



**EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
BOARD CHAMBERS
2120 MAIN STREET, FORT MYERS**

**WEDNESDAY, MAY 11, 2022
2:00 P.M.**

AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – April 13, 2022
3. LDC Amendments – Dock and Shoreline (Chapter 26)
4. Adjournment
Next Meeting date: JULY 13, 2022

To view a copy of the agenda, go to www.leegov.com/dcd/calendar.

For more information, contact Debbie Carpenter, (239) 533-8345 or DCarpenter@leegov.com.

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**MINUTES REPORT
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
(EROC)**

**Wednesday, April 13, 2022
2:00 p.m.**

Committee Members Present:

Randal Mercer, Chairman
Victor DuPont
Mike Roeder

Jim Ink
Bob Knight

Excused / Absent:

Ian Moore
Matthew Roepstorff
Carl Barraco Jr.
Sam Hagan
Tim Keene

Mike Reitmann
Bill deDeugd
Tracy Hayden, Vice Chair
Bill Ennen
Buck Ward

Lee County Government Staff Present:

David Loveland, Director, Community Development
Anthony Rodriguez, Zoning Manager
Joe Adams, Assistant County Attorney
Deborah Carpenter, DCD Admin, Recorder

Outside Consultants/Members of the Public Present:

Steve Brodtkin

CALL TO ORDER AND AFFIDAVIT:

The meeting was held in the Board Chambers, 2120 Main Street, Fort Myers, Florida. Mr. Randal Mercer, Chair called the meeting to order at 2:00 p.m.

Mr. Joe Adams, Assistant County Attorney confirmed the Affidavit of Publication was legally sufficient as to form and content and the meeting could proceed.

APPROVAL OF MINUTES – March 9 2022

Mr. Mike Roeder made a motion to approve the March 9, 2022 minutes as written. Mr. Jim Ink seconded. The motion was called and carried unanimously.

LDC AMENDMENTS

Mr. Rodriguez provided background information and an overview of the Hearing Examiner (HEX) Amendments. Community Development (DCD) staff, Hearing Examiner (HEX) and County Attorney Office (CAO) have been working for the past year to clarify the powers, duties and responsibilities of the HEX in relation to code enforcement and zoning. The amendments are intended to streamline the code where appropriate and to assure compliance with state statute. The LDCAC considered these amendments on March 11 and voted unanimously to approve them. The LPA considered the amendments on March 28th and had some notation language and comments which staff addressed. The vote, and comments from each of the

committees, was noted in the backup.

TOPIC 1: Code Enforcement Update

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amendments to LDC Chapter 2 to establish a Code Enforcement Agreement process and clarify enforcement penalties and fine mitigation.

Mr. Roeder asked about the code agreement and what happens if the violator needs more time to mitigate the violation. Mr. Rodriguez explained that the Code Enforcement Agreement is entered into between staff and the violator, it does not have to be submitted to the Hearing Examiner. If the violator needs more time than what the Code Enforcement Agreement established as a timeframe to abate the violation, an amendment to the agreement would need to be agreed upon between staff and the violator. Once the violation is abated, it is the responsibility of the violator to record the release.

Motion to approve Topic 1 by Mr. Roeder; seconded by Mr. Victor DuPont. Mr. Mercer called the motion and it passed unanimously.

Mr. Mercer called for public comments.

Mr. Steven Brodtkin, representing the Concerned Citizens of Bayshore Community, and Women for a Better Lee addressed the Committee on Topics #2 and #3. He opposed the HEX amendments as written, stating that it is a step backward for an open and transparent government and free speech rights. He said Lee County's rezoning process is already very restrictive due to the prohibition of communication between the Board of County Commissioners and Hearing Examiner. The proposed amendments further restrict public input by eliminating many Commissioners hearings. (complete text of comments attached)

TOPIC 2: Delegation of Decision-making to HEX for Conventional Rezoning Requests

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to allow the HEX to provide the final decision in all conventional rezoning requests.

Mr. Mercer said it appeared that the HEX would be hearing many more cases than currently. Mr. Rodriguez clarified that the HEX hears all the cases now, but makes only a recommendation for consideration by the Board, then the case goes to the Board for the final decision.

Mr. Ink did not support this amendment. He liked the idea of streamlining but not when conventional rezonings become just a one stop process. His concern was that there could be changes to the schedule of uses or property regulations that could affect surrounding properties. He preferred to see it remain as a two-step process.

Mr. Roeder agreed with streamlining. He said he would like to see the Planned Development process addressed, as well as the ability for the public to communicate or coordinate with the

Board but neither of those topics are on this agenda. Mr. Roeder supported the amendment, stating that having the two step process could be a double edged sword with the possibility that a favorable decision could be reversed at that level. He felt the HEX setting gives the public more latitude whereas the Board is much more restrictive.

Mr. Knight agreed with the concept, liking the idea of streamlining and saving money, but was uncomfortable giving HEX the final authority.

Mr. Adams clarified that the election to go to the board is made by the applicant prior to the decision by the HEX. That was a concern for Mr. Ink and Mr. Knight - that the applicant can request to take the case to the Board, but the public cannot.

Mr. Roeder commented that three-fourths of the conventional zoning cases are non-controversial and allowing the HEX to make the final decision makes sense. He suggested adding a provision that the public can also request that the case go to the County Commission.

Mr. Ink wanted the 2 step process to remain. Mr. Roeder felt that allowing the HEX to make the decision for those non-controversial cases saves time and money.

Mr. Rodriguez clarified that this topic relates to conventional rezoning only, going from one established district to another established district. There are no conditions to debate through the hearing process. Development must abide by the schedule of uses and property regulations in place at the time of development. These types of rezonings are not often denied and generally have very limited or no public involvement.

Mr. Rodriguez said that as a result of LPA's response, language was added [(d)(1)e.] that the applicant must make the request for a second public hearing before the Board at the conclusion of the HEX hearing or any time before that.

Mr. Knight made a motion to accept the amendments as written with the suggestions of previous committee comments incorporated. No second. The motion failed.

Mr. Roeder made a motion to accept the amendments with the addition that a member of the public could also request a public hearing before the Board of County Commissioners (page 4, (d)(1)e). Mr. Victor Dupont seconded.

Mr. Adams clarified that the request would need to be made on the record at the HEX hearing in order to elect that option.

Mr. Mercer called the motion. The motion carried (3 to 1) with Mr. Ink dissenting.

TOPIC 3: Delegation of Decision-making to HEX for PD/PUD Amendments

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to allow the HEX to provide the final decision for certain planned developments and amendments to planned unit developments that are not subject to separate ordinance.

Mr. Roeder made a motion to accept the amendments with the addition that a member of the public could also request a public hearing before the Board of County Commissioners [page 6 of 10, (d)(1)e.5.]. Mr. Victor Dupont seconded.

Mr. Mercer called the motion. The motion carried (3 to 1) with Mr. Ink dissenting.

TOPIC 4: Changes to HEX Recommendations on Zoning Matters

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to establish a procedure for the HEX to consider requests for changes to HEX-recommended conditions of approval in advance of the BCC hearing. Currently drafted to require written submission to the HEX, with a copy to staff, at least 14 working days prior to the scheduled BCC public hearing date.

Mr. Roeder asked if the response would be provided to all parties. Mr. Rodriguez confirmed that the correspondence would be shared with any parties of interest associated with the zoning case.

Mr. Ink was in favor of this amendment, which provides an opportunity to clarify items or issues before going to the Board.

Motion to approve by Mr. Knight. Seconded by Mr. Roeder. Mr. Mercer called the motion and the motion carried unanimously.

TOPICS 5: HEX Related amendments to DRIs:

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to align with state statutes.

Motion to approve by Mr. Knight. Seconded by Mr. Ink. Mr. Mercer called the motion and it carried unanimously.

TOPIC 6: Administrative Appeals to HEX

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to consolidate language regarding the authority of the HEX to hear appeals in LDC Section 34-145. Establish procedures for filing, standing to appeal, acceptance of appeals, nature of proceedings, considerations, and nature of relief.

Mr. Roeder questioned the reference to Timberland and Tiburon DRIs on page 10. Mr. Rodriguez confirmed that this is language already in the code and he could not speak to its significance.

Mr. Roeder asked if an applicant wins an appeal if the application fee is refunded. Mr.

Rodriguez believed that was the case.

Motion to approve Mr. Ink. Seconded by Mr. Knight. Mr. Mercer called the motion; the motion carried unanimously.

Mr. Rodriguez explained that the next two topics, #7 and #8, came about after discussion with the Board in December of 2021. The Board directed staff to prepare some amendments to address the Board's concern relative to these topics.

TOPIC 7: Participation of Hearing Examiner at Board of County Commissioner (BoCC) Hearings on Zoning Matters.

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to allow the Hearing Examiner to participate in hearings before the BoCC on zoning matters. Intended to remove the need for staff or the applicant to interpret a Hearing Examiner position on a particular aspect of the recommendation.

Mr. Mercer summarized his understanding of the amendment: that HEX is allowed to attend BoCC hearings; that HEX does not give a presentation; that HEX is able to answer questions from the BoCC, which Mr. Rodriguez clarified is limited to the evidence and testimony presented at the HEX. Current rules apply, cannot introduce new evidence, cannot provide additional testimony.

Motion to accept as written by Mr. Roeder. Seconded by Mr. DuPont. Mr. Mercer called the motion and it passed unanimously.

TOPIC 8: Clarification of Language Prohibiting Unauthorized Communications.

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to allow the County Commissioners to have informational discussions with county staff including the County Attorney's office, regarding zoning cases, as needed.

This is intended for the Board to gather information to streamline the public hearing process.

Mr. Mercer asked if this communication would be part of the public record and discussion followed. Written communication is part of a public record subject to Sunshine Laws. Verbal conversations are not part of the public record and this would include Commissioner briefings. Mr. Adams clarified the distinction between the Sunshine Law and Ex Parte Communication in quasi-judicial proceedings.

Mr. Knight had a concern that when a commissioner wanted information that he could call and speak to anyone but there was no record of the conversation. Mr. Knight felt that the request for information should go through the Department manager who then would relay the request to appropriate staff.

Mr Ink did have some concern about the flow of information, but could justify the concept of going directly to staff since staff prepared the staff report. Mr. Roeder would prefer that communications be in writing so it can be made public.

Mr. Ink made a motion to approve the amendment. Seconded by Mr. DuPont.

Mr. Roeder would rather restrict this to written communication, that oral off the record communication not be allowed.

Mr. Ink revised the motion to approve the amendment with Mr. Roeder's comment added. Mr. Mercer called the motion and it carried unanimously.

TOPIC 9: Clarification of Language regarding administrative interpretations

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend LDC Section 2-1 to clarify that requests for Interpretation regarding a specific piece of property may only be sought by the property owner or registered agent of the property in question.

There are third parties that are utilizing the Administrative Interpretation process in an attempt to appeal an administrative decision by staff. The Hearing Examiner does not have the right to consider that as part of an appeal, but that does not prevent someone from filing the appeal. This requires staff time and effort to respond to an appeal that the HEX has no authority to hear in any case.

Motion to accept the amendment as written by Mr. Knight. Seconded by Mr. Ink. The motion carried unanimously.

Mr. Rodriguez stated that LDC amendments related to Dock and Shoreline will be discussed at the next meeting scheduled for May 11, 2022.

There was no further business. **Mr. Mercer adjourned the meeting at approximately 3:20 p.m.**

4/13/2022

RE: HEX Amendments

Executive Regulatory Oversight Committee

EROC Members,

We oppose the HEX (Hearing Examiner) amendments to the LDC (Land Development Code) as written because they are a step backward for open and transparent government, and free speech rights.

The rezoning process in Lee County is already extremely restrictive to public input due to the prohibition on communications with the BOCC (Board of County Commissioners) and HEX. Unlike Lee County, in almost all other counties in the state, and within all of the cities in Lee County, the public can communicate with elected officials at any time regarding rezoning cases. The proposed HEX amendments further restrict public input by eliminating many BOCC hearings for rezonings. County staff stated that the number of rezoning cases going to the BOCC would decline by 42%. If approved, the public will have only the one HEX meeting to comment at, since there would be no BOCC meeting. Many more rezoning decisions would be made by the HEX, an unelected official.

These amendments would allow the HEX to increase density in some cases without BOCC approval, allow the HEX to rezone properties in some cases without BOCC approval, and would also allow the HEX to make changes to her recommendations without public input.

In the hearing packet for this meeting, the first question listed under EROC Ordinance Evaluation Guidelines, asks: "What is the public interest that the Ordinance is designed to protect?". So how is further restricting public input and granting much more final decision making authority to the HEX, without BOCC involvement, in the public interest?

With regard to the public interest, we should be making changes to the rezoning process to end the prohibition on communications, allowing residents to comment and provide facts and documents to the BOCC and the HEX during rezoning consideration. Instead, these amendments further reduce the public's opportunity to provide input for rezoning cases. Currently residents have only a few minutes to present at these meetings and there is no back and forth discussion. If an applicant makes a false statement after public input has ended, there is no recourse for residents to respond.

We've heard opinions from the county attorneys saying that the legality of eliminating the prohibition on communications for rezonings is problematic because it is a quasi-judicial process. Yet somehow other counties and cities can do it without a problem.

We ask that you recommend against approval of the HEX amendments because they further restrict public participation and give too much decision making authority to the HEX, an unelected official. We also ask that you make a recommendation to the BOCC to open up the process by eliminating the prohibition on communications during the rezoning process. We should have an open and transparent government that supports free speech rights as guaranteed by the First Amendment to the Constitution.

Thank you,

Steve Brodtkin

Representing:

CCBC (Concerned Citizens of Bayshore Community)

and

WFBL (Women for a Better Lee)

EROC ORDINANCE EVALUATION GUIDELINES

Proposed Ordinance: Amendments to LDC Chapter 26 (Dock and Shoreline Structures)

1. What is the public interest that the Ordinance is designed to protect?

1. Provide minimum standards to safeguard the health, safety and public welfare as it relates to the quality, design, fabrication and erection of structures for recreational boats such as piers, boat docks, mooring, platforms or other similar type structures designed primarily for use of recreational boats.
2. Preserve the navigability of the waterway, aquatic resources and species.
3. Maintain compliance with the Lee Plan and the Lee County Manatee Protection Plan (MPP).

2. Can the identified public interest be protected by means other than legislation (e.g., better enforcement, education programs, administrative code in lieu of ordinance, etc.)? If so, would other means be more cost effective?

No.

3. Is the regulation required by State or Federal law? If so, to what extent does the County have the authority to solve the problem in a different manner?

No. As proposed, many of the regulations contained in this chapter align further with State and Federal permitting; however, the proposed amendments are not required by state or federal law, but rather are necessary to maintain compliance with the County's comprehensive plan and Manatee Protection Plan.

4. Does the regulation duplicate State or Federal programs? If so, why?

No, the amendments to Chapter 26 aim to streamline and provide clarification and design flexibility for county-required approvals.

5. Does the regulation contain market-based incentives? If not, could that be used effectively?

No.

6. Is the regulation narrowly drafted to avoid imposing a burden on persons or activities that are not affecting the public interest?

Yes.

- 7. Does the regulation impose a burden on a few property owners for the benefit of the public as a whole? If so, does it provide any form of compensation?**

No.

- 8. Does the regulation impact vested rights?**

No.

- 9. Does the regulation provide prompt and efficient relief mechanisms for exceptional cases?**

Yes, the proposed amendments create additional prompt and efficient relief mechanisms.

- 10. Even though there is an interest to be protected, is it really worth another regulation?**

The majority of the amendments contained in the proposed draft increase design flexibility, clarify and streamline existing regulations. In those instances where additional regulations are proposed, such regulations are required to maintain compliance with the County's comprehensive plan and Manatee Protection Plan.

- 11. Has this approach been tried in other jurisdictions? If so, what was the result? If not, what are the reasons?**

The draft proposes setback regulations in artificial waterbodies in line with input received by LDCAC, LPA and a member of the marine industry to address access, navigability issues and to preserve riparian rights. Other jurisdictions that include setback regulations in artificial waterbodies include The Cities of Fort Myers, Cape Coral, Sanibel, Bonita and Town of Fort Myers Beach.

- 12. If this regulation is enacted, how much will it cost on an annual basis, both public and private? If this regulation is not enacted, what will be the public and private cost?**

The regulations, as proposed, are not projected to result in an appreciable difference in cost in either respective domain.

MEMORANDUM
FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

**TO: Executive Regulatory Oversight
Committee**

DATE: May 2, 2022

**FROM: Adam Mendez
Planner, Zoning Section**

**RE: Land Development Code Amendments
Dock and Shoreline Structures (LDC Chapter 26)**

The attached Land Development Code (LDC) amendments propose a comprehensive realignment of dock and shoreline regulations, giving consideration to current industry trends, the Lee Plan, and the Manatee Protection Plan (MPP). Staff seeks input and a recommendation as to whether the proposed amendments should be adopted by the Board of County Commissioners (BoCC).

Background and Summary

Regulations contained in LDC Chapter 26 are largely derived from ordinances from the mid- to late-1980s. In 2009, various changes to LDC Chapter 26 were codified in recognition of the County's Manatee Protection Plan (MPP). In August of 2020, staff commenced the process of preparing amendments to LDC Chapter 26 based on initial industry input gathered from professionals who regularly conduct business within Lee County. County staff developed draft language and met with industry representatives on several occasions to gain further insight on sections within the Code that merited closer consideration. Final draft language was presented to the Board of County Commissioners (BoCC) at a work session in December of 2021, and the BoCC subsequently directed staff to present the proposed amendments to the three advisory committees in January of 2022.

Amendments to dock and shoreline regulations must maintain consistency with the Lee County Manatee Protection Plan (MPP), Comprehensive Plan (Lee Plan) and the balance of the Land Development Code. The proposed amendments also consider environmentally critical and sensitive areas and natural resources.

The draft amendments propose:

- New definitions within the chapter.
- The clean-up of various sections to address scrivener's errors, eliminate internal inconsistencies, and to provide greater clarity throughout the Chapter.

- Codify additional site plan details for ease of administration in effectuating permit reviews.
- Introduce specified departures from standard regulations through administrative and special exception processes that rely on impact and compatibility analysis rather than the hardship (variance) analysis currently in place for departures.
- Clarify that single-family docking facilities in all waterbodies permit two slips by right (except shared-use agreements) to assure compliance with the Lee County MPP.
- Establish administrative and special exception routes to obtain additional slips.
- Provide handrail waiver criteria for private single-family or joint-use docking facilities evaluated at time of permit request.
- Consider dock lengths exceeding 200 feet through an administrative review process.
- Designate figure 26-1, Private Single-Family Structure Plan View, as required only in state designated aquatic preserves instead of all natural waterbodies.
- Replace kayak and canoe references with “paddlecrafts”, as defined, for broader insertion in Chapter.
- Permit greater dimensioned boathouses by right and by special exception, permit seating areas associated with boathouses, and introduce the potential for dock pavilions, as defined, in lieu of the right to construct a boathouse.

Land Development Code Advisory Committee (LDCAC) - April 8, 2022

The LDCAC provided suggestions to consider public comment received from members of the marine industry, John Siekmann (Stokes Marine), Dan Stovall (Honc) and Hans Wilson (HWA). Primarily, the consideration of implementing certain additional design standards, the removal of the proposed ingress and egress site plan requirement in favor of establishing minimum setbacks for dock and shoreline structures, and the clarification of whether codifying a uniform single-family boat-slip quantity maximum in all navigable waterways is consistent with the Manatee Protection Plan (MPP) and is not effectively amending the MPP. Accordingly, staff has included the following revisions and clarifications in the attached Draft LDC Chapter 26 Amendments:

- Modification of certain design standards:
 - Remove proposed ingress/egress site plan requirement in favor of setback standards in artificial waterbodies.
 - Introduce reduced setbacks for lots with shoreline lengths of less than 65 feet in natural waterways.
 - Recognize the presence of mangroves when determining navigable channel widths.
 - Clarification regarding ingress/egress depth requirements associated with multi-slip and Marina docking facilities.
 - Implementation of a setback waiver for boathouses in natural waterbodies.
- Clarification that the proposed amendments are consistent with the MPP.

- Broadening of the dates during which a Benthic Species Survey Assessment may be conducted as it pertains to the growing season for benthic species to maintain consistency with the MPP.
- Recognition that minor maintenance or repairs may not require a local development order.

Local Planning Agency (LPA) April 25, 2022

The LPA voted to find the amendments, as proposed, consistent with the Lee Plan, with suggestions to pursue further amendments to the Manatee Protection Plan and County seawall regulations in the near future in a process separate from these amendments. In addition, the LPA suggested the need to define the distance related to assuring adequate ingress and egress of a dock, the potential of reducing the single-family water depth requirement for lots less than 80 feet wide, and consideration of electric modes of propulsion to aid in paddlecraft travel. Members of the marine industry, Brent Stokes (Stokes Marine) and Hans Wilson (HWA) provided public input as follows:

HWA

- Chapter 26 should stand alone, independent of the County's Manatee Protection Plan.
- The ingress and egress for pathway depth applicability must be more clearly defined.
- Continue to pursue improvements to current seawall regulations if they are not drafted as part of these amendments.

Stokes Marine

- Remove the proposed minimum side setbacks in artificial waterbodies.
- Continue to pursue seawall regulations that would permit replacement seawalls in natural waterbodies with different material types with the option to entomb old seawalls as permitted in artificial waterbodies.
- Reduce or eliminate natural waterbody single-family slip water depth requirement outside of aquatic preserves.
- Remove proposed limitations on watercraft slips in artificial waterbodies and natural waterbodies outside of aquatic preserves.

Accordingly, staff has included annotations and the following revisions and clarifications in the attached draft LDC Chapter 26 Amendments:

- Modification of the definition of "egress and ingress" in Section 26-41.
- Modification of Section 26-71(f)(2) to effectuate the revised definition of egress and ingress and to provide a reduced water depth for multi-slip docking facilities that are exempt from MPP Review.
- Modification of Section 26-71(d) to state that single-family residential docks are subject to the accessory structure side setback instead of the principal structure's.

- Modification of the definition of Multi-slip Docking Facility to address “residential” multi-slip docking facilities.
- Replacement of ingress and egress references with “access” to eliminate conflict with revised definition of “egress and ingress.”
- Modification of Section 26-80 to clarify that transfer of watercraft slip credits to and from single-family docks is prohibited.

Attachment – Draft LDC Chapter 26 Amendments

**Dock and Shoreline Structures
(Comprehensive Amendments to LDC Chapter 26)**

AMENDMENT SUMMARY

Substantive amendment affecting LDC Chapter 26

- Issue:** County staff has received feedback from marine contractors that LDC Chapter 26 maintains certain design regulations that are more restrictive than state or other local government regulations.
- Solution:** With input from industry professionals, prepare amendments that are more consistent with state and other local jurisdictions. Establish a special exception process in lieu of variance process for certain departures from amended dock and shoreline regulations.
- Outcome:** Adoption of updated regulations that address industry feedback while maintaining consistency with the Lee Plan, the Lee County Manatee Protection Plan (MPP) and other applicable regulations. The Lee Plan Future Land Use Category (FLUC), determines the density of a property and dictates the number of allowable slips, while the Manatee Protection Plan (MPP) limits the allowable slips further depending on the linear feet of shoreline and preferred, conditional, or non-preferred waterway classification. Provides a public hearing process for deviations from certain dock and shoreline regulations without requiring “hardship” associated with variance process.

CHAPTER 26 – MARINE FACILITIES, STRUCTURES AND EQUIPMENT

ARTICLE II. – DOCK AND SHORELINE STRUCTURES

DIVISION 1. – GENERALLY

Sec. 26-41. - Definitions.

Staff Note: Add definition of benthic species survey assessment, which is referenced in Section 26-71. Add cross-reference to LDC Section 10-420 definition of invasive exotic vegetation (currently utilized in Section 26-77(b)(3), pertaining to mangroves). Add definition of “dock pavilion”. Relocate definition of “multi-slip docking facility” (currently defined in chapter 34). Add definition of paddlecraft. Add definition of “personal watercraft”. Delete definition of open water (not used in chapter). Relocate definition of “waterway” (currently defined in Chapter 34). Correct scrivener’s errors.

Industry Comment: Is the proposed Benthic Species Survey Assessment the most appropriate assessment, would a bathometric survey work? The proposed timeframe is a small window to perform this assessment (June 1 through September 31).

Staff Response: Staff believes the proposed assessment is the most appropriate to review benthic species. Staff has broadened the assessment dates to permit assessments from April 1 through October 31, while maintaining consistency with the MPP.

The following words, terms and phrases, when used in this article, will have the following meanings unless the context clearly indicates a different meaning:

Access walkway means the portion of a structure that allows access to a docking facility or terminal platform.

Areas of special concern (ASC) means those areas as identified and described in the Manatee Protection Plan.

Benthic Species Survey Assessment means an assessment of the animals and plants that live on or in the bottom of a body of water conducted between April 1 and October 31. Supporting data are in the form of but are not limited to: benthic habitat species maps that depict the topography, photos, acoustic surveys, and an analysis of sedimentary samples beneath the body of water that provide data sufficient to determine the presence of shellfish and seagrass beds.

Boat means a vehicle or vessel designed for operation as a watercraft propelled by sail or one or more electric or internal combustion engines. For the purposes of the Manatee Protection Plan, non-mechanically powered ~~canoes and kayaks~~ paddlecrafts are not covered by this definition. See also *Vessel* or *Watercraft*.

Boat facility means a public or private structure or operation where boats are moored or launched, including commercial, recreational and residential marinas, and ~~boatramps~~ boat ramps.

Boathouse means a roofed structure constructed over or adjacent to water to provide a covered mooring or storage place for watercraft.

~~Boat ramp~~ *Boat ramp* means a structure, man-made or altered natural feature, or an inclined and stabilized surface extending into the water from the shore, which facilitates the launching and landing of boats into a waterbody or from which trailered watercraft can be launched and retrieved.

Director means the director of the department of community development, or his successor or designee, except when otherwise stated.

Ditch means a manmade trench or canal that was built for a non-navigational purpose. (See Federal Register 33 CFR 329.24 for definition of navigable waterways.)

Docking facility means a water-oriented structure designed primarily for the launching, retrieval, storage or mooring of watercraft.

Dock pavilion means an open-sided roofed structure located completely over dock decking with no roof overhang projecting over the edge of the dock in which the pavilion is located.

Egress and *ingress* means, ~~for the purposes of the Manatee Protection Plan,~~ a continuous pathway of deep water that vessels would most likely travel between a facility and a marked channel.

Exterior property line means the side lot line or riparian property line separating two or more lots or parcels under common ownership from the adjoining lots or parcels under separate ownership.

Finger pier means a dock landing that branches from an access walkway or terminal platform to form a watercraft slip and provide direct access to watercraft moored in the slip.

Hazard to navigation means a watercraft or structure erected, under construction or moored that obstructs the navigation of watercraft proceeding along a navigable channel or obstructs reasonable riparian access to adjacent properties.

Invasive exotic vegetation means Australian pine (*Casuarina spp.*), Brazilian pepper (*Schinus terebinthifolius*), paper or punk tree (*Melaleuca quinquenervia*), beach naupaka (*Scaevola frutescens*

or *Scaevola taccada*), and earleaf acacia (*Acacia auriculiformis*) and those additional species listed in section 10-420(h).

Lawfully has the same meaning as set forth in section 34-2.

Linear shoreline means the mean high water line in tidally influenced areas and the ordinary high water line along ~~waterways~~ waterbodies that are not tidally influenced. This definition does not apply to shorelines artificially created after October 24, 1989 through dredge and fill activities (such as boat basins or canals). Shorelines artificially created before October 24, 1989 must have been permitted in accordance with the regulations in effect at that time. Shoreline along man-made ditches (such as mosquito control, flood control ditches, etc.) will not qualify as linear shoreline, regardless of the date of construction unless verifiable documentation of regular navigational use prior to July 1, 2004 exists. For purposes of Manatee Protection Plan, linear shoreline will be calculated using survey quality aerial photographs or by accurate field survey. The calculation of linear shoreline for purposes of Ch. 26 is based upon shoreline owned or legally controlled by the property owner.

Littoral zone means the shallow-water region of a waterbody where sunlight penetrates to the bottom.

Manatee Protection Plan means the Lee County Manatee Protection Plan, dated June 17, 2004, approved by the Board of County Commissioners on June 29, 2004, as it may be amended from time to time.

Mangrove means any specimen of the species black mangrove (*Avicennia germinans*), white mangrove (*Laguncularia racemosa*), or red mangrove (*Rhizophora mangle*).

Marginal dock means a dock that runs parallel and adjacent to the shoreline. This term includes docks with a maximum access walkway length of 25 feet to a dock running parallel to the shoreline and adjacent to wetland vegetation.

Marina has the meaning provided in section 34-2.

Mean high water means the average height of the high waters over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value.

Mean high-water line means the intersection of the tidal plane of mean high water with the shore.

Mean low water means the average height of the low waters over a 19-year period. For shorter periods of observation, "mean low water" means the average height of the low waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value.

Mean low-water line means the intersection of the tidal plane of mean low water with the shore.

MFSE means the marine facilities siting element of Lee County's Manatee Protection Plan.

Mooring area means the portion of a docking facility used for the mooring of watercraft.

Multi-slip docking facility ~~has the meaning provided in section 34-2.~~ means two or more docks that provide vessel mooring slips to unrelated individuals, either for rent or for sale, or as an on-site private recreation facility as defined in section 34-2. A multi-slip docking facility is distinguished from a marina in that it has no commercial activity associated with it, including boat rentals or those uses or activities listed under transportation services group I (see Section 34-622(c)(53)). The term "multi-slip docking facility" does not include boat ramps or a shared docking facility in accordance with Section 26-71(h).

Navigable channel means the area within a natural waterbody that has a minimum of three feet of water depth at mean low water.

~~*Open water* means, for the purposes of the Manatee Protection Plan, wide water bodies or water adjacent to passes. Charlotte Harbor is defined as the southern limit of the Charlotte Harbor Aquatic~~

~~Preserve line north to the Lee County line, and Pine Island Sound is defined as the northern limit of the Pine Island Sound Aquatic Preserve line at the north end of the Sound, south to Redfish Pass. Gulf Passes, for the purposes of the Manatee Protection Plan, include Matanzas Pass, Captiva Pass, Redfish Pass, Boca Grande, Big Hickory Pass, Big Carlos Pass, Blind Pass, Hurricane Pass and New Pass.~~

LPA: Some kayaks have trolling motors. Is that considered motorized?

Staff Response: Yes, staff does not propose exceptions for any variation of motorized paddlecrafts.

Paddlecraft means any type of non-motorized canoe, kayak, paddleboard, or other similar vessel manually powered by its occupants using a single or double-bladed paddle as a lever.

Staff Note: Personal watercraft as defined below is consistent with the definition established in F.S.S. 327.02, and encompasses “jet skis” and similar watercrafts.

Personal watercraft means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Public service marina means a marina that generally leases wet storage to the general public on a first come, first serve basis, and also offers services such as the provision of supplies, sewage pump-out, repair of boats and wet or dry storage.

Retaining wall means a vertical bulkhead constructed landward of the mean high water line and wetland vegetation.

Single-family dock means a fixed or floating structure, including moorings, used for berthing buoyant vessels, that is an accessory use to an existing or proposed single-family residence, with no more than two boat slips per residence when located in a ~~natural waterbody~~ waterway. Notwithstanding, a shared single-family dock approved in accordance with this code may contain up to four boat slips. A single-family dock may contain additional slips as provided in Section 26-71(a).

Slip or watercraft-slip means a space designed for the mooring or storage of a single watercraft, regardless of size, which includes wet or dry slips, anchorage, beached or blocked, hoist, parked on trailers, open or covered racks, seawall or the number of parking spaces for ~~boatramps~~ boat ramps. Mooring or storage of paddlecrafts are not considered wet or dry slips. Piers authorized only for fishing or observation are not considered wet slips.

Structure refers to any water-oriented facility and includes, without limitation, any dock, boardwalk, floating dock, fishing pier, wharf, observation deck, deck, platform, boathouse, mooring piling, riprap, revetment, seawall, bulkhead, retaining wall, jetty, groin, geotextile tube, boat lift, davit or ~~boatramp~~ boat ramp, or any other obstacle, obstruction or protrusion used primarily for the landing, launching or storage of watercraft, erosion control and shoreline stabilization, or for water-oriented activities.

Seagrass means ~~Submerged~~ submerged aquatic vegetation (SAV) means including fresh, saline (~~seagrass~~) or brackish submerged vegetation that may be used by manatees for food.

Terminal platform means the part of a docking facility connected to and generally wider than the access walkway that is used both for securing and loading a vessel.

Vessel means a motor-propelled or artificially propelled vehicle and every other description of boat, watercraft, barge and airboat (other than a seaplane), used or capable of use as a means of transportation on the water, ~~including jet skis~~. See Boat or Watercraft.

Staff Note: ‘Warm water refuge’ is not utilized anywhere in the LDC and is defined in the Manatee Protection Plan, staff proposes to strike the definition, as it is immaterial to this Chapter and LDC.

~~Warm water refuge means known areas of warm water discharge, deep water or natural springs where manatees aggregate in the wintertime for thermoregulation. Known or recognized warm water refuges are listed in the Manatee Protection Plan.~~

Waterbody means all artificial and natural bodies of water, as those terms are defined in section 34-2, and all adjacent wetlands, as defined in section 14-292.

Watercraft means any vehicle designed for transporting persons or property on, in or through water. See *Boat* or *Vessel*.

Waterway means any bay, river, lake, canal or artificial or natural body of water traversable by watercraft to navigable waters of the United States, including the Gulf of Mexico.

Work means and includes, but is not limited to, all dredging or disposal of dredge material, excavation, filling, construction, erection or installation, or any addition to or modification of a structure on ~~a waterway~~ any waterbody.

Sec. 26-42. - Violations and penalties.

Staff Note: Based on the definition of *work* (contained in the Section above), activity that is not deemed structural may still be considered “work”. Staff suggests these phrases be removed in both Subsections (a) and (b).

- (a) Any person doing work in violation of this article or any approval or permit issued in accordance with this article is subject to prosecution through the county code enforcement process, described in chapter 2, article VII. Any affected party, including the county, may seek a civil injunction to enjoin work ~~on a structure~~ conducted in violation of this article, in addition to or in lieu of initiating or pursuing code enforcement action.
- (b) Each day work continues ~~on any structure~~ without the appropriate permits constitutes a separate offense.

Sec. 26-43. - Applicability of article.

The terms and provisions of this article apply to the unincorporated area of Lee County.

Sec. 26-44. - Compliance with applicable regulations.

Permits issued in accordance with this chapter or development orders for work in the unincorporated area of the county do not eliminate the need to obtain all applicable state and federal agency permits. Except when issued in conjunction with a transfer of a watercraft slip, County approval does not constitute a property right.

Sec. 26-45. - Permits required.

Staff Note: Add subsections c and d, which require site plans provided for permit applications to identify the location and quantity of watercraft slips and to depict the width of the abutting navigable channel or artificial waterbody.

LDCAC Comment: Consider implementing setback requirements in artificial waterbodies in lieu of demonstration of ingress and egress.

Staff Response: Staff has deleted proposed ingress egress site plan requirement language accordingly with the addition of language in Section 26-71(d), implementing minimum setbacks for future docks in artificial waterbodies.

Industry Comment: Section 26-45(c) proposes that all work relating to industrial, commercial or multi-family projects will require a development order. Industry cited that there might be instances that minor repairs warrant a permit but not a development order.

Staff Response: Section 26-45(c) has been reverted to its existing language of “may require a development order...”

- (a) A permit is required prior to starting any work addressed by this article.
- (b) Permit applications must be submitted in writing on an appropriate form to the Department of Community Development, and contain the following:
 - (1) The names, addresses, and telephone numbers of the property owners;
 - (2) The name, address and telephone number of the property owner's agent, if applicable
 - (3) Written authorization from the property owner to the agent, if applicable;
 - (4) The property street address;
 - (5) The property STRAP number;
 - (6) A site plan, showing the following:
 - a. The proposed location of the work relative to riparian property lines; ~~and~~
 - b. Dimensions and side setbacks of all proposed structures or work;
 - c. The proposed location and quantity of watercraft slips; and
 - d. The width of the abutting navigable channel or artificial waterbody.
 - (7) Copies of all necessary state and federal agency permits, unless a submerged lands lease is required from the state department of environmental protection, in which case county approval is required first; and
 - (8) A fee, as established in the applicable county administrative code.
- (c) Work relating to industrial, commercial or multi-family projects may require a development order in accordance with Chapter 10 and construction drawings sealed by a professional engineer (P.E.) or registered architect. All development order applications will be reviewed for compliance with this article.
- (d) The director has the discretion to require:
 - (1) Construction drawings sealed by an appropriately qualified professional engineer, or registered architect;
 - (2) A boundary or record survey, including labeled delineation of riparian lines, sealed by a professional surveyor and mapper (PSM) identifying the property boundary or riparian extensions into the waterbody in relation to construction or work. The survey submitted to meet this criteria must be certified to Lee County; and
 - (3) A post-construction as-built survey, sealed by a PSM and certified to the county, prior to issuance of a certificate of completion for any permit under this section.
- (e) The director may conduct on-site inspections to determine if the proposed work or structure meets the required minimum standards.
- (f) A permit is required to repair or replace an existing structure. The director has the discretionary authority to exempt minor repairs.

- (g) The director can authorize minor design alteration necessary to comply with the Americans with Disabilities Act.
- (h) Permit approvals granted under this section will be based upon the information submitted by the applicant. An approval under this section does not constitute a legal opinion regarding the riparian rights boundaries of the subject property or adjacent property; and, may not be used to substantiate a claim of right to encroach into another property owner's riparian rights area.
- (i) Issuance of a permit for new construction, reconfiguration or the repair of an existing structure that changes the configuration in a manner not consistent with the terms and conditions of the Manatee Protection Plan is prohibited.

Sec. 26-46. - Variances and Special Exceptions.

Staff Note: Provide for the consideration of additional single-family slips and greater dimensioned single-family boathouses, through the special exception and administrative approval processes, to allow for the evaluation of the appropriateness of a use or structure under special conditions. Additional review criteria and submittal requirements to evaluate potential impacts of dock and shoreline special exception and administrative requests are proposed to be incorporated into amendments to Chapter 34 and are located on the last pages of this draft. LDC 34-1863 dictates that the placement, construction, and maintenance of the dock components must demonstrate compliance with the Manatee Protection Plan (MPP) and the Lee Plan. LDC Section 14-154 describes the Manatee Protection Plan's applicability for all types of waterways.

- (a) Variances from the requirements of this article may be requested in accordance with section 34-145(b).
- (b) Requests for variances involving historic resources, as defined in chapter 22, may be obtained in accordance with sections 22-173 and 22-174.
- (c) Specified departures from the standards contained in sections 26-71 and 26-74 may be requested through the special exception or administrative approval process respectively in accordance with sections 34-145(c) and 34-174. Development approved by these processes may not be permitted prior to the commencement of a principal structure. The principal structure must be existing or concurrently constructed with any approved departure from the standard regulations contained herein.

Sec. 26-47. - Exemption from setback requirement.

Any structure permitted under this article will not be subject to the ~~25-foot waterbody~~ setback requirements from a bay, canal or other waterbody ~~established~~set out in chapter 34.

Sec. 26-48. - Nonconforming structures.

Staff Note: Revised to address inconsistency in the first sentence of section 26-48. A nonconforming structure cannot "remain in compliance with existing regulations."

A nonconforming structure may be repaired, replaced or altered if the size, dimensions and location of the structure is and will remain in compliance with ~~existing~~ all other applicable regulations, including the Manatee Protection Plan and section 26-75(b)(4) (regarding seawalls). Nonconforming structures may be altered, if in the opinion of the director, the proposed work will not cause an increase in the nonconformity.

Secs. 26-49—26-70. - Reserved.

DIVISION 2. - LOCATION AND DESIGN

Sec. 26-71. - Docking facilities and boat ramps.

Staff Note: Modify section to allow for the waiving of handrail requirements subject to certain conditions. Staff maintains that handrails play an important role in deterring docking area from non-compliance with the approved watercraft-slip count. Modify subsection (a) for compliance with the MPP, which defines a single-family dock as containing two slips regardless of waterbody classification. Modify subsection (b) to clarify method of measurement and establish submittal documents and criteria for consideration of maximum dock length exceedances. Modify subsection (c) to require benthic survey as a supporting document for applications seeking to exceed maximum dock dimensions. Modify subsection (d) to remove appeal-related language, which will be relocated to Chapter 34. Delete redundant language and clarify language as necessary.

LDCAC/Industry Comment: Ensure proposed single-family slip maximum is consistent with the MPP and is not effectively amending the MPP.

Staff Response: Staff is not seeking to amend the MPP. The MPP currently exempts single-family docks from MPP review, defines a single-family dock as containing “...No more than two (2) boat slips per residence...”, and does not discern between natural and artificial navigable waterways. The revised language clarifies that single-family docks with 3 or more slips are not exempt from the MPP. Staff has worked with the Environmental and Natural Resources sections to create an administrative and special exception mechanism for additional single-family slips. As proposed, natural and artificial waterbodies will be treated equally in this respect for consistency with the MPP and does provide a mechanism for additional slips without the necessity of a hardship analysis.

LDCAC/Industry Comment: Eliminate the ingress and egress requirements and establish common setback rules for artificial waterbodies.

Staff Response: Staff removed the proposed ingress and egress requirements and proposes setback requirements accordingly.

Industry Comment: Consider reducing setback requirements less than 65 feet wide. At the state and federal level, lots are exempt from setbacks.

Staff Response: Staff proposes reduced setbacks for lots less than 65 feet wide in natural waterbodies.

Industry Comment: Consider mangroves when measuring the navigable channel of artificial waterbody as the current method overestimates the actual navigable channel width when mangroves are present.

Staff Response: Staff proposes an exception for instances where mangroves are present in line with industry input.

Industry Comment: Clarify the 4-foot water depth requirement for ingress and egress pathways adjacent to and within a multi-slip docking facility or a marina (26-71(f)(2)) to establish a proximity from the mooring areas and turning basins associated to the subject property.

Staff Response: Depth requirements in ingress and egress pathways are specified at length in the Manatee Protection Plan. Staff does not propose copying over language from the MPP into the LDC.

Industry Comment: Consider permitting single-family docking facilities in natural waterbodies at depths less than -3 feet mean low waterline (Section 26-71(f)) based on state-level permitting exceptions when the facility is not located in an aquatic preserve.

Staff Response: Staff is opposed to establishing a lesser depth requirement in natural waterbodies due to Public health/safety/welfare concerns as certain seasonal mean-low waterlines could result in watercrafts grounded on the submerged bottoms or ashore.

Industry Comment: Consider standardizing the Joint use agreements process in Section 26-71(h) to avoid the required review by the County Attorney's Office.

Staff Response: Nothing in the relevant section prohibits an interested party in pursuing a standardized joint-use agreement form with the County Attorney's Office. This does not require amend language.

LDCAC/Industry Comment: Suggestion to revise Subsection (b)(3)b.3. of 26-71 to state no impacts instead of "lessen impacts."

Staff Response: Staff has revised the subsection accordingly.

Industry Comment: Remove the proposed requirement for a sworn statement that no dredging will occur in conjunction with a request for increased docking facility length, in recognition of Section 26-76.

Staff Response: The proposed language has been removed accordingly.

LPA Comment: How many slips do other jurisdictions allow in canals?

Staff Response: While that answer may vary based on jurisdiction, the Lee Plan requires consistency with the Manatee Protection Plan, which exempts single-family slips from MPP review on the basis that single-family residences are limited to two slips per residence.

Industry Comment: Brent Stokes with Stokes Marine does not support minimum setbacks in artificial waterbodies as they have been implemented in other adjacent municipalities and do not stop or reduce the dock design complaints received by those municipalities. Suggests leaving the design in the hands of the general public.

Staff Response: Staff disagrees with this ideology, minimal minimum setbacks moving forward is prudent as the county continues growing to create space between side and riparian lines. This Section currently provides three separate and distinct opportunities for reduced setbacks if relief is needed.

LPA/Industry Comment: Stokes Marine - The state does not establish a water depth requirement in natural waterbodies outside of aquatic preserves, the county should reduce or eliminate the three (3) foot minimum depth requirement outside of aquatic preserves as some boats draft less than three feet. Consider draft vessel restrictions. LPA – Consider property with 80' or less shoreline frontage to two feet mean low as that may correlate to ownership of a vessel that drafts less than three feet.

Staff Response: Staff maintains the position provided in the previous annotation above, enforcing draft vessel restrictions is not feasible, allowing less or no depth requirement in natural waterbodies raises environmental, public health safety and welfare concerns, see Lee Plan Policy 128.4.8.

LPA/Industry Comment: Where is the termination of the review of ingress and egress pathways depths as referenced in 26-71(f)(2)?

Staff Response: Staff has revised the definition of "Egress and ingress" in LDC Section 26-41 to clarify the same standard applies, staff has also revised the depth requirement for multi-slip docking facilities which are exempt by the MPP.

Docking facilities will be permitted in accordance with the following regulations:

(a) *Number of slips.*

- (1) No more than one private single-family watercraft mooring dock with two slips is permitted in all waterways ~~natural waterbodies~~, except that a joint use agreement may be executed in compliance with section 26-71(h) for a shared docking facility with up to four slips.
- (2) Private single-family watercraft mooring docks in all waterways, which contain more slips than permitted in subsection (a)(1) above, are not exempt by the Manatee Protection Plan and require:
 - a. An administrative approval for a maximum of two additional personal watercraft slips, as defined in section 26-41, and in accordance with section 26-46(c); or
 - b. A special exception is approved for additional slips in accordance with section 26-46(c).
- ~~(2) A shared property line dock can be permitted for up to four slips with a joint use agreement in compliance with section 26-71(g).~~
- (3) Handrails may be required to prohibit the mooring of watercraft in any area not designated as a watercraft slip. Handrails must be permanently maintained. Handrails for a private single-family or joint use watercraft mooring dock may be waived if:
 - a. A review of the property's location, docking facility design and Notice of Code Violation (NOV) case history does not warrant concern of future violation of approved watercraft slip count.
 - b. The plans provided clearly demonstrate the mooring location(s) and quantity of watercraft slips.
 - c. The absence of handrails does not contravene other local, state or federal building regulations.
 - d. The Director's decision is discretionary in nature and may not be appealed pursuant to section 34-145(a). Subsequent notice of code violation for non-compliance with the approved watercraft slip count or location may only be abated through the issuance of a building permit for the construction of handrails.
- (4) Determination of non-single-family slips must be in compliance with the Manatee Protection Plan as defined by section 26-41 and 26-79.

(b) *Length of docks.* ~~No private single-family dock, including mooring area, may be permitted or constructed in a natural or artificial waterbody to exceed any of the following lengths: as measured from the mean high water line seaward:~~

- (1) 200 feet as measured from the mean high water line seaward;
- (2) 25 percent of the navigable channel width. In artificial waterbodies, the navigable channel is measured from mean high waterline to mean high waterline, except for instances where mangroves are present, the navigable channel may be measured from the most waterward root system of the mangroves horizontally to the adjacent mean high waterline or the most waterward root system of mangroves adjoining that waterline. Watercraft mooring areas that are waterward of the dock will be deemed 10 feet in width; or
- (3) ~~Up to 300 feet, if the director, in his sole discretion, finds that:~~ A dock, including mooring area, may be permitted to exceed 200 feet at the director's discretion. The applicant must provide the following documentation in support of such a request:

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- a. ~~The proposed dock has been approved by all applicable~~ All applicable state and federal agencies agency issued permits;
 - b. ~~The increased length will not result in a hazard to navigation;~~
 - c. ~~The proposed dock is compatible with docks or other structures and uses on adjoining lots; and~~
 - d. ~~The increase in length will lessen the dock's impacts on seagrass beds or other marine resources.~~
- b. Site plans demonstrating:
- 1. The increased length will not extend beyond 25 percent of the navigable channel width and does not result in a hazard to navigation.
 - 2. The proposed dock is compatible with docks or other structures and uses on adjacent lots.
 - 3. A benthic species survey assessment, as defined in section 26-41 of this Chapter, conducted between April 1 and October 31, demonstrating the increase in length will not adversely impact seagrass beds or other marine resources.

Staff Note: Revised to limit consistency with figure 26-1 and the corresponding maximum dimensions to state designated aquatic preserves. Private single-family docks located in natural waterbodies outside of aquatic preserves are limited dimensionally by the width of the navigable channel, side lot line and riparian line setbacks, hazard to navigation determination and applicable state and federal agency coverage limitations.

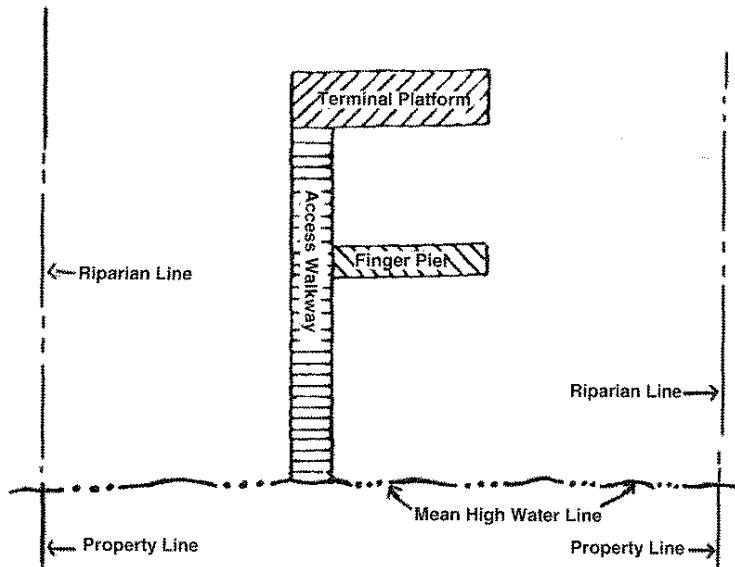
LPA Comment: Why are we specifying aquatic preserves only?

Staff Response: This was a state aquatic preserve dimensional standard adopted countywide back in the 1990s in all natural waterbodies regardless of existing areas outside of aquatic preserves. The State does not require the aquatic preserve dimensional standards carried out by this figure outside of aquatic preserves.

(c) *Maximum dimensions.*

- (1) Docking facilities in ~~natural waterbodies~~ state designated aquatic preserves must comply with the following maximum dimensional requirements:

Figure 26-1
Private Single-Family Structure
Plan View



Private Single-Family Structure	
Access walkway	4 feet wide
Terminal platform	160 square feet
Finger piers	3 feet wide

The application of these regulations is illustrated in Figure 26-1, Private Single-Family Structure Plan View.

- (2) The director has the discretion to permit a dock of greater dimensions than allowed by this subsection if:
 - a. The primary access to the property is by watercraft;
 - b. No reasonable alternative access exists; and
 - c. The increase in the dock dimensions is the minimum necessary to meet the needs of the property owner; and
 - d. The applicant provides a benthic survey assessing the aquatic habitat, conducted between April 1 and October 31, accompanied by a site plan depicting appropriately permitted below dock and/or shoreline vegetation enhancement measures.
- (3) Single-family residential boat ramps cannot exceed 15 feet in width.

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(d) *Setbacks.*

- (1) All multi-slip and marina docking facilities, except boat davits, in or adjacent to natural waterbodies must be set back a minimum of 25 feet from all adjoining side lot lines.
- (2) All private single-family docking facilities in natural waterbodies must be set back from all adjoining side lot and side riparian lines as follows:
 - a. Marginal docks—No less than 10 feet.
 - b. All other docks on lots with 65 linear feet of shoreline or greater—No less than 25 feet.
 - c. Boat lifts and mooring pilings on lots with 65 linear feet of shoreline or greater—No less than 10 feet.
 - d. All other docks, boat lifts and mooring pilings on lots with less than 65 linear feet of shoreline—No less than 10 feet.
- (3) All private single-family docking facilities in artificial waterbodies must be set back from all adjoining side lot and side riparian lines a distance equal to 10 percent of the property's linear shoreline length or the minimum required accessory structure side-yard setback in the zoning district for which the property is located in, whichever is less provided that a minimum setback of five feet is maintained.
- ~~(4) (3)~~ Side setback requirements can be reduced if:
 - a. Adjoining property owners execute a written agreement in recordable form, agreeing to a setback less than that required or to a zero setback; and
 - b. Placement of the dock in accordance with the setback agreement will not result in greater environmental impacts than compliance with the regulations set forth in this subsection.
- ~~(5) (4)~~ The director, in ~~his~~ the director's discretion, may permit administrative deviations from the setbacks required by this subsection if the facility is located as close to the required setback as possible and:
 - a. The width of the subject parcel is not wide enough to permit construction of a single-family docking facility, perpendicular to the shoreline at the midpoint of the shoreline property line, without a deviation; or
 - b. Construction of the structure outside the setback area will not cause or will minimize damage to wetland vegetation or other environmental resources or will not cause greater damage than will occur if the deviation is not granted.

~~The director's decision under this subsection can be appealed through the procedure set forth in section 34-145(a) or the applicant may seek a variance in accordance with section 26-46.~~

- ~~(6) (5)~~ All boat ramps must set back ten feet from all adjoining side lot and side riparian lines.

(e) *Location.*

- (1) ~~Docking s~~Structures and watercrafts in natural or artificial waterbodies that create a hazard to navigation are prohibited.
- (2) Boat ramps located in a manner that will result in a change in the mean high water line are prohibited.
- (3) Docks located at the end of a canal ~~may require a survey sealed by a PSM depicting the riparian area. The dock~~ must be designed to allow for adequate access ingress/egress and mooring within the subject property's riparian area.

(f) *Minimum water depths.*

- (1) *Single-family docking facilities.* There must be a minimum depth of three feet mean low water for all watercraft slips on private single-family docking facilities in natural waterbodies.
- (2) *Water depths adjacent to and within a multi-slip docking facility or a marina.* Except when a reduced water depth for a public service marina has been approved by variance and vessel draft restrictions considered, there must be a minimum depth of one foot clearance between the deepest draft of a vessel (with the engine in the down position) and an unvegetated bottom or the top of submerged aquatic vegetation (e.g. seagrasses) at mean low water, with a minimum water depth of at least four feet within mooring areas, turning basins, and egress and ingress ~~and egress~~ pathways. Multi-slip docking facilities that do not require review under the Manatee Protection Plan may be located in a minimum water depth of at least three feet mean low water within mooring areas, turning basins, and egress and ingress pathways. The hearing examiner may grant a variance to the minimum water depth for a ~~public~~ public service marina in accordance with section 34-145(b), only upon finding the request is consistent with the other provisions of Manatee Protection Plan.

(g) *Interest in land to support residential dock/facility approval.* In order to obtain a permit for a residential dock and related facilities, the property owner/applicant must have a recorded right to access the water meeting the following criteria:

- (1) A deed describing the residential lot with at least one boundary being the ~~waterway~~ waterbody along which the dock facility is proposed. The lot described must be a buildable lot with sufficient square footage to meet county requirements except as provided in section 34-1173(a)(2)d; OR
- (2) A recorded easement granting access to the waterbody for purposes of constructing and using a dock/facility meeting the following criteria.
 - a. The easement must be over land contiguous to the residential lot such that an extension of the side lot lines will allow access to the water beyond the rear lot line;
 - b. The easement must be for the benefit of a residential lot that is a buildable lot under county regulations; and
 - c. The easement must be necessary to gain access to the waterbody over and through waterway buffer and maintenance areas required for development approval under chapter 10.

(h) *Joint use agreements.* Adjacent property owners seeking approval for a shared docking facility must submit a draft joint use agreement to ~~Environmental Sciences~~ with a permit application. The agreement must be reviewed and approved by the County Attorney's office prior to permit issuance, and must:

- (1) Identify each party by name, including mailing address. The parties must be the owners of the property abutting each other that will benefit from the dock facility.
- (2) Identify the physical location of the subject parcels, including STRAP numbers, a legal description and accompanying sketch.
- (3) Identify the specific location of the docking facilities including: the name of the waterbody, the dimensions of the facilities, and the dimensions of the land that will be used in conjunction with the facilities.
- (4) Provide, as an attachment to the agreement, a detailed sketch of the facility identifying the various docking facilities, subject property boundaries and the upland area intended to be encumbered by the normal use of these facilities. This sketch must be consistent with the statements made to comply with section 26-71(h)(3).
- (5) Specifically identify those areas that will be the subject of access easements to provide access ~~(ingress/egress)~~ to the docking facilities from each of the benefitted parcels. Depending on the facilities and parties involved, these easements may be reciprocal in nature. The easements must

be specifically granted to each party named in the agreement and must run with the land (i.e. be part of the title to the primary residential parcel) in perpetuity. Grant of dock easement rights to parcels that do not abut the docking facility parcel is prohibited.

- (6) Provide, as an attachment, a sketch prepared by a registered PSM, based on the legal description and identifying the access easements granted.
- (7) Indicate who will be responsible for the cost of construction and maintaining the facilities. This can be accomplished by inclusion of cost sharing provisions.
- (8) Indicate that the parties understand and agree to abide by all applicable Federal, State and local regulations pertaining to the construction, maintenance and use of the facilities.
- ~~(9) Be submitted as a draft to Environmental Sciences for review by staff and the County Attorney's Office prior to recording.~~
- ~~(10)~~ (9) Be recorded in the public records at the applicant's cost. In order to satisfy the minimum recording requirements imposed by the Florida Statutes, there must be two witnesses to each party's signature and each party must acknowledge the agreement before a notary public. Additional requirements can be found in F.S. § 695.26. A copy of the recorded agreement or a document identifying the recording information must be submitted to the County prior to permit issuance.

Sec. 26-72. - Dock boxes.

Dock boxes on private single family docking facilities may not exceed three feet in height and 100 cubic feet in size. Dock boxes do not require building or marine facility permits.

Sec. 26-73. - Fishing piers, observation decks or kayak/canoe paddlecraft structures.

Staff Note: Change of term from kayak/canoe to suggested term 'paddlecraft' with suggested revisions covers other non-motorized watercrafts intended to be launched from these facilities while maintaining the original intent of this section.

Fishing piers, observation decks or kayak/canoe paddlecraft structures may be permitted in areas where water depth is insufficient for watercraft mooring. Kayak/canoe Paddlecraft structures are for launch and retrieval use with of non-motorized watercraft vessels. Fishing piers, observation decks and kayak/canoe paddlecraft structures must meet the following criteria.

- (1) *Design.* The design and construction must:
 - a. Prohibit watercraft mooring;
 - b. Provide access walkways and terminal platforms at five feet above mean high water; except that the terminal end of a kayak/canoe paddlecraft structure used for launching kayaks/canoes paddlecrafts may be constructed lower than five feet above mean high water;
 - c. Provide fixed handrails, including intermediate rails, installed around the perimeter of the structure, except for the terminal end of a kayak/canoe paddlecraft structure;
 - d. Include a "no boat mooring" sign placed facing the water on the terminal platform of the structure; and
 - e. Be set back from all adjoining side lot and riparian lines no less than 25 feet on natural water bodies. In manmade waterbodies, no setback is required.
- (2) *Dimensions.* The design and construction must:
 - a. Provide access walkways that do not exceed a total of four feet in width in natural water bodies.
 - b. Not extend waterward more than 200 feet from the mean high waterline.

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- c. Not exceed 260 square feet for the terminal platform for fishing piers or observation decks;
- d. Not exceed 160 square feet for the terminal platform for ~~kayak/canoe~~ paddlecraft structures; and
- e. Not extend waterward more than 25 percent of the navigable channel width. In artificial waterbodies, the navigable channel is measured from mean high waterline to mean high waterline, except for instances where mangroves are present, the navigable channel may be measured from the most waterward root system of the mangroves horizontally to the adjacent mean high waterline or the most waterward root system of mangroves adjoining that waterline.

Sec. 26-74. – Boathouses and Dock Pavilions.

Staff Note: Modify section to allow:

(a) Construction of one boathouse with a total square footage of 1,000 square feet in lieu of two separate 500-square-foot boathouses, where such construction is permitted by right. Modify boathouse decking regulations to allow for the opportunity of a covered seating area associated with a boathouse. Provide that boathouses exceeding 1,000 square feet in area be approved by special exception, with the review of larger seating area dimensions, increased height and area subject to analysis during the special exception process. Staff does not support introducing the opportunity for opaque enclosures over water due to the potential navigational hazards, potential to impact viewshed and environmentally critical habitat (e.g. reduce/prevent sunlight from reaching seagrass and shellfish environments).

(b) Permit dock pavilions, as defined, in lieu of the construction of a boathouse associated to a private single-family dock.

Industry Comment: Consider implementing a setback waiver agreement for boathouses, such as its existing implementation in 26-71 for single-family docking facilities.

Staff Response: Staff proposes language to permit a setback waiver agreement for boathouses and dock pavilions in natural waterbodies to permit a reduced setback from the required 25 feet, to no less than 10 feet. As proposed, in natural and artificial waterbodies a minimum of 20 feet separation between boathouses (or dock pavilions) located on adjacent properties must be provided unless further variance approval is achieved.

The following regulations apply to all boathouses and dock pavilions associated with private single-family residential uses, except where specifically superseded by other provisions of this article:

(a) *Location.*

- (1) Boathouses must be constructed adjacent to or over a waterway. Any boathouse constructed over land must be located, in its entirety, within 25 feet of the mean high water line.
- (2) Boathouses over submerged bottoms containing areas of dense seagrasses or shellfish beds are prohibited.
- (3) Boathouses, boat lifts and davits designed with mooring inside the structure may not extend beyond 25 percent of the width of a navigable channel. In artificial waterbodies, the navigable channel is measured from mean high waterline to mean high waterline, except for instances where mangroves are present, the navigable channel may be measured from the most waterward

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root system of the mangroves horizontally to the adjacent mean high waterline or the most waterward root system of mangroves adjoining that waterline.

- (4) Dock pavilions may be constructed over docks that conform to the provisions of this chapter.
- (b) *Setbacks.* The minimum setbacks for boathouses and dock pavilions as measured from side lot lines and riparian lot lines to the nearest point of the structural beam of the boathouse roof are as follows:
- a. Natural waterbodies—25 feet.
 - b. Artificial waterbodies—10 feet.
 - c. Side and riparian setback requirements in natural waterbodies can be reduced if:
 - i. Adjoining property owners execute a written agreement in recordable form, agreeing to a setback less than that required but not less than 10 feet; and
 - ii. Placement of the dock in accordance with the setback agreement will not result in greater environmental impacts than compliance with the regulations set forth in this subsection.

When a boathouse or dock pavilion is constructed on or adjacent to two or more adjoining lots under common ownership and control, the setbacks will be measured from the exterior property lines.

(c) *Design criteria.*

- (1) *Maximum area.* ~~A boathouse may not encompass more than 500 square feet of roofed area.~~
- a. A boathouse may not encompass more than 500 square feet of roofed area, except where two boathouses are permitted on an individual property, one boathouse exceeding 500 square feet in roofed area, up to 1,000 square feet, may be constructed in lieu of two individual boathouses. No more than 1,000 square feet of roofed area may be permitted on an individual property unless approved by special exception in accordance with section 26-46(c)
 - b. A dock pavilion may be permitted in lieu of a boathouse and may not encompass more than 150 square feet of roofed area over decking, except where a shared-use docking facility is permitted the dock pavilion may not exceed 300 square feet.
- (2) *Height.* ~~The maximum height of a boathouse is 20 feet above mean high water, as measured from mean high water to the highest point of the boathouse.~~
- a. The maximum height of a boathouse is 20 feet above mean high water, as measured from mean high water to the highest point of the boathouse. A special exception may be requested in accordance with section 26-46(c) for a boathouse height up to 35 feet above mean high water.
 - b. The maximum height of a dock pavilion is 20 feet above mean high water, as measured from mean high water to the highest point of the dock pavilion; or 12 feet above the grade of the dock to the highest point of the dock pavilion, whichever is lower. The roof of a dock pavilion is prohibited from containing an upper-story deck or guardrails.

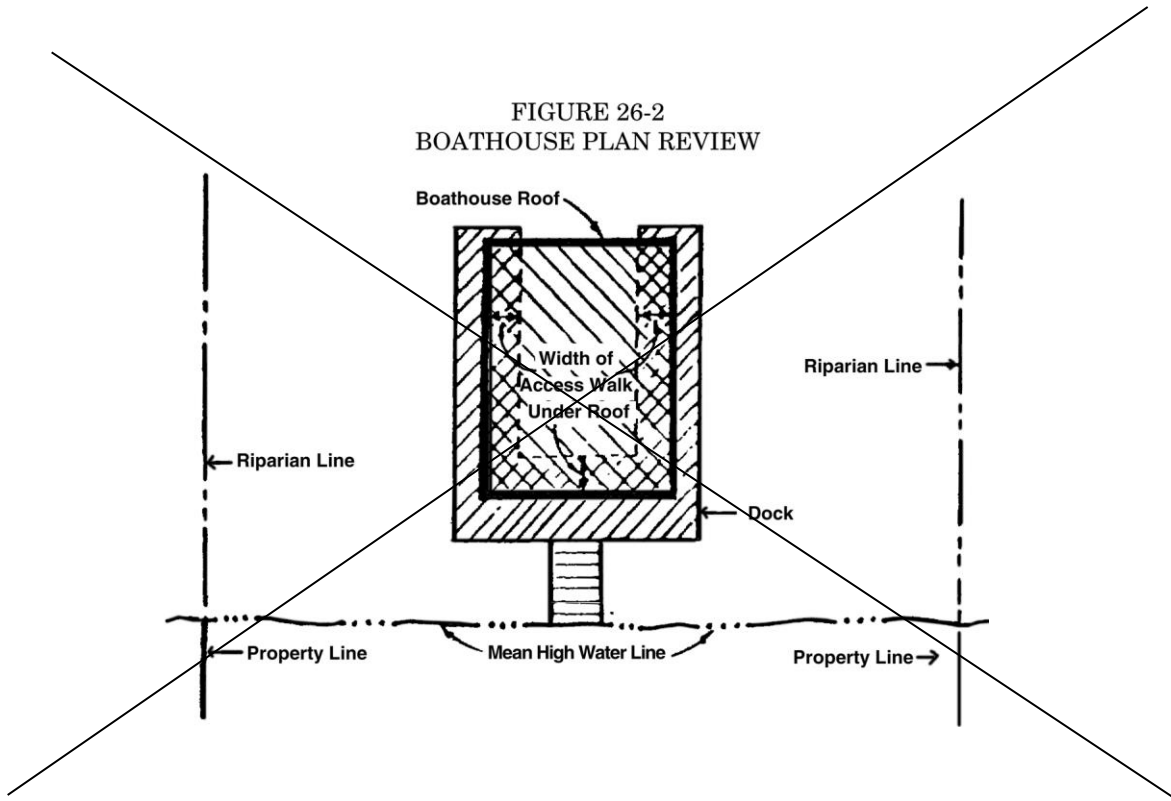
(3) *Permitted uses.*

- a. Use of a boathouse or dock pavilion for living or fueling facilities is prohibited.
 - b. Up to 25 percent of the total roofed area of a boathouse can be used for storage of items that relate directly to the use and maintenance of watercraft. Items that do not relate directly to the use and maintenance of watercraft may not be stored in a boathouse, except as provided below.
 - c. A seating area in conjunction with a boathouse not exceeding the permissible decking area in subsection (4) of this section.
 - d. A dock pavilion is limited to a seating area.
- (4) ~~Boathouse decking. Decking. Access walkways not exceeding four feet in width are permitted in the area under the roof of a boathouse located over water. Additional decking in the area under the roof of a boathouse is prohibited.~~
- a. Access walkways not exceeding four feet in width are permitted in the area under the roof of a boathouse located over water.
 - b. A seating area may be included in the area under the roof of a boathouse provided that the seating area is no greater than 25 percent of the boathouse roofed area.
- (5) *Enclosure.*
- a. Boathouses located over a waterbody or adjacent to a natural waterbody must be open-sided. Safety rails 42 inches high or less are permitted.
 - b. Boathouses located adjacent to an artificial waterbody must meet the following requirements:
 - 1. The boathouse must be open-sided if the proposed side setback is between ten and 25 feet.
 - 2. The boathouse may be open-sided or enclosed with wood lattice, chainlink fencing or other open-mesh fencing materials if the side setback is 25 feet or more.
 - c. Dock pavilions must be completely open-sided
- (6) *Wind load standards.* All boathouses and dock pavilions must comply with the building code wind load standards as adopted in chapter 6.

Staff Note: Figure 26-2 below requires removal from Chapter as the proposed design of a boathouse is clearly defined and now introduces variables.

~~The application of the regulations is illustrated in Figure 26-2, Boathouse Plan Review.~~

FIGURE 26-2
BOATHOUSE PLAN REVIEW



Sec. 26-75. - Seawalls, retaining walls and riprap revetment.

Staff Note: Modify subsection (2) to reflect that placement of riprap may conflict with federal regulations for impacts to Smalltooth Sawfish habitat. Update Lee Plan cross-references.

LDCAC/Industry Comment: Consider regulations in natural waterbodies which permit entombing old sea wall, flexibility to use different product to permit an upgrade of seawall material.

Staff Response: The requested revisions to this section require requisite scientific data to consider the impacts to environmental sensitive lands and natural resources. Impacts to navigable channels widths must also be considered. Staff does not propose any changes at this time and will need to rely on favorable scientific evidence in order to promulgate the requested revisions.

LPA Comment: Suggest staff conduct the necessary research within 6 months to form an opinion on whether entombing seawalls with differing materials is appropriate as opposed to removing and replacing with like for like material.

Staff Response: Staff will evaluate requested seawall regulation modifications as a potential separate amendment to Chapter 26 to ensure consistency with the Lee Plan and other federal, state and county regulations.

LPA Comment: Suggest staff revise riprap rock size regulation to address mixture of sizes to obtain maximum stabilization.

Staff Response: Staff has stricken “minimum” from subsection (d)(2) below which provides for a mixture of rock sizes provided the average diameter is 12 inches.

(a) *Seawalls on artificial waterbodies and retaining walls.*

- (1) Seawalls may be permitted in an artificial canal with a minimum of 50 percent of the bank having seawalls, or for a linear distance less than 300 feet where both adjoining properties have seawalls. A new or replacement seawall must be installed in line with the existing seawall alignment or adjoining seawalls and placed no greater than one foot waterward of an existing seawall. Until the backfill area is stabilized, silt fence or sod must be placed immediately landward of the seawall cap to minimize erosion into the water.
- (2) Except where it conflicts with state or federal regulations, ~~Riprap~~ rock or other similar approved material must be placed waterward along no less than 50 percent of the linear length of a new or replacement seawall. This riprap is not required where it would interfere with designated watercraft tie-up areas. The rock must be placed a minimum of three feet in height above the bottom, waterward of the seawall, or up to the mean high water line. The rock must be a minimum average size of 12 inches in diameter.

(b) *Seawalls on natural waterbodies.*

- (1) The Lee Plan, through Objective ~~101.4~~ 101.4.2 and Policy ~~105.1.3~~ 101.4.2, regulates hardened structures along the natural shoreline.
- (2) New or expanded seawalls are not allowed along natural waterbodies, including the Gulf of Mexico.
- (3) Other hardened structures, including but not limited to geotextile tubes, groin, fencing and other similar structures, may be permitted along natural waterbodies, except along the Gulf of Mexico.
- (4) Lawfully existing seawalls along natural waterbodies may be maintained or repaired and may be replaced with the same type structure, built to the same dimensions and in the same location as the previously existing structure.

(c) *Retaining walls.* Retaining walls must be setback a minimum of five feet from the mean high water line or landward of any wetland vegetation.

(d) *Riprap revetment.*

- (1) Riprap must be located and placed so as not to damage or interfere with the growth of wetland vegetation.
- (2) Material used for riprap should be sized properly for intended use, be a ~~minimum~~ average of 12 inches in diameter, and installed on top of filter fabric or equivalent material to prevent erosion of subgrade. Riprap must be clean and free of debris deemed harmful to the environment and public safety.
- (3) Mangroves or other approved wetland vegetation must be planted three feet on center in compliance with section 26-77(b)(2) for added shoreline stabilization and ecological benefit within the riprap. Other wetland mitigation techniques may be considered in lieu of vegetation planting. No vegetation planting is required for riprap revetments constructed in artificial upland canals with a minimum of 50 percent of the bank having seawalls, or for a linear distance less than 300 feet where both adjoining properties have seawalls.

Sec. 26-76. - Dredging; new and maintenance.

- (a) All dredging limits must be clearly defined.
- (b) Methods to control turbidity and dispose of dredging spoil must be indicated.
- (c) Dredging that is permitted for commercial or multi-family projects must provide a bathymetric grid/survey of post dredging depth at no less than ten-foot intervals and be prepared, signed and sealed by a PSM or professional engineer prior to final inspection.
- (d) Beach renourishment projects will not require a Lee County dredging permit.

Sec. 26-77. - Turbidity; protection of vegetation.

- (a) *Turbidity.* All structures must be placed so as to provide the least possible impact to seagrass, aquatic, or wetland vegetation. During work that will generate turbidity, turbidity screens must be installed and properly maintained until turbidity levels are reduced to normal (ambient) levels.
- (b) *Protection of vegetation.*
 - (1) *Permit conditions.* Conditions for the protection of shoreline vegetation can be placed on permits issued in accordance with this article. The conditions can include: the method of designating and protecting mangroves vegetation to remain after construction; and replacement planting for mangroves vegetation removed due to construction.
 - (2) *Mangrove replacement and plantings.*
 - a. For each mangrove removed due to construction, three mangroves must be replanted at an alternate location on the subject property. If planting on the subject property is not appropriate, alternative forms of mitigation, such as payment into a mitigation bank, may be allowed.
 - b. Mangrove plantings must be container grown, no less than one year old, eight inches in height and have a guaranteed 80 percent survivability rate for at least a five-year period. Mangrove plantings must be planted three feet on center. Mangrove replanting is required if the 80 percent survivability rate is not attained.
 - (3) *Mangrove removal.*
 - a. Mangrove removal in conjunction with construction of riprap revetments, seawalls, or retaining walls along natural waterbodies is prohibited.
 - b. Mangrove removal necessary for access walkway construction is limited to the minimum extent necessary to gain access to the dock facility. To the greatest extent possible, the access must be located to:
 - 1. Use existing natural openings;
 - 2. Use areas infested with invasive exotic vegetation;
 - 3. Avoid larger mangroves; and
 - 4. Provide a maximum width of four feet and a maximum height of eight feet above the level of the walkway base.

Sec. 26-78. - Marina design and location.

Marina locations must be consistent with Lee Plan Objective ~~428-5~~ 128.4 and all of its implementing policies, including the Manatee Protection Plan and Lee County Administrative Code 13-21. Marinas must be designed and constructed in a manner consistent with Lee Plan Objective ~~428-6~~ 128.5 and all of its implementing policies.

LPA Comment: The MPP was adopted in 2005, based on the age of this plan staff should begin the process of amending the MPP to ensure the plan is up to date.

Staff Response: Staff agrees that old data sets can become problematic and will work with the applicable agencies on future updates.

Sec. 26-79. - Facility siting criteria.

The general screening process in the Manatee Protection Plan will be used to identify desirable locations for new marine facilities, as well as to evaluate the redesign and expansion of existing sites. The results of the screening process will also result in a determination of the maximum number of slips that may be approved at a requested location. The screening criteria are set forth in the Manatee Protection Plan and Lee County Administrative Code Section 13-21.

Sec. 26-80. - Transfer of (watercraft) slip credits (TSC).

Staff note: relocate appeal-related language to chapter 34. Prohibit slip transfers to and from single-family slips to prohibit potential intensification of single-family docks through the transfer of slip credits in lieu of an evaluation of allowable slips in accordance with the MPP.

- (a) *Transfer of slips.* The Manatee Protection Plan provides for the transfer of (watercraft) slips when certain requirements are satisfied. Transfer of watercraft slip credits to and from single-family docks, as defined in section 26-41, is prohibited.
- (b) *Director responsible.* The director of the division of natural resources, or his designee, will be responsible for approving the number of slips that may be recognized or transferred. The director, or his designee, will also be responsible for approving all transfers.
- ~~(c) *Appeal of director's decision.* Appeals from the decision of the director may be appealed to the Lee County Hearing Examiner in accord with the procedures set forth in chapter 34 for appeals of administrative decisions. The hearing examiner may grant the appeal only upon a finding that the applicable criteria in the Manatee Protection Plan have been met.~~
- ~~(c)(d)~~ *Credits from shorelines with legally existing docks.* The Manatee Protection Plan contains provisions that may give credit for the removal of legally existing docks.
- ~~(d)(e)~~ *Procedural rules for creating transfer (watercraft) slip credit under the Lee County Manatee Protection Plan.* Lee County Administrative Code Section 13-21 has been adopted to supplement and implement the transfer of (watercraft) slips pursuant to the provisions of the Manatee Protection Plan.

Sec. 26-81. - Beach/Dune Walkovers.

Walkovers must be constructed in a manner that minimizes disturbance to the dune and beach system and existing vegetation. Vegetation impacted during construction must be replaced with similar native vegetation suitable for beach and dune stabilization in compliance with section 14-178(b). The construction of dune walkovers may not occur during the marine turtle nesting season, May 1 through October 31.

- (1) *Florida Department of Environmental Protection.*

- a. Prior to issuance of a county permit, the applicant must provide a copy of the FDEP permit approval for the walkover.
 - b. The conditions and requirements set forth in this section are in addition to and supplement the FDEP permit guidelines.
- (2) *General Design.*
- a. The walkover must be constructed and located in existing natural openings, if available. The walkover must extend to the seaward edge of the existing line of vegetation and the terminal end must be perpendicular to the shoreline to prevent possible sea turtle entrapment.
 - b. Decks, platforms or lights are not permitted on beach/dune walkovers.
- (3) *Design criteria for single-family developments.*
- a. The maximum width of the walkover structure is four feet. Railings are limited to a handrail with no more than two center guard rails.
 - b. The posts for the walkover structure must be a maximum of four-inches in diameter and may not be encased in concrete.
- (4) *Design criteria for multifamily/commercial developments.*
- a. The maximum width of the walkover is six-feet. If more than one walkover is permitted, they must be spaced a minimum 100 feet apart.
 - b. The pilings for the walkover must be a maximum of six-inches in diameter.

Secs. 26-82—26-110. - Reserved.

ARTICLE III. - MARINE SANITATION

Sec. 26-111. - Purpose of article.

The purpose of this article is to protect the water quality and the health of the citizens of the county from pollution resulting from sewage and other waste or discharges from marine-related activities.

Sec. 26-112. - Definitions.

The following words, terms and phrases, when used in this article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved discharge device means a device that is listed by the United States Coast Guard as an approved marine sanitation device.

Boat includes every description of vessel, watercraft or other artificial contrivance used, or capable of use as a means of transportation, as a mode of habitation or as a place of business or professional or social association on waters of the county, including but not limited to:

- (1) Foreign and domestic watercraft engaged in commerce;
- (2) Passenger or other cargo-carrying watercraft;
- (3) Privately owned recreational watercraft;
- (4) Airboats and seaplanes; and
- (5) Houseboats or other floating homes.

Department means the county health department.

Live-aboard means use of a boat as a living unit for temporary or permanent human habitation; or any boat or vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence. To be a legal live-aboard for purposes of this article, a boat must contain sleeping facilities, kitchen facilities and an approved discharge device. A commercial fishing boat is expressly excluded from the term "live-aboard" in accordance with F.S. ch. 327, as amended or replaced.

Marina. For purposes of this article only:

- (1) Class I marina means any place allowing for the mooring of boats for nonlive-aboard purposes.
- (2) Class II marina means any place allowing for the mooring of boats for live-aboard purposes.

Moor means to secure a vessel with lines.

Sec. 26-113. - Penalty for violation of article; injunctive relief.

Persons convicted of violating the provisions of this article will be subject to punishment as provided in section 1-5. Each day that a violation is committed or permitted to continue constitutes a separate offense and will be punishable under this section. In addition to such penalties, the Board of County Commissioners or any affected party may bring injunctive action to enjoin violations of this article.

Sec. 26-114. - Applicability of article.

This article applies to waters of the unincorporated areas of the county and will be operative to the extent that it is not in conflict with F.S. ch. 327 or any other state or federal regulation.

Sec. 26-115. - Discharge of waste material prohibited.

Staff Note: Clarification of jurisdiction.

It is unlawful for any person to discharge or permit or control or command to discharge any raw sewage, garbage, trash or other waste material into the waters of ~~the county~~ Unincorporated Lee County.

Sec. 26-116. - Marina sanitation facilities.

Staff Note: Revise section to provide cross-reference.

- (a) ~~Marinas that provide mooring of boats for live-aboard purposes with installed onboard sewer systems not designed and approved for overboard discharge~~ Class II marinas, as defined in section 26-112, must have:
 - (1) Public restrooms with facilities for sewage disposal and bathing.
 - (2) A county approved sewage disposal system to accommodate pump out by all live-aboard vessels.
- (b) Overboard disposal of refuse is prohibited.
- (c) All garbage must be collected at least once a week and transported in covered vehicles or covered containers. Burning of refuse in the marina is prohibited.

CHAPTER 34 – ZONING

ARTICLE II. – ADMINISTRATION

Sec. 34-145. - Functions and authority.

Staff Note: Amend subsection (c) to establish additional review criteria for special exceptions from the regulations established in Chapter 26.

(a) through (b) remain unchanged

(c) *Special exceptions.*

(1) through (2) remain unchanged

(3) *Findings/review criteria.*

- a. Prior to granting a special exception, the Hearing Examiner must find the Applicant has proven entitlement to the special exception by demonstrating the request:
 1. Is consistent with the goals, objectives, policies and intent of the Lee Plan;
 2. Will protect, conserve or preserve environmentally critical and sensitive areas and natural resources, where applicable;
 3. Will be compatible with existing and planned uses;
 4. Will not be injurious to the neighborhood or detrimental to the public welfare; and,
 5. Will be in compliance with zoning regulations pertaining to the use and other applicable regulations.

b. through d. remain unchanged

e. In the case of specified departures from the standard dock and shore regulations in Chapter 26, the Hearing Examiner must also find, or conclude a finding that the proposed development is in compliance with the Manatee Protection Plan.

Remainder of section remains unchanged.

Staff Note: Amend authority to approve administrative actions to establish additional review for additional personal watercraft slips

Sec. 34-174. Authority to approve administrative actions.

(a) through (j) remain unchanged.

(k) Administrative approval of additional personal watercraft slips.

(1) Authority. The Director is authorized to administratively approve a maximum of two personal watercraft slips associated to a private single-family dock already containing two watercraft slips pursuant to section 26-71.

(2) Findings/review criteria. Before approving any additional personal watercraft slips the Director must find the following criteria are satisfied:

- a. The proposed additional slips are consistent with the Manatee Protection Plan (MPP), including a favorable evaluation of the MPP siting criteria.
- b. Will protect, conserve or preserve environmentally critical and sensitive areas and natural resources, where applicable;

~~(k)(l)~~ *Decisions of Director.*

Remainder of section remains unchanged.

Sec. 34-202. - Submittal requirements for applications requiring public hearing.

Staff Note: Amend subsection (b) to establish additional submittal requirement for special exceptions from the regulations pursuant to Chapter 26 amendments.

(a) *Remains unchanged*

(b) *Additional submittal material.* Additional information, specific to the type of action(s) requested, is required as follows:

(1) *through (4) remain unchanged*

(5) *Special exceptions.* Applications for special exceptions must include the following:

a. *through c. remain unchanged*

d. Additional information is required for the following special exception requests:

1. *through 3. remain unchanged*

4. Dock and shoreline structures. Dimensioned plan view of the structure(s) subject to the request, scaled architectural elevations demonstrating the proposed height above mean high water and a benthic species survey assessment as defined in Section 26-41.

Remainder of section remains unchanged.

Staff Note: Amend submittal requirements for administrative actions to address submittal material necessary for evaluation of additional personal watercraft slips pursuant to Chapter 26 amendments.

Sec. 34-203. Submittal requirements for administrative action applications.

(a) *remains unchanged*

- (b) *Additional submittal requirements.* In addition to the application requirements provided in subsection (a) above, the following submittal requirements apply, as specified.

(1) through (5) remain unchanged

(6) *Additional personal watercraft slips:*

- a. To scale plan view of the existing and proposed private-single-family or shared-use docking facility, associated watercraft slip count and supplemental site plan details listed by section 26-45(b)(6).
- b. The site plan must demonstrate that the proposed private-single-family or shared-use docking facility is in compliance with the standards articulated in Chapter 26.

Section ends