must provide evidence that the regulated activity will not change the hydro-period of the wetland. Altering the water levels in wetlands or other surface waters cannot adversely impact the resource.

WMD considers that docks can potentially impact water quality and has established standards for boat facilities with >10 slips.<sup>32</sup> Class 2 waters are of special importance and concern, as nursery areas and sources of shellfish and fish; WMD will deny a permit for a regulated activity adjacent to or in these waters unless a plan is submitted that details measures for protecting water quality standards. WMD will deny a permit in Class 2 and 3 waters for a regulated activity that is to be located in a DEP approved area, that is restricted, conditionally approved, or conditionally restricted, for shellfish harvesting. Exceptions include maintenance dredging, shoreline protective structures, transmission and distribution lines for potable water, electricity or communications, and private docks accessory to single-family residences. There are special public interest test requirements for OFW.<sup>33</sup>

WMD also considers cumulative impacts of regulated activities on wetlands and other surface waters. These impacts are considered unacceptable when the proposed activity, considered in conjunction with past, present and future activities, would result in a violation of state water quality standards or significant adverse impacts to the functions of wetlands within the same drainage basin. The applicant may propose mitigation if the proposed preservation measures are found insufficient.<sup>34</sup> Mitigation will not be considered, however, until the applicant can demonstrate compliance with the requirements to apply practicable modifications to reduce or eliminate adverse impacts. And, in some cases, mitigation may not offset impacts sufficiently to permit a project. This is particularly the case in an OFW.

## LOCAL LAND DEVELOPMENT REGULATIONS

### Allowable Water-Dependent Uses

Charlotte County and City of Punta Gorda land development regulations contain 38 zoning districts, ranging from General Agriculture to General Industrial.<sup>1</sup> Permitted and special exception uses, of specific importance to this study, because of their relation to water-dependent and water-related characteristics, are: docks, boat ramps, fishing piers, and marinas. Some districts allow docks, piers, and marinas as-of-right, e.g.,

medium and high density residential districts.<sup>2</sup> Special exceptions grant permission for a use that would not be allowed, except with certain controls to address compatibility issues, such as limiting number (intensity), area, location, and relation to an existing neighborhood.<sup>3</sup>

Land development regulations differentiate among types of marinas and yacht clubs: resort marina, sport marina, industrial marina, yacht club.<sup>4</sup> These are allowed in the various zoning districts relative to their customary intensity and potential for compatibility with neighboring uses within the zoning districts and future land use categories.

Boat ramps and accessory docks to single-family residences, for example, are not identified as specific uses in the zoning districts. Nevertheless, boat ramps and their docking facilities are often acceptable in zoning districts which may not be primarily for residential purposes, but in which single-family residences are permitted along with such customary accessory uses as boat docks, e.g., agricultural estates zoning district.<sup>5</sup> Often, boat docks are considered recreational facilities and are appropriate in recreational areas, such as parks, as well as in residential developments. Land development regulations do not provide for separate recreation zoning districts.

Table 2 identifies permitted water-dependent and water-related activities for combinations of future land use and zoning designations. There are criteria, standards and special regulations that affect these water-dependent and water-related uses. Local restrictions prevail where these are more restrictive than applicable state regulations. The applicable standards include minimum acreage, setbacks from water bodies, parking, and building height.<sup>6</sup> Table 3 summarizes these zoning requirements for the water-dependent and water-related uses, permitted as-of-right, or by special exception.<sup>7</sup> Existing marinas are concentrated in the Lemon Bay and Charlotte Harbor areas. Table 4 summarizes future land use and zoning for these locations.

### **Marina Standards**

Marinas are waterfront facilities for recreational boats, offering services of berthing, launching, storing, repairing, fueling and provisioning. They are located along coasts and inland, in rural and urban areas, on canals, rivers, lakes and reservoirs. They are publicly or privately owned, in single use or are part of a larger development.

Marinas must provide adequate sanitation facilities. The usual standard is 1 bathroom, including a toilet and shower for each sex, per 20 berths. There should be 0.5<sup>3</sup> ft per berth of trash receptacles, with 3-4 bins at each 20-slip pier end. A variety of ancillary boating services may be found in or near marinas, such as boat building, cabinetry, carpentry, sail-making, instrument adjustment, machine and engine repair and service. Marinas may provide hot showers, restaurants, easy access to shops, communications

and transportation. Other uses may include other water-related activities, such as windsurfing, canoeing, rowing, water-skiing, swimming, fishing, snorkeling, and diving.

**Table 2: Water-Dependent and Water-Related Activities, By Selected Zoning District and Future Land Use Designations**

FUTURE LAND USE MAP CATEGORIES	ZONING DISTRICT DESIGNATIONS	SELECTED PERMITTED USES
Agricultural	Agricultural, general (AG); agricultural estates (AE 10)	Parks in AE 10; yacht club; private docks
Agricultural, conservation	Agricultural, conservation	Parks, other recreational uses; private docks
Residential estates	Residential estates (RE-1, 2, 3, 4, 5)	Non-profit parks; yacht club; private docks
Low density residential	Residential, single-family (RSF-1, 2, 2.5, 3.5, 5)	Non-profit parks; yacht club; private docks
Medium density residential	Residential, multi-family (RMF-3.5, 5, 7.5, 10); -tourist (RMF-T)	Yacht club, resort marina; resort and sport marinas in RMF-T; private docks
High density residential	Residential, multi-family (RMF-12, 15)	Yacht club, resort marina
Planned development	Planned development (PD)	One or more uses subject to flexible performance standards
Mobile home	Mobile home park (MHP); mobile home subdivision (MHS); mobile home conventional (MHC)	Resort marina and park recreation facilities - MHP; non-commercial dock and non-profit park - MHS; non-commercial dock, non-profit park - MHC
Recreational vehicle	Recreational vehicle park (RVP)	Dock, pier, boat launching; resort marina
Commercial	Commercial, neighborhood (CN); general (CG); intensive (CI)	Resort and sport marinas - CG and CI; boat service in CI
Professional office	Office, medical, institutional (OMI)	Public park
Highway service, rural	Commercial, highway (CH);	Resort and sport marinas-CT
Industrial	Industrial, light (IL); general (IG)	Resort and sport marinas, boat repair and storage; industrial marina
Industrial, office	Industrial office park (IOP)	None
Public, semi-public	Marine park (MP)	Boat docks; commercial wet storage of boats
Environmentally sensitive overlays	Various, depending upon specific location	Uses as established by underlying zoning designations, subject to constraints of specific overlay district

**Table 3: Selected Standards and Criteria for Water-Dependent and Water-Related Uses, By Use and Appropriate Zoning District**

ZONING DISTRICT	USES	STANDARDS AND CRITERIA
Environmentally sensitive	Parks, piers, docks, wharves, resort and sport marinas	Setback from center line of channel or open water and seaward extension of pilings or boat lifts controlled, unless inside a three-sided marina (3-9-70); minimum of 10 acres; 250 ft. frontage; maximum lot coverage 10 %; maximum height 36 feet; setbacks relative to water body (3-9-98); buildings limited to 200 feet in length, width.
Agriculture, general, estate	Yacht club	All required parking set back 50 feet from residential use; minimum area 10 acres in AG; 1 acre in AE; height and water setback restrictions (3-9-98).
Residential estate	Yacht club	All required parking set back 50 feet from residential use; minimum area 1 to 5 acres; height and water setback restrictions (3-9-98).
Residential, single-family	Yacht club	All required parking set back 100 feet from residentially zoned property; height and water setback restrictions (3-9-98).
Residential, multi-family	Yacht club, resort marina	All required parking from club set back 50 feet from residentially zoned property; maximum lot coverage 35 %; maximum height 60 feet; setback from residential structures 25 feet; sign control; restrictions on height and water setback (3-9-98); parking (3-9-90).
Residential, multi-family and tourist	Resort and sport marinas	Minimum lot size; maximum lot coverage 35 %; maximum height 38 feet; buffers (3-9-83); 25 feet setback from single-family zoned property; restrictions on height and water setback (3-9-98); sign control; parking (3-9-90).
Mobile home park	Resort marina	Minimum park area 20 acres; maximum height 38 feet; restrictions on height and water setbacks (3-9-98); sign control.
Recreational vehicle park	Resort marina	Minimum park area 20 acres; maximum height 38 feet; restrictions on height and water setbacks (3-9-98); sign control.
Commercial, general, intensive	Resort and sport marinas	Minimum lot 12,000 sq. ft.; 100 ft. frontage; maximum lot coverage 50 %; maximum height 60 ft.; 25 ft. setback from residential districts; parking (3-9-90); height and water setback restrictions (3-9-98); sign control.
Commercial, tourist	Resort and sport marinas	Minimum lot 12,000 sq. ft.; 100 ft. width; maximum lot coverage 35%; maximum height 38 ft.; 25 ft. setback from residentially zoned property; height and water setback restrictions (3-9-98); sign control; parking (3-9-90).
Industrial, light	Resort and sport marinas	Minimum lot 12,000 sq. ft.; 100 ft. frontage; maximum lot coverage 40 %; 25 ft. setback from a residential district; maximum height 60 ft.; height and water setback restrictions (3-9-98); sign control; parking (3-9-90).
Industrial, general	Resort and sport marinas, industrial marina	Minimum lot 40,000 sq. ft.; 200 ft. frontage; maximum lot coverage 40 %; maximum height 60 ft.; 25 ft. setback from residential district; height, ater setback (3-9-98); sign control; parking (3-9-90).
Planned development	All uses	The standards and requirements are flexible (3-9-49); 20 % of gross area required for open space.

**Table 4: Charlotte County Marinas, Future Land Use and Zoning District Designations**

MARINA	FLU	ZONING	LOCATION
The Boatworks	IND	CI	Englewood
Englewood Bait House	IND	CG	Englewood
C. K. Marine Services (Chadwick Cove)	COM	CT	Englewood
Chuck's Marina, Inc.	IND	CI	Englewood
Ainger Creek Marina	COM	CI	Englewood
Kevin's Place	HDRES	RMF	Englewood
Stump Pass Marina	IND	CT	Grove City
Gulfwind Marine (Palm Is. Resort) at Palm Island	COM	CG	Cape Haze
Elfred's Marina	IND	CT	Placida
Gasparilla Marina	COM	CI	Placida
Uncle Henry's Marina Resort (Boca Grande Club)	IND	CT	Gasparilla Island
Gulf Coast Marine Center	COM	CI	El Jobean
Sea Horse Marina	COM	CT	Charlotte Harbor
Peace River Fish Camp	MHR	MHC	Cleveland
Punta Gorda Marina	LRES	CI	Punta Gorda
Fishermen's Village	COM	CT	Punta Gorda
Gator Creek Marine	MHR	MHP	Punta Gorda
Riviera Marina	MHR	MHP	Punta Gorda

Sources: (3,4,5)

Marinas may include shoreside activities like golfing and tennis, and can serve as centers for sailing, community meetings, conventions, and exhibitions. They have been built as public works development projects for local and regional growth schemes. They have been the base for hotels, destination resorts, housing, public and private recreation, restaurants, museums, planned developments, and new towns (3).

The marina site selection process takes into account boating geography of the locale (fetch, aspect, water depth, marine habitat, etc.), engineering requirements, planning information, and links potential site selection to types of boating services needed by the boating public.<sup>8</sup> Recreational planners usually search for a site and then determine what services can be provided at that location (6). The size of a marina is related to current and projected use, average length of stay, number of permanent renters versus

transients, transient turnover, and average spending per berth. A marina seeks to draw overnight and weekend visitors, since transients tend to spend more than permanents; transient berth charges are more than those charged long-term customers.

Marinas with a combination of dry storage facilities and wet berths are the most economical in the use of space.<sup>9</sup> A 10-acre site should provide adequate space for 250 berths, 375 parking spaces for vehicles, and the necessary repair and service buildings.<sup>10</sup> Table 5 outlines zoning code standards for boat and vehicle storage. Slip rentals may account for 40% of marina net profit and an additional 27% is generated from boat storage. For this reason, a dry storage facility, or multi-storied building for stacking boats in multiple tiers, is often proposed. Such a bulky structure presents a challenge to planners and builders. Often, these large box-like, window-less, intrusive structures obscure water vistas of neighboring properties. An economical design is a 70 ft X 100 ft structure, perhaps as high as 40 ft - 50 ft. Such a 350,000<sup>2</sup> ft building can store 50 to 150 boats per acre, in a typical 5-tiered design. A single fork-lift can move 20 to 25 boats an hour depending upon the carrying distance and the height of the lift.

Table 5: Marina Standards for Boat and Vehicle Use and Storage

STANDARD	MINIMUM	MAXIMUM
Density of boats/acre, wet	25/acre	65/acre
Density of boats/acre, dry*	10/acre	30/acre
Vehicle/boat ratio	1:1	1.5:1
Density of vehicles/acre	140/acre (8' X 16' stalls)	208/acre
Range of boat length	25' - 45'	14' - 70'
Range of boat beam	6' - 14'	5' - 20'
Range of boat draft	25" - 50" inboard 12" - 22" outboard 45" - 70" sail	20" - 65" 8" - 25" 40" - 85"
Average boat length	18 feet	30 feet
Ratio parking area to water area	20%	50%
Persons/boat	1.5:1	3:1
Persons/car	1:1	4.5:1
Cars to boats	0.5:1	2:1

Source: (6)

\* at the surface; multiply by the number of stacking levels.

## CONCLUSIONS AND RECOMMENDATIONS

Federal, state and local regulations affect water-dependent and water-related uses. For the most part, federal programs, (excluding COE and EPA dredge-and-fill permits seaward of the CCCL to protect navigable waters and adjacent wetlands) encourage voluntary participation to bring state and local programs into compliance with national standards. Federal programs have avoided water use zoning by sponsoring land use regulations and environmental regulatory protection by state and local authorities. The policies and programs of these authorities exert the greatest immediate control on water-dependent and water-related uses.

The Coastal Barrier Resources Act bars federal development subsidies on unprotected, undeveloped barrier islands. The Florida Coastal Management Act restricts development on barrier islands for the construction of bridges or causeways which were not accessible in October, 1985. The local comprehensive plan of a coastal community like Charlotte County includes a Coastal Management Element to address the state's commitment to finance assistance for reconstruction of infrastructure in the event of natural disaster. The Coastal Management Element of the plan limits public expenditures in high hazard coastal areas by controlling population density and settlement on barrier islands, providing for transfer of development rights to safer, upland locations, and buying privately owned lands for public conservation purposes.

The purchase of platted, undeveloped lots on barrier islands is good public policy. Since many of these lots are substandard, eliminating them from the market reduces use density and demand for public services. Reuse of these lands for public recreation is an integral component of a long-term coastal management program. Public access to these barrier islands may require boat ramps and accessory docks and fishing piers. Important siting criteria should include adequate water depth, protection of sea grasses, limitations on overnight accommodations, restrictions on vehicle use, and reduction or elimination of fueling and boat maintenance on the islands. Compliance with these criteria would facilitate protection and conservation of the sea grass habitat, natural marine dunes and upland ecosystems. Any proposals for full-service marinas and recreational resorts on the barrier islands would likely be inconsistent with the Charlotte County - Punta Gorda Comprehensive Plan and the state Coastal Area Management Plan.

Public boat ramps, accessory docks and upland parking areas do not face insurmountable state permitting regulations, although parking is a frequent constraining factor in assessing compatibility with surrounding residential uses. Potential pollution, from limited dredge-and-fill required for erecting pilings and from the effects on marine grass beds, is manageable. More critical problems are the impacts of increased boating in areas frequented by manatees and increased congestion and unwanted intrusion of strangers in residential waterfront areas.

State waters are grouped into 3 classes by existing and future uses. Classes 1 and 2 share standards that protect marine and wildlife while allowing limited recreational use; development which degrades water quality is unacceptable except where there is overriding public interest. Water-related recreational uses, such as boat ramps and accessory docks, may not be consistent with the intent of Class 1 designation. Class I waters are potable and are found in the Port Charlotte Canal System and Shell Creek areas. Class II waters generally include Lemon Bay, Placida Harbor, Gasparilla Sound, Charlotte Harbor, and the Myakka and Peace rivers area.

The OFW designation for waters in Charlotte County prohibits direct or indirect discharges that would degrade their quality. The Lemon Bay Aquatic Preserve is both an OFW and Class II water designated from Forked Creek south to the Charlotte Harbor Aquatic Preserve at Cape Haze and the Gasparilla Sound-Charlotte Harbor area. Their conservation places additional constraints on both public and private proposals for water-related and water-dependent development. Any proposal for increasing public boating access must consider potential water traffic impact on manatees since they are known to frequent these waters. Dredging and filling for docks, piers, boat ramps, and the expansion of existing marinas, must be demonstrated to be clearly in the public interest.

Within the aquatic preserves, marine resources are catalogued in Resource Protection Areas (RPA) according to their ecological value and proximity to upland uses, ranging from "primary resource protection areas designated "1" and "2," through "secondary resource protection areas" designated "3." Water-dependent structures are constrained by their location within these RPAs. The Lemon Bay Aquatic Preserve Management Plan generally limits docks and access channels to private single and multi-family residences. The remaining two aquatic preserves have no designated RPA areas; it is recommended that the county participate in delineating these protected areas. The aquatic preserves represent a significant proportion of the county's total bay water area. It may be appropriate for Charlotte County to reconsider its upland future land use designations and zoning districts on platted salt-water accessible parcels adjoining the aquatic preserve lands. If the local policy is to expand existing marinas and public ramp access points within or near these preserves, this planning should be done jointly and concurrently with state aquatic preserve staff, in order to integrate these local initiatives with state management programs.

Any inconsistency in development policies between aquatic preserve plans and local comprehensive planning and land development regulations may jeopardize county policy for long-term growth of water-dependent use since the preserve management strategies are important DEP permitting guides. The dimensions and locations of boating facilities and structures in the preserves are limited to insure that impacts to marine resources are minimal. It appears that DEP will retain shallow boat draft access in the preserves; no new deep draft channels are envisioned. Permitting of boat ramps



and accessory docks in shallow waters is questionable; fishing piers are a likely alternative permit-able use. Greater public access to navigable waters is possible in RPA 3 waters, but this still will require approval for both consent of use S.L. and consistency with the environmental conservation standards to protect these aquatic preserves. Impacted wetlands and other surface waters will require review by DEP, W.D., and COE.

The environmental costs to marine habitat of increased water-dependent and water-related uses are of significant concern, particularly in OFW and aquatic preserves. A consistent recommendation of all aquatic preserve management plans is to direct growth in water-dependent uses to previously disturbed areas. Expansion of existing marinas where sufficient upland exists for the accessory uses is a logical policy to accommodate anticipated growth while minimizing environmental impacts.

There are at least 18 marinas in the county. The majority of them are within the Lemon Bay Aquatic Preserve which has policy restrictions against marina development. The existing marinas which have vacant land adjacent or nearby include Albritton, Gasparilla, the Palm Island Resort, Stump Pass, C. K. Marine Services, Englewood Bait House, and Seahorse Marina. A policy of encouraging use of this land for marina expansion would be consistent with both the aquatic preserve plan and the county's comprehensive plan.

Marina expansion may include permit applications for consent of use of S.L. The county can assist private marina development, by identifying the RPAs in the county and developing policies for encouraging water-dependent recreational uses in the previously disturbed areas of the aquatic preserves, in order to avoid pristine habitat and wildlife zones and areas frequented by manatees.

Phase 2 of this Marine Land and Water Use Siting Study provides important information to achieve this goal, by inventorying and evaluating existing shore side facilities, present land use, zoning, and availability of land side infrastructure, as sewer, potable water, and roads. The reconnaissance-level information on wetlands and marine habitats, available from DEP, provides a general understanding of prevailing resource elements, which is adequate to determine whether vacant parcels could qualify as potential sites for boat ramps, fishing piers, and marinas. The county, in the future, should upgrade this marine resources inventory to the level of its parcel-based Marine Siting data base.

A key element of a marina expansion plan concerns dry boat storage. It can provide water access to increasing numbers of boaters while minimizing the need for wet slip facilities, and can reduce the loss of marine, wetland habitats. New dredging for access channels is minimized. Accessory facilities that enhance water quality, such as pump-out facilities and fuel containment areas, contribute to conserving the scarce

waterfront. A 10-acre site can accommodate a large commercial marina. The county's future land use policies and zoning controls do not discourage new marinas at new locations. Both resort and sports marinas are allowable in 9 zoning districts, ranging from multi-family residential, to mobile home and recreational vehicle parks, to commercial and industrial districts. The planned development district allows any mixture of uses. The comprehensive planning process calls for the use of innovative land development regulations. A "marina overlay" designation would be an alternative and, as a conditional overlay, it would require compliance with performance standards for development approval. Furthermore, a conditional approval would allow for the imposition of site-specific conditions that could resolve compatibility issues for the surrounding existing uses as well as environmental problems related to local marine habitat and wildlife.

The controls included in the future land use districts which apply to marinas, however, are inadequate. Parking for marinas is 1 space per 10 wet slips, plus parking for accessory uses. Modern marinas, in areas where suburban development predominate, may have a variety of upland mixed uses requiring significantly more parking (a ratio of 1 space per 2 wet slips is recommended). This is a requirement which helps to make a marina a better neighbor where on-street parking or off-site parking is unavailable. If marinas are to build more dry storage to provide water access to a growing boater population, then the requirement of 1 space per 20 boats is insufficient. Finally, the stall dimensions of 9 ft X 18 ft could be conditionally reduced to 8 ft X 16 ft where existing marina space is at a premium. Reducing this stall space requirement will provide flexibility in providing for additional extended stall space for boat trailer-vehicle rigs.

Building setbacks, buffer widths and landscaping requirements, height restrictions and off-site parking regulations, should be reconsidered to encourage the expansion of existing marinas. Building height ranges from 38 ft to 60 ft in the zoning districts that currently allow marinas. A dry storage facility may require 40 ft to 50 ft in order to accommodate 5 tiers of boats. These buildings, usually built without windows, can become massive intrusions in residential and tourist areas, and can obscure waterfront views for neighboring businesses. Performance standards should include requirements for acceptable architectural design in keeping with the surrounding development. Signage should be severely restrained. Painted surfaces should avoid colors which draw attention to the structure. Landscaping can be required that will soften the exterior and its impacts on the surrounding neighborhood. Adding littoral plantings requirements to the landscape code are recommended to help stabilize the shoreline and reduce runoff. Landscaped buffers decrease contaminants from reaching the preserve.

Uses located in shoreline properties which are not water-dependent or water-related should be made non-conforming. A Future Land Use Element policy to encourage their

replacement with water-dependent and water-related uses will be consistent with the long-term planning for recreation and public access to Charlotte County's water resources.

## ENDNOTES

### BACKGROUND

1. Population change includes a trend of increasing in-migration of new residents into the county. Over the 1990-93 period, net migration was 12,460, a total population change of 10,720 (4). County projections are for 260,000 inhabitants by 2010, with 2.15:1 persons/household, suggesting an additional 121,000 dwellings may be needed to double the existing housing stock (5).

### ENVIRONMENTAL LAND USE LAW AND COASTAL DEVELOPMENT

1. In "California Coastal Commission vs. Granite Rock Company," the Supreme Court reversed a Court of Appeals decision, distinguishing between land use planning – which the Court viewed as selective of particular land uses – and environmental regulation – which it considered does not mandate particular land uses but only requires that environmental degradation be kept within prescribed limits (6).
2. The Court has shifted its interpretation of a regulatory taking, concluding that none of the designated purpose may be significantly advanced by preserving a part of the property rights. A substantial nexus must be demonstrated between the condition imposed by the land development regulation and the asserted public purpose. The interpretation recognizes that complete deprivation of one right to develop property is a taking (8).
3. The Act creates a legal remedy in the circuit court, before a jury, for future land use controls of government which "inordinately burden" private property rights. A claim can be filed within 1 year following government action and can be done so without exhausting the appeals process. The claim includes an appraisal documenting the loss in value. Such lost value is not as difficult to demonstrate as the taking of private property use under constitutional law, which requires a "substantial" loss of use – usually all profitable use of the property – before the government is required to compensate for the loss.
4. A landowner, who claims that a development order or an enforcement action is unreasonable or unfairly burdensome, may request a fact-finding proceeding before a Special Master. This request must follow exhaustion of the local government's administrative appeals process, so long as it does not exceed 4 months. The intent is to bring the parties together in a mediation effort, within 30 days of the government action, to seek compromise that enables the property owner to use the land while still satisfying the public interest that is the basis for the agency's action. The agency is allowed under this legislation to modify or vary the permitting or enforcement process.
5. This includes environmental protection or growth management laws or regulations, i.e., state dredge-and-fill permits, subdivision approvals, building permits, re-zoning applications.

## COASTAL REGULATORY POLICIES AND PROGRAMS

1. The CZMA program encourages a state to conserve coastal resources through:
  1. Protection of natural resources, such as wetlands, flood plains, estuaries, beaches, dunes, barrier islands, coral reefs, fish and wildlife; and,
  2. Management to minimize losses caused by improper development in hazardous areas, and by destruction of natural protective barriers; and,
  3. Management to improve water quality and protect resources and existing uses; and,
  4. Priority consideration for coastal-dependent uses, i.e., orderly processes for siting major facilities related to national defense, energy, fisheries, ports, recreation, and commercial and industrial development in or adjacent to already developed areas; and,
  5. Public access to coasts for recreation; and,
  6. Redevelopment of deteriorating urban waterfronts, and preservation and restoration of historic, cultural, and aesthetic features; and,
  7. Coordination and simplification of decision-making procedures; and,
  8. Coordination and consultation with affected federal agencies; and,
  9. Timely notification and opportunity for public and local government participation in coastal management decisions; and,
  10. Assistance for comprehensive planning, conservation, and management of living marine resources and coordination between state and federal coastal zone management agencies and state and wildlife agencies; and,
  11. Study and development, if appropriate, of plans for addressing adverse effects from land subsidence and sea level rise (1).
2. Funded programs must:
  1. Identify boundaries of the coastal zone (inland, seaward, interstate, and excluded areas; the inland boundary is to include
    - a. Areas which must be managed to control uses directly and significantly impacting on coastal waters, salt marshes, wetlands, beaches, transition and intertidal areas, islands, etc., and
    - b. Must be designated clearly enough to determine whether a property or a use is located within the managed area, and
    - c. Can include watersheds, areas of tidal influence beyond saline influence, and
    - d. Must exclude lands owned, leased, held in trust or otherwise used solely by the federal government, and
    - e. Must define "beach" in the broadest legal sense allowed under state law;
  2. Provide a definition of permissible land uses and water uses impacting on coastal waters;
  3. Include an inventory of areas of particular concern;
  4. Include the means to control land and water uses;
  5. Contain guidelines and a prioritization of uses by area;
  6. Describe the organizational structure to implement the program;
  7. Contain a planning process for protection and access to public beaches and other coastal areas of environmental, recreational, historical, aesthetic, ecological or cultural value;
  8. Include a planning process for anticipating and managing impacts of energy facilities;
  9. Contain a planning process for assessing shoreline erosion, its control or lessening (2).
3. The "coastal waters" definition also was amended in 1990, limiting the seaward boundary to the limits of state ownership and title under the Submerged Lands Act (3). The coastal zone extends inland to the extent necessary, to control shore lands whose uses directly and significantly impact on the coastal waters, and is intended to control the geographical areas which are likely to be affected by or vulnerable to sea level rise. This vague definition is intended to give states discretion in setting their own jurisdiction (4).

4. Multiple uses, e.g., hunting, fishing, neighboring development, and navigational dredging, can occur within the sanctuaries.
5. CBIA offers an expanded definition of coastal barriers (e.g., fringing mangroves are included) and the Department of the Interior publishes a map which identifies these resources. A local government can add elements without Congressional approval.
6. A-zone mapped areas are subject to a  $\geq 1\%$  chance of flood in any year (i.e., a 100-year storm). Z-zone (high-hazard) areas are within the 100-year floodplain and are subject to high velocity waters and wave action. FEMA does not account for shoreline erosion during the 100-year period, and thus, its boundaries may not coincide with the 100-year storm determinations mapped by state agencies.
7. Legislative changes in 1993 (5) in the definition of "coastal area" and "high hazard coastal area," now include for management purposes the Category 1 Hurricane Evacuation Zone (6), areas seaward of the Coastal Construction Control Line (CCCL) and the V-zone of FIRMS. Local government is given discretionary power to rebuild or relocate state-funded infrastructure in these areas.
8. After the local adoption of an approved coastal zone management element, no state funds can be expended to increase the capacity for infrastructure unless the projects and expenditures are consistent with the adopted comprehensive plan. Once all local coastal zone management elements are approved, the state coastal infrastructure policy becomes effective statewide.
9. Each year, thousands of proposed development activities involving federal agencies are reviewed for consistency. These range from the restoration of flows to the Everglades and Florida Bay to the filling of wetlands, removal of shoals, beach renourishment, and construction, repair, and expansion of dwellings, marinas and docks.
10. The Charlotte County - City of Punta Gorda Comprehensive Plan, Coastal Zone Management Element, provides such a mechanism in the state consistency review process, by evaluating: activities conducted by a federal agency; federal funding to state and local governments; activities requiring a federal license or permit; and activities performed on the outer continental shelf for minerals exploration.
11. A decision to find a proposed federal project inconsistent must be based upon state, regional, and local regulations which do not unreasonably restrict or exclude land and water uses of a regional benefit (11). NOAA considers state appears of inconsistency, and the Secretary of the Department of Commerce has the final decision.
12. The SWIM plan is being applied to Charlotte Harbor and focuses on 4 critical issues:
  1. Protection of water quality, with emphasis on prevention of excessive nutrient enrichment.
  2. Protection of optimum freshwater flows to the estuary.
  3. Habitat protection and restoration, with emphasis on acquisition of selected parcels.
  4. Development of public education and public involvement programs, to inform citizens of problems affecting the waterbody and their potential solutions.
13. Water management districts in Florida are authorized by recent legislation to serve as the state's federal consistency determination review agency for purposes of compliance with the federal CZMA where activities are determined to have minimal adverse impacts to the water resources of the district (12).
14. The classifications do not preclude the use of water for other purposes.

15. Class 1 waters are: Port Charlotte Canal System (including the surface waters upstream or directly connected to Fordham Waterway upstream of Conway Blvd.), Prairie Creek, and Shell Creek (from the headwaters to Henderson Dam, east of Myrtle Slough). Class 2 waters are: Lemon Bay, Placid harbor and its tributaries (from the Charlotte County border south to Gasparilla Sound and bounded on the east by SR775), Charlotte Harbor, Myakka River, Gasparilla Sound (except the Peace River upstream from the northeastern point of the Myakka Cutoff to the boat ramp in Ponce de Leon Park in south Punta Gorda). Class 5 waters are all remaining water bodies.
16. These include some surface waters of exceptional recreational significance for outdoor activities. An OFW or ONRW designation results in these resources receiving the highest protection. No degradation of water quality is acceptable beyond that allowed by state statutes (14). Generally, these are waters found in parks, wildlife refuges, wilderness preserves, and waters included in the conservation and acquisition programs, i.e. Land Acquisition Trust Fund Program, Save Our Coast Program, Conservation, Florida Scenic and Wild River Program, and Waters in Aquatic Preserves.
17. They are Cape Haze, Gasparilla Sound-Charlotte Harbor and Lemon Bay aquatic preserves. The Island Bay Wildlife Refuge and the Don Pedro Island and Port Charlotte Beach state recreation areas are also situated in Charlotte County.
18. Such cases include: public navigation projects; maintaining existing navigation channels; creating and maintaining commercial or industrial docks, piers or marinas; creating or maintaining private docks for water access by riparian owners; and minimal dredging for navigation right-of-way to docks.
19. RPA-1 includes: marine grass beds, mangrove swamps, saltwater marsh, oyster bars, endangered or threatened species habitats, colonizing water-bird nesting areas, and historical and archeological sites.
20. These upland land uses are: single-family, multi-family, commercial, public recreation, preservation, open water.
21. The selected management initiatives for boating, marinas, and waterfront structures are:
  1. Restrict boat draft to allow 1 ft clearance at MLW, to reduce prop dredging, turbidity, and to protect sea grasses;
  2. Designate additional minimum wake zones in shallow areas of the Intracoastal Waterway to decrease turbidity, propeller scars in seagrass beds and manatee accidents;
  3. Establish deep water moorings;
  4. Restrict fuelling facilities to commercial docks and marinas with approved spill prevention procedures and equipment;
  5. Recommend upland dry storage for marina expansion and new marinas;
  6. Encourage additional approved holding tank pump-out facilities;
  7. Prohibit docks and piers in shallow water (<3 ft MLW);
  8. Prohibit (discourage) new non-water dependent development;
  9. Recommend against replacement of non-water-dependent structures;
  10. Require revegetation of shoreline with native plants and remove noxious exotics;
  11. Allow no wastewater or reverse osmosis plant discharges;
  12. Add buffers in new developments to decrease contaminants from reaching the preserves;
  13. Include critical habitat on the county Future Land Use map;
  14. Locate commercial development away from the bays and tributaries.
22. Boating and marina policies include:
  1. Site in or near well-flushed, deepwater areas;
  2. Avoid dredge-and-fill locations;

3. Do not sited in RPAs 1 or 2;
4. Access channels should avoid marine grass beds;
5. Expand existing boating facilities before developing new marinas
6. Site new marinas only in previously disturbed areas;
7. Locate marinas away from manatee habitats;
8. Locate marinas close to demand, with sufficient upland to support activities;
9. Locate marinas away from hurricane-threatened locations.

## COMPREHENSIVE PLANS

1. Coastal and marine resources policies of the state:
  1. Protect coastal and marine resources from the adverse effects of development.
  2. Develop and implement comprehensive, coordinated planning, management, and land acquisition to ensure the integrity and continued attractive image of coastal areas.
  3. Encourage uses which are compatible with the protection of sensitive coastal resources.
2. The USA boundary: excludes public lands along the Charlotte Harbor shoreline and lower Cape Haze peninsula, and islands and wetlands in the Peace River; on the east is at Ranges 23 and 24; and on the south is defined by Townships 41 and 42.
3. See Appendix 1 for an explanation of the different future land uses.
4. See Appendix 2 for an explanation of the different overlays.
5. The recommended levels of service are:
 

Beach Access	7 parking spaces per 1,000 residents, subject to the limits of the resource;
Public Boat Ramps	1 ramp per 2,000 county registered boats, and 10 parking spaces for vehicles with trailers per 1,000 county registered boats.
Marina and Dry Storage Capacity	170 boats per 1,000 county registered boats.
Non-boat Fishing	45 linear feet per 1,000 county residents, and 2 parking spaces per 1,000
County Access (Piers)	residents.
6. These regulations:
  1. Protect relatively unaltered, natural drainage features, as identified in the Conservation Element, to minimize the disruption of natural hydro-periods, flows and water quality;
  2. Minimize and mitigate further disruption of altered natural drainage features, and encourage the creation of new drainage works which, on balance, improve (sic) the adverse effects of previous works;
  3. Develop, maintain and utilize existing slough and natural flow-ways, as part of the stormwater management system, without significantly degrading their natural function;
  4. Protect isolated wetlands, > ½ acre in size, in accordance with Southwest Florida Water Management District (SWFWMD) and South Florida Water Management District (SFWMD) regulations;
  5. Modify projects, by reasonable means, before permitting wetland alterations (to avoid or minimize alterations);
  6. Require mitigation, where alteration of wetlands is necessary, to offset lost wetland value as a result of alteration;
  7. Use naturally vegetated upland buffers to protect natural surface waters from water quality degradation and encroachment by upland development. (A minimum buffer zone of 15 ft width, as required by SWFWMD around isolated wetlands, normally will be required around water bodies and wetlands, except for those uses requiring access to the water, such as docks, boat ramps, and shoreline stabilization. Greater buffer zone requirements

may be specified for surface water features deemed to be of special economic or ecological significance. Construction in buffer zones will be limited to utility line crossings, bridges, and removal of exotic vegetation that shall not include removal of native trees and ground cover except as allowed above. Buffer zones will count towards (sic) "open space" requirements.)

8. Discourage construction of vertical seawalls along the shoreline of natural surface waters;
9. Require that the design of docks, piers and other water-related structures, built in natural surface water, are consistent with criteria given in the State of Florida's Rules of the Board of Trustees of the Internal Improvement Fund, Chapters 18-20 (Florida Aquatic Preserves) and 18-21 (Sovereignty Submerged lands);
10. Restrict development in the Special Surface Water Protection Overlay district to certain uses and permits;
11. Maintain design criteria and development standards applicable to development within the districts;
12. Create special development considerations, including Transfer of Development Rights and land development, within the districts;
13. Report annually on the water quality within the districts.

## PERMITS

1. COE jurisdiction extends from tidal waters to the mean high water or ordinary high water mark.
2. Section 404 of the Rivers and Harbors Act requires the COE to control dredge-and-fill activities through permits for the discharge of dredged or fill material into the navigable water of the U.S. Under this process, all such permits become subject to concurrent review by National Marine Fisheries (NMF), Environmental Protection Agency (EPA), and U.S. Fish and Wildlife Service (FWS) for environmental or marine resource impacts, and the U.S. Coast Guard (USCG) for navigation and vessel safety.
3. FWS also can issue an opinion on any proposed federal project which may have an adverse impact on its jurisdictional responsibilities.
4. A DEP permit is required for any coastal construction or reconstruction or change of existing structures, or any activity undertaken for shore protection, any deposition or removal of beach material, undertaken seaward from the MHWL (on SSL) or landward to the CCCL (8,9,10).
5. Single docks, docking facilities, boat ramps, marginal docks, moorings, dredging, filling, shore protective structures,  $\leq$  1,000 ft, and outside aquatic preserves, are eligible for consent of use permits.
6. Larger docking facilities, revenue-generating and income-related activities, grand fathered structures, and aquaculture projects, outside aquatic preserves, are permit-able through renewable lease agreement, for up to 25 years.
7. Road and bridge structures, navigation projects, canals, channels, and other public water management structures, outside aquatic preserves, can be allowed by an easement over sovereignty land.
8. Minor activities, that are not water-dependent, are allowed if they are in the public interest, are not proposed for Class II waters, and are not within aquatic preserves.
9. The following standards show these differences; aquatic preserve standards are in ( ):
  1. Maximum width of the access pier is 6 ft (4 ft).



2. Maximum total terminal platform area is 300<sup>2</sup> ft (160<sup>2</sup> ft).
  3. Minimum setback from riparian lines is 25 ft.
  4. Maximum dock length is 200 ft (125 ft) and is measured perpendicular to the MHWL, excluding mangrove areas, except as allowed to obtain 4 ft navigable depth (MLWL).
  5. Required setback for marginal dock is 10 ft; setback can be adjusted, as a special exception, with the written consent of the adjacent property owners.
  6. Maximum 1,000<sup>2</sup> ft (500<sup>2</sup> ft) for a consent of use permit; > 1,000<sup>2</sup> ft (500<sup>2</sup> ft) requires a lease.
  7. Maximum elevation for an accessory boat shelter is ≤ 500<sup>2</sup> ft and ≤ 20 ft above the adjacent access pier or platform.
  8. Vessel mooring is restricted to pleasure craft registered to adjacent upland property owners and their guests or neighbors.
  9. Maximum of 2 moored vessels.
  10. One dock constructed under the exemption, for a lot with minimum dimension of 65 ft along the shoreline, unless the lot is less than 65 ft, in which case there is 1 dock per lot.
10. DEP must determine if the facility would result in greater environmental protection for the SSL resources than multiple individual docks. For the first 6 units, a 1-slip-per-unit ratio is allowed. The ratio changes for higher numbers of units: ½ slip per unit for 7 - 14 units; 1/3 slip per unit for 15 - 28 units; 1/4 slip per unit for projects ≥ 29 units, to the maximum amount of sovereign land which can be used. This is 40X the riparian waterfront footage of the associated upland property.
11. The permitting standards, outside aquatic preserves, are:
1. Maximum structural width is 10 ft.
  2. Maximum platform area is 250<sup>2</sup> ft per 10 slips.
  3. Minimum setback from riparian lines of the adjacent property, used, zoned, or designated for non-residential use, is 25 ft.
  4. Minimum setback from the riparian lines of adjacent property, used, zoned, or designated residential, is at least 50 ft, and is consistent with the local land development regulations.
  5. Maximum length of the docking facility is 200 ft, measured perpendicular to the MHWL, excluding mangroves.
  6. Minimum of 1 parking space per 15 slips. These spaces may be counted for compliance with other zoning requirements if the spaces are used for both purposes.
12. This width limitation can be modified several ways: to access an upland dry storage facility; and if within a federal navigation project area, the width restriction limits docks up to 100 ft into the channel (13).
13. The entire Charlotte County coastline, except for a small portion of the county west of the Peace River, is situated in the 100-year floodplain, a high hazard, high hurricane vulnerability area.
14. These are grouped as:
- Habitable: houses, mobile homes, apartment buildings, condominiums, motels, hotels, restaurants, towers and other types of residential, commercial, or public buildings.
- Non-habitable: swimming pools, bath houses, detached garages, cabanas, pipelines, piers, canals, lakes, ditches, drainage structures and other water retention structures, roads, streets, highways, parking areas and other paved areas exceeding 144<sup>2</sup> ft in area, underground storage tanks, etc.
- Minor Structures: pile-supported, elevated dune and beach walkover structures, viewing platforms, gazebos, boardwalks, slab patios and other paved areas not exceeding 144<sup>2</sup> ft in area, lifeguard stands, cantilevered decks or porches on new or existing support stands, etc.

15. **DEP needs assurance that the permitted activity will not result in violation of the water quality standards (16), and if in the public interest, whether the proposed development will be either temporary or permanent, will not interfere with public access along the shore, and will not adversely affect**
1. **Public health, safety, welfare, or the property of others;**
  2. **Conservation of fish and wildlife, including endangered or threatened species or their habitats;**
  3. **Navigation or flow of water, or cause harmful erosion or shoaling;**
  4. **Fishing or recreational values or marine productivity of an area;**
  5. **Historical or archeological resources.**
16. **DEP standards used to determine whether to issue the permit are:**
1. **The CCCL is a line of regulations. The 30-year Erosion Projection Line (EPL), however, is a line of prohibition. On an individual case-by-case basis, DEP requires that each applicant establish a line through the use of historic beach erosion data to project where the beach will naturally erode in 30 years. With the exception of single-family residences, where a permit denial might constitute a taking, and the repair and maintenance of existing buildings, no structure can be permitted that extends seaward of the EPL.**
  2. **DEP policy is that generally only 60% of the site frontage can be occupied by buildings. This is to guarantee an adequate opening between structures for wave action in the storm event.**
  3. **Only approximately 50% of the site above the MHWL is to be covered by impervious structures. This includes paving and structures, unless the building material is made of pavers that allow water to seep around the edges.**
  4. **The bottom of the construction slab for the first habitable floor must be above an elevation that would account for the height of the projected rise in water level during a 100-year storm plus a factor accounting for the wave crest height that would exist above the still water elevation. This is a more stringent criterion than the FEMA 10 ft requirement.**
17. **The state's applications review process is being modified (18). The Wetland Resource Permit program and the Management and Storage of Surface Water Permit program were combined in October 1995 into the ERP program. ERP encompasses all wetland and surface water impacts of a proposed project. The changes allow for concurrent review by DEP, water management districts, and COE, in a new joint application, that includes the ERP, authorization to SSL, and the COE dredge-and-fill permit.**
18. **Applicants must provide reasonable assurances that the regulated activity will not violate water quality standards. These assurances are for both the short- and long-term, and include: turbidity controls, stabilization of new slopes and surfaces adjacent to wetlands, pollution containment and siltation prevention measures. A permit denial can be reversed by submitting a mitigation proposal. This modification must be technically feasible and economically viable, and must not adversely affect public safety.**
19. **ERP-exempted activities include:**
1. **Construction of private docks accessory to 1-4 - dwelling residences which are not part of a larger development plan or sale and do not involve wetlands or other surface waters. Private docks must be for recreational use and non-commercial, of  $\leq 1,000^2$  ft surface area over wetlands ( $\leq 500^2$  ft surface area over wetlands in OFW), do not involve more dredging and filling than is necessary for installation of pilings, and do not impede navigation significantly. Other, private docks may be constructed without an ERP in artificially created waterways where water quality standards will not be violated, and navigation will not be significantly impeded.**
  2. **Boat ramps which are located on artificial bodies of water (including residential canals,**

canals permitted by the WMD, and artificially created parts of the Florida Intracoastal Waterway) where navigation access already exists or, if they are open to the public, they may be located in wetlands where navigation access to the proposed ramp exists. The ramp is limited to < 30 ft width and  $\leq 25^3$  yds of dredged material. Dock area for ramp loading is limited to  $\leq 500^2$  ft over wetlands. Removed spoil is to be protected from erosion from an upland site into the wetlands.

20. No notice permit stipulations include:
  1. Valid only for the specific activity.
  2. Does not relieve the applicant of obtaining other required authorizations.
  3. Requires that the applicant obtain required consent of use, lease or easement.
  4. Authorizes for five years.
  
21. Receiving approval under this noticed general permit does not relieve the applicant of obtaining a consent-of-use or lease permit from the Board of Trustees for occupancy of SSL. (It is intended, however, that this will be coordinated through the ERP in the coming months.)
  
22. The following criteria are stipulated:
  1. Total project area is < 10 acres;
  2. Total project area involves < 2 acres of impervious surface;
  3. None of the activity will impact wetlands or other surface waters;
  4. Project is not part of a larger common plan of development or sale.
  
23. Areas excluded are those situated upstream of water control structures that prevent the passage of manatees. Charlotte County has an additional limitation that a proposed boat ramp will not increase the number of boat launching lanes in waters that are accessible to manatees.
  
24. Construction standards for noticed general ERP boat ramps and accessory docks are:
  1. Ramp is not part of a larger development plan which requires a standard general or individual ERP.
  2. Navigational access must exist to the ramp and accessory docks, at -2 ft MLWL (or the mean annual low water level [MALWL] in non-tidal waters).
  3. Filling must be limited to recontouring the land under the ramp to create a level grade, and for the pilings for the accessory docks.
  4. Ramps are limited to 35 ft width (including side slopes); the county can obtain a general permit for  $\leq 50$  ft width.
  5. Ramp cannot significantly impede navigation in the water body.
  6. Above-water part of the ramp must be landward of the MHWL for tidal waters or the OHWL for non-tidal waters.
  7. Dredging is limited to the amount of material required to construct the boat ramp surface or restore the ramp to its original configuration and dimensions, but not >  $100^3$  yds.
  8. Spoil is to be deposited in an upland site designed to prevent its erosion into wetlands or other surface waters in violation of water quality standards.
  9. Maximum of 2 accessory docks which must abut the ramp. The dock area over wetlands  $\leq 500^2$  ft; county can exceed this limit to  $1,000^2$  ft; accessory docks may not exceed 6 ft width.
  10. No dredging or filling of submerged grass beds or coral communities.
  11. Accessory docks cannot be located over grassbeds or coral communities.
  12. Docks cannot be used for overnight mooring, except for accessory docks at a boat ramp for a single-family residence.

25. The stipulated conditions for general permit piers and associated structures is:
1. Pier, boat lift, boat house, platform and gazebo, must be accessory to a single-family residence.
  2. Mooring is limited to 2 vessels or watercraft.
  3. All structures (existing and permit proposed)  $\leq 2,000^2$  ft.
  4. All designated boat mooring and navigational access areas have minimum depth of -2 ft MLWL for tidal waters and MALWL for non-tidal waters.
  5. Public fishing piers do not exceed  $2,000^2$  ft, provided that the structure is designed and built to a minimum height of 5 ft above MHWL or OHWL to discourage boat mooring, and by surrounding it with handrails and installing signs prohibiting boat moorings.
  6. No construction or extension of the boat house, shelter, lift, gazebo or terminal platform, can be over submerged grassbeds, coral communities or wetlands. The access walkway part of the pier may traverse these resources provided it is elevated at least 5 ft above MHWL (OHWL), has handrails to prevent boat moorings or access, and cannot exceed a 6 ft width (4 ft in aquatic preserves).
  7. No wet bars or living quarters are allowed over wetlands or other surface waters or on the pier, and no structure can be enclosed by walls or doors.
  8. Structure and its use cannot significantly impede navigation of the water body.
  9. Dredging and filling is to be limited to that required for the installation of the pilings for the structures authorized by the general permit.
  10. No fish cleaning facilities, boat repair, fueling facilities, nor disposal of trash, animal waste may occur from the structures.
26. Excludes aquatic preserves; OWF limit is  $500^2$  ft.
27. A standard general or individual (including conceptual) permit requires assurances:
1. That the regulated activity will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters.
  2. That a regulated activity located in, on, or over wetlands or other surface waters, will not be contrary to the public interest, or if such an activity significantly degrades or is located within OFW, that the regulated activity will be clearly in the public interest.
  3. That a regulated activity will not adversely affect the quality of receiving waters such that the water quality standards and any special standards for OFW and ONRW will not be violated.
  4. That a regulated activity located in, adjacent to, or in close proximity to, Class II waters, or located in waters classified as approved, restricted, or conditionally restricted for shellfish harvesting, will comply with the additional standards.
  5. That construction of seawalls in estuaries and lagoons will comply with the additional standards.
  6. That a regulated activity will not cause adverse secondary impacts to the water resources.
  7. That a regulated activity will not cause unacceptable cumulative impacts upon wetlands and other surface waters.
28. A general (or more restrictive "individual") ERP also constitutes compliance with state water quality standards, unless another authorized permit is obtained. When mangrove alteration is to be conducted as part of the standard general (or individual) ERP, a separate mangrove alteration permit is unnecessary.
29. The DEP district office for Charlotte County is located in Ft. Myers.
30. Water management districts are included in the application review process.
31. SWFWMD was created in 1961 for the purposes of flood control and water conservation. Statutory

revisions in 1993 and 1994 added environmental resource permitting to district responsibilities.

#### LOCAL LAND DEVELOPMENT REGULATIONS

1. These exclusionary-type zoning districts identify permitted uses, prohibited uses, and other uses that can be allowed as special exceptions. Districts are based upon density of dwelling units or use intensity; they parallel future land use designations of the comprehensive plan.
2. Other zoning districts provide for these uses as special exceptions. There are other, minor uses which can be allowed if approved accessory to a principal use that customarily includes them.
3. Standards for approval of a special exception include: consistency of the use density or intensity with the comprehensive plan, compatibility with surrounding, contiguous uses, and demonstration that the requested use is either explicitly permitted by the land development regulations in the zoning district, or is permitted by reasonable implication within that district. A special exception application requires: site plans (showing utility connections, screening and buffering, landscaping, signs, and lighting), a legal description, a narrative describing the proposed project, and an affidavit of notice for a public hearing before the Board of Zoning Appeals.
4. **Marinas, are either private or public commercial docking facilities. Three types are distinguished. Resort marinas are sheltered water areas or harbors with docking facilities for sport and pleasure boats, as well as live-aboards. Accessory uses may include sale of fuel and lubricants, provisions, and bait and tackle. Service buildings may accommodate laundry facilities, showers, toilets, lavatories, and recreational facilities. Sports marinas are commercial establishments engaged in the sale, maintenance, repair, docking and storage (dry, wet) of boats used in sports. Accessory uses include sale and maintenance of trailers, equipment and supplies. The sale of fuel and lubricants, provisions, bait and tackle is permitted. Live-aboards may be approved. Industrial marinas are marine-oriented establishments engaged in the building, sales, maintenance, repair, docking and storage of commercial boats, barges and other water-craft. Accessory uses include sales and repairs of marine engines, motors, winches, other mechanical equipment, fuels, lubricants, provisions, and seafood product processing, storage and distribution. Live-aboards are allowed. A yacht club is different from a marina. It is a boat docking facility and clubhouse associated with a development, whose primary use is reserved for property owners and their guests.**
5. The zoning official is authorized to allow a "permitted accessory use and structure" recognized in the land development regulations. Such uses must be deemed to be customarily accessory and clearly incidental to permitted uses and structures in the zoning district.
6. The development approval process also includes a variance procedure. This is of importance to marina development since the location of marinas at the shoreline means that acreage often is limited. Off-site parking is permitted through the variance procedure by application, to include a parking study, to the board of appeals. Up to a 15% reduction in off-street parking is possible (1).
7. For any salt-water accessible parcel, excluding those on the Gulf of Mexico, Charlotte Harbor, Peace and Myakka rivers, Gasparilla Sound, Placida Harbor, Lemon Bay and Red Fish Cove, on which a marine business or industrial use is proposed, the 20 ft setback is waived. On the exempted water bodies listed above, limitations include a 200 ft building length or width maximum, a 35 ft height maximum, and a rule that structures are to be no closer than 20 ft or the distance equal to the building height from the MHWL, except for the Gulf of Mexico, where the setback is 50 ft or the height of the building (2).
8. Since a marina exists to provide services, the owners will be sensitive to the type of boaters and

their needs. Answers to the following questions about their customers are helpful in determining the size and type of marinas:

1. What is the average boat size, beam, length, draft?
  2. What is the range of boat sizes?
  3. How will the boats differ as to sail or power?
  4. How permanent will the moorings be?
  5. How many visiting boaters and charters will there be?
  6. What will be the length of stay?
  7. What kinds of accommodations will be needed?
  8. What kinds of services will be needed?
  9. What type of provisions and fuels will be needed?
  10. What amount of self maintenance will be usual?
  11. What proportion of wet to dry slips will be needed?
  12. What clubs will there be and their membership numbers?
  13. What requirements will there be for children?
  14. What is the estimated expenditures per boat and per capita?  
Seasonal variation in these?
  15. Will customs be needed for foreign boaters?
9. Marinas should not be located within 100 yds of residential areas or hospitals, because of noise-related activities and because of their location adjacent to open water where noise travels farther than over uplands.
10. In general, half of the area of a marina is water surface and half is upland. Approximately 25% is devoted to boat moorings, 25% to the clearances around these boats, 22% of the upland is for parking, and the remainder of the upland is used for structures.

## REFERENCES CITED

### BACKGROUND

1. U.S. Bureau of the Census, Washington, D.C.
2. Southwest Florida Regional Planning Council, 1991, Hurricane Evacuation Study Update
3. Bureau of Economic and Business Research, 1994, Florida Population Studies, Vol.27, February, Gainesville, Fl.
4. Florida Statistical Abstract, 1994
5. Charlotte County Comprehensive Plan, Data and Analysis Section population projections
6. Charlotte County - City of Punta Gorda Comprehensive Plan, p.50
7. 9J-5.012 (3) © 1, 21, Florida Administrative Code, pp. 45-50
8. F. Bell, 1994, Projection of Boating Demand Report, October.

## **ENVIRONMENTAL LAND USE LAW AND COASTAL DEVELOPMENT**

1. Linda A. Malone, 1994, Environmental Regulation of Land, Clark Boardman Callaghan, Deerfield, Il.
2. Standard State Zoning Enabling Act, 1922, U.S. Department of Commerce
3. 1926 Supreme Court decision in the Village of Euclid vs. Ambler Realty Co. (272 US 365 1926).
4. American Law Institute's Model Land Development Code, 1975
5. CZMA (107 S. Ct 1431)
6. California Coastal Commission vs. Granite Rock Company, Supreme Court Decision (480 US 572, 107 S. Ct 1419 (1987))
7. Penn Central Transportation Co. Vs. City of New York (438 US 104 (1979))
8. Nollan vs. California Coastal Commission (483 US 825 (1987))
9. Lucas vs. S. Carolina Coastal Council (305 SC 376, 404 SE2nd 895 (1991) 112 S.Ct. 2886 (1992))
10. Florida Rock Industries, Inc. Vs. Us (8 Cr. Ct 160 (1985))
11. Bert J. Harris, Jr. Private Property Rights Protection Act

## **COASTAL REGULATORY POLICIES AND PROGRAMS**

1. 16 U.S.C. P 1452 (2)
2. 16 U.S.C. p 1455 (d) (2)
3. 43 U.S.C., p 1301
4. Malone, p. 2-8
5. Chapter 163 (1993)
6. Federal Emergency Management Agency, "A Unified National Program for Floodplain Management," II-2, D-3, FEMA 100/March 1986.
7. Rule 9J-5.012, FAC
8. Evaluation and Analysis Report (FAC 9J-5)
9. Coastal Infrastructure Policy Report (DCA, March 1, 1995)
10. Chapter 163 Florida Statutes
11. 16 U.S.C. p. 1455 (e)
12. Recent legislation amending Chapter 373, F.S.
13. ELMS, Final Report, 1994, Land Use and Water Task Force
14. 62-4.242, (2) and (3), FAC
15. Conservation and Groundwater Aquifer Recharge Element, Charlotte County Comprehensive Plan, p. 59.
16. Lemon Bay Aquatic Preserve Management Plan (1992)
17. Charlotte County Comprehensive Plan, pp. 63-64.
18. Charlotte Harbor Aquatic Preserves Management Plan (1983).

## **COMPREHENSIVE PLANS**

1. Chapter 187, F.S.
2. Charlotte County - City of Punta Gorda Comprehensive Plan

## **PERMITS**

1. Rivers and Harbors Act (1899, amended in 1868)
2. Federal Water Pollution Control Act (amended in 1972), Section 404, 33 USC Paragraph 1288
3. Water Quality Act of 1987, Section 117, 33 USC Paragraph 117
4. Chapter 163, Florida
5. Chapter 373, Florida
6. Chapter 380, Florida
7. Chapter 403, Florida
8. Chapter 161, F.S., the Beaches and Shores Preservation Act
9. FAC 62B-33
10. Florida Administrative Code, Chapter 18-21, Florida Statutes Chapter 253
11. Chapter 253, F.S.
12. Chapter 403, F.S.
13. Chapter 253.03(10), F.S.
14. Chapter 18, FAC
15. Chapter 161
16. Chapter 17, FAC
17. Chapter 161 FAC
18. Chapters 253, 258 and 373, FS
19. Chapter 373, F.S.
20. Section 161.041, F.S.

## **LOCAL LAND DEVELOPMENT REGULATIONS**

1. Charlotte County Zoning Code (3-9-90)
2. Charlotte County Zoning Code (3-9-98)
3. Marina Siting Survey, Southwest Florida Regional Planning Council, 1984
4. Boater's Guide to Charlotte Harbor, Florida Sea Grant, 1994
5. Aerial Photography, Future Land Use and Zoning Maps, Charlotte County
6. Donald Adie, Marinas, 3rd edition, Nichols Publishing Co., 1984, 100,291



## ACRONYMS

BCC	Board of County Commissioners
CBIA	Coastal Barrier Improvement Act
CBRA	Coastal Barrier Resources Act
CCCL	Coastal Construction Control Line
CCCP	Charlotte County Comprehensive Plan
CME	Coastal Management Element (of CCCP)
CME	Coastal Management Element
COE	U.S. Army Corps of Engineers
CZMA	Coastal Zone Management Act
DCA	Florida Department of Community Affairs
ELMS	Land Use and Water Planning Task Force
EPA	Environmental Protection Agency
ERP	Environmental Resource Permit
FCMA	Florida Coastal Management Act
FCMP	Florida Coastal Management Program
FDEP	Florida Department of Environmental Protection
FEMA	Federal Emergency Management Agency
FIRMS	Flood Insurance Rate Maps
FLUE	Future Land Use Element
FLUE	Future Land Use Element (of CCCP)
FWS	U.S. Fish and Wildlife Service
GFWFC	Florida Game and Fresh Water Fish Commission
IITF	Internal Improvement Trust Fund
MALWC	Mean Annual Low Water Level
MHWL	Mean High Water Line
MLWU	Marine Land and Water Use Siting Study
NMS	National Marine Fisheries
NOAA	National Oceanic and Atmospheric Administration
OFW	Outstanding Florida Waters
OHWL	Ordinary High Water Level (same as MHWL)
ONRW	Outstanding National Resources Waters
ROSE	Recreational and Open Space Element
RPA	Resource Protection Area
SDHR	State Division of Historic Resources
SFWMD	South Florida Water Management District
SSL	Sovereignty Submerged Lands
SWFWMD	Southwest Florida Water Management District
SWIM	Surface Water Improvement and Management Act
USA	Urban Service Area
USCG	U.S. Coast Guard
WMD	Water Management District

# APPENDIX 1

## FUTURE LAND USE DEFINITIONS

<b>Agricultural</b>	Includes agriculture within the USA and agriculture outside it, at 1 unit per 10 acres outside the USA, and 1 unit per acre inside the USA;
<b>Agriculture/ Conservation</b>	Outside the USA, with sparse development at less than 1 unit per 40 acres.
<b>Residential</b>	<p>Residential estates, of very low density, in rural areas, ranging in density from 1 unit per 5 acres to 2 units per acre.</p> <p>Low density, ranging in density of 1 unit per acre to 5 units per acre, and including single-family detached, single-family attached, duplex, multi-family, and mobile homes and manufactured housing in the unincorporated county.</p> <p>Medium density, ranging from above 5 units per acre to 10 units per acre, and recreational vehicles at no more than 8 units per acre in the unincorporated county.</p> <p>High density, of more than 10 units per acre up to and including 15 units per acre.</p> <p>Planned Development-High Density, of more than 15 units per acre not to exceed 30 units per acre in appropriate locations, contingent upon amendment of the Future Land Use map and excluding the barrier Island Development Protection District or a Category 1 Hurricane Vulnerability Zone.</p>
<b>Mobile Home</b>	Provides for several types of mobile home development up to 6 units per acre, and single- or multi-family residential development up to 5 units per acre, and recreational vehicle park development up to 8 units per acre.
<b>Commercial</b>	The range of intensity is from general commercial serving the community, neighborhood commercial oriented to serving residential areas, and recreational vehicle units up to 8 per acre.

<b>Commercial/ Office</b>	For large-scale office park use in a park-like development scheme of at least 1 acre in area for the individual parcels within the commercial/office tract.
<b>Professional Office</b>	For professional office, medical and institutional uses.
<b>Highway Service Rural</b>	For services for the traveling public, including hotels, motels, restaurants, service stations, car, boat and manufactured home sales, with a minimum lot area of 2 acres.
<b>Industrial</b>	For activities of manufacturing, assembly, processing, storage, of intensity ranging from light to heavy, and industrial parks.
<b>Industrial/ Office</b>	For light industrial and office park use in a park-like setting, on tracts with minimum lots of one acre, and with specific regulations for setbacks, landscaping, noise control, buffering, etc.
<b>Recreation</b>	Includes parks and areas for specialized recreation, both non-public (N) and public (P).
<b>Public/Semi-public</b>	These are areas dedicated to such uses as schools (S), utilities, and government buildings.
<b>Preservation</b>	These are areas of significant ecological value. Except as provided in the land development regulations, no new development or expansion of existing development is permitted.

## **APPENDIX 2 FUTURE LAND USE OVERLAYS**

### **Town Center (TC)**

area of intensive development with mixed uses, including large-scale commercial, high density residential, government uses and other associated urban activities.

### **Special Surface Water Protection District (S)**

land bordering surface waters with special economic or ecological significance, i.e., Class I potable water resources, Class II fishing areas, valuable recreational uses, and significant wetland habitats.

### **Limited Development (LD)**

area closely associated with preservation and conservation lands. Development is constrained to locations where impacts will have the least effect on long-term functioning of the natural systems.

### **Planned Development (PD)**

area apply to underlying future land use designations, to allow bonuses in intensity or density up to the maximum of the underlying future land use limit, without a future land use amendment.

### **Environmentally Sensitive (ES)**

important environmentally sensitive area, such as coastal wetland, floodplain, and linkage or corridor area.

### **Barrier Island Development Protection District (B)**

coastal barrier islands to be restricted from further development beyond 1 unit per acre except where vested projects exist.

## APPENDIX 3 DEP MULTI (2+)-SLIP RESIDENTIAL DOCK STANDARDS

1. There is a 25% occupancy limit of the dock on the waterway upland width, measured at the landward end of the dock, and excluding mangrove areas.
2. The dock can extend into the waterway to provide a safe, navigable depth of 4 ft below MLWL at the mooring area, provided that the dock does not impede navigation.
3. The dock is to be located as close to the riparian area center as possible after a licensed land surveyor certifies the extent of riparian limits to the property.
4. The DEP permit must be obtained before a local building permit is issued.
5. Tidal marsh and marine grasses are to be avoided wherever possible.
6. Access through an estuarine shoreline protection zone, including a mangrove community, must comply with the local comprehensive plan limitations.
7. There is to be no associated dredging in tidal marshes and marine grass beds for a new docking facility; maintenance dredging is allowable for a previously dredged area that has silted.
8. No docking facility can occupy or cause to occupy a required setback.
9. Roofed boat shelters may be placed over docking facilities and navigable waterways exceeding 500<sup>2</sup> ft, but may be no higher than 20 ft above the adjacent pier or platform.
10. The docking facility cannot obstruct >50% of shoreline frontage open space.
11. Such docking facilities are accessory to a principal use located on the adjacent upland and cannot be built before the principal use.
12. There can be no live-aboards at docking facilities which are accessory to single-family residences.
13. No docks or pilings are to be erected, constructed, or maintained with broken glass, spikes, nails, barbs, electrical elements or other materials hazardous to wildlife or humans.

14. The design of docks, piers, and their platforms shall not, to the maximum possible extent, shade seagrass beds.
15. Docking facilities shall have a minimum water depth of - 4 ft MLWL.
16. The maximum width of the access pier shall be 8 ft.
17. The maximum platform area shall be 250<sup>2</sup> ft for each 10 slips in a finger pier, and 300<sup>2</sup> ft for 10 slips on a marginal dock.
18. The minimum setback from riparian lines shall be 25 ft.
19. The maximum length of a dock shall be 200 ft, measured perpendicular to the MHWL, excluding mangroves, except to reach navigable water at -4 ft MLWL.
20. Access ramps are limited to 200 ft, except that they can extend beyond this limit to connect to upland dry storage facilities.
21. The total number of slips shall not exceed the total number of dwellings or establishments that the dock is to serve.
22. No less than 50% of the shoreline frontage is to remain unobstructed open space.
23. A minimum of 1 off-street vehicular parking space is to be provided for each 5 boat slips, except where pedestrian access is provided.

## APPENDIX 4 DEP PERMIT REVIEWS

### (A) District Office Reviews

1. Systems not involving work in wetlands or other surface waters;
2. Systems <5 acres of any combination of construction or alteration in, on, or over, wetlands or other surface waters. This acreage limit does not include mitigation proposed to offset the otherwise unpermittable aspects of the activity.
3. Activities involving docking facilities with < 30 new wet or dry slips, except for activities that involve expansions of docking facilities that were previously permitted by the Bureau of Wetland Resource Management or the Division of Environmental Resource Permitting. Renovation or reconstruction of existing slips is not considered new slips. Other activities such as riprap revetments, seawalls, etc. are included in this provision.

### (B) Division Reviews

All activities that exceed the district criteria or which have greater impacts, including:

1. Systems involving work in wetlands or other surface waters, i.e. dredge and fill activities.
2. Systems of >5 acres of any combination of construction or alteration in, on, or over, wetlands or other surface waters.
3. Application for docking facilities with ≥30 wet or dry slips.
4. Mitigation banks.
5. Activities also requiring a coastal construction permit (20).
6. Other activities, such as transmission or distribution lines, pipelines, ports, etc.

