



**EXECUTIVE REGULATORY OVERSIGHT COMMITTEE  
COMMUNITY DEVELOPMENT/PUBLIC WORKS BUILDING  
FIRST FLOOR CONF. RM. 1B  
1500 MONROE STREET, FORT MYERS**

**WEDNESDAY, SEPTEMBER 14, 2022  
2:00 P.M.**

**AGENDA**

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – May 11, 2022
3. Review Ordinance “The Lee County Manatee Protection Zones Ordinance”
4. LDC Amendments - Seasonal Farmers’ Markets (Sec. 34-3048)
5. Adjournment  
Next Meeting date: November 9, 2022

To view a copy of the agenda, go to [www.leegov.com/dcd/calendar](http://www.leegov.com/dcd/calendar).

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

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

**Wednesday, May 11, 2022  
2:00 p.m.**

**Committee Members Present:**

Tracy Hayden, Vice-Chair  
Victor DuPont  
Michael Reitmann  
Bill deDeugd  
Buck Ward

Bob Knight  
Matt Roepstorff  
Tim Keene  
Carl Barraco, Jr.

**Excused / Absent:**

Randal Mercer, Chairman  
Ian Moore  
Sam Hagan

Mike Roeder  
Bill Ennen  
Jim Ink

**Lee County Government Staff Present:**

David Loveland, Director, Community Development  
Anthony Rodriguez, Zoning Manager  
Adam Mendez, DCD Zoning  
Amanda Swindle, Assistant County Attorney  
Cheryl Simpson, DCD Admin, Recorder  
Christine Boyette, DCD Admin

**Outside Consultants/Members of the Public Present:**

Hans Wilson, Hans Wilson & Associates  
Brent Stokes, Marine Industry representative

**CALL TO ORDER AND AFFIDAVIT:**

Ms. Tracy Hayden, Vice-Chair called the meeting to order at 2:00 p.m. The meeting was held in the Board Chambers, 2120 Main Street, Fort Myers, Florida.

Ms. Amanda Swindle, Assistant County Attorney confirmed the Affidavit of Publication was legally sufficient as to form and content and the meeting could proceed.

**APPROVAL OF MINUTES – April 13, 2022**

**Mr. Bob Knight made a motion to approve the April 13, 2022 minutes as written. Mr. Michael Reitmann seconded. The motion was called and carried unanimously.**

**DOCK AND SHORELINE AMENDMENTS**

Mr. Adam Mendez reviewed the proposed Dock and Shoreline amendments within Chapter 26. He provided background and a history of the regulations and ordinances initially adopted in the mid- to late- 1980s, with various changes codified in 2009 in recognition of the Manatee Protection Plan (MPP). He stated that staff has been working with the Marine Industry since August 2020 and some members of the industry were present. Substantive changes included:

- New definitions within the chapter;

- Housekeeping to address scrivener's errors, eliminate inconsistencies and to provide greater clarity throughout the Chapter;
- Codify additional site plan details to effectuate permit reviews;
- Introduce specific departures from standard regulations through administrative and special exception processes that rely on impact and compatibility rather than hardship;
- Clarify that single-family docking facilities in all waterbodies permit two slips by right;
- Establish administrative and special exception processes to obtain additional slips;
- Provide handrail waiver criteria;
- Consider dock lengths exceeding 200 feet through an administrative review process;
- Designate figure 26-1 as required only in state designated aquatic preserves instead of all waterbodies;
- Replace kayak and canoe references with "paddlecraft";
- Permit larger 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.

As a result of LDCAC and Marine Industry input, changes were made to insure that the proposed language was consistent with the MPP and were not effectively amending the MPP. Staff affirmed that this is not retroactively amending the MPP but is consistent with the MPP which defines a single family residence as containing no more than two boat slips. Currently the LDC specifies two boat slips in natural waterbodies. As proposed, there will be revised language that states two boat slips are permitted by right in all waterways.

He reviewed additional revisions and clarifications as a result of LDCAC, LPA and Industry comments.

Following the presentation, Ms. Hayden called for public comments.

Mr. Hans Wilson, local consulting engineer specializing in waterfront facilities commended staff for their job of addressing comments and responses from the Industry and making changes. He mentioned that the over structure pavilion will make people's utilization of the dock facilities much more attractive. He thought that there was still some concern regarding the relationship of the ordinance with the county's Manatee Protection Plan because there is what he called a "no-man's land" in the MPP where less than 5 slips is not subject to MPP review, but placing a limit of two slips for a single family residence specifically in the ordinance makes a lot of sense.

Mr. Brent Stokes spoke on behalf of the Industry. He too appreciated the effort staff has made to address the issues. He still had concerns with the limitation of two slips because many of his customers have more than two slips. He doesn't see the need for the limitation especially in artificial waterways. Setbacks are a major concern and he would prefer to leave the setbacks as they are now in artificial waterways.

Ms. Hayden called for committee comments. She also thanked staff for the summary, the staff notes and comments, and discussions from each committee, finding all very helpful.

Mr. Buck Ward had concerns first on Page 3 of 27 regarding Multi-slip docking facilities. Mr. Mendez agreed to review that section to ensure that all multi-slip docking facilities are captured, but he thought it was more oriented toward the slips, not the amount of docks. The suggestion was made to change the word "docks" to "slips". On Page 4 of 27 Mr. Ward questioned the definition of paddlecraft as well as the need to define a single or double-bladed paddle "as a

lever”. Staff agreed to look at that language as well.

Page 7, 26-46 (c)

Mr. Ward asked for a clarification with respect to the construction of the principal structure and why the accessory structures (dock, boathouse) could not be built before the primary structure. Mr. Mendez clarified that if the applicant is proposing to exceed the limits of what is permitted by right, in order to get a special exception or administrative approval, they would not be able to secure the dock and shoreline permit approval until the building permit for the house is issued, concurrently or before. A dock or other dock and shore structures if permitted by right could be constructed before the primary structure. It is the exceedances that this is capturing.

Mr. Bob Knight asked for a clarification and staff reasoning for this section as well. Mr. Mendez explained that the departures staff is proposing are special exceptions and administrative paths that don't require a hardship analysis. The requirement is to ensure that the use for the property is a single family residence.

Further discussion followed with the suggestion that wording in that section be changed; perhaps the word commencement should be changed to "*prior to the approval of a permit for a principal structure.*" Staff agreed to look at the section and revise the language accordingly.

Mr. Tim Keene asked staff to consider the extent of the deviation, particularly, if minor. If the paragraph was stated more as an additional condition that the HEX or whomever has to consider during the various process rather than an absolute, Mr. Keene felt it could be included as an additional criteria for consideration. Staff made note of Mr. Keene's comment.

Mr. Stokes had additional comments concerning this section as well, stating that the dock permit should not be held up; that the zoning of the property and the zoning codes dictate what can be built on the property. He also stated that working on a vacant lot is completely different than working concurrently with other construction, so being able to work prior to commencement is very important.

Mr. Mendez provided two scenarios for clarity:

A property with 500 sq. ft. boathouse is proposed, which is within current limitations. The applicant could build the dock as long as the lot is buildable, and would not need a Special Exception or an approved building permit for a single family residence.

If an applicant wants to entertain building a bigger boathouse through a special process, then they would need to pursue a special exception (SE). The SE could be sought before the permit for the house is submitted and the applicant can get an answer on what can be done, but would not be able to secure a permit for the dock structure and have it issued prior to the house being approved.

Page 16, Sec 26-74

Ms. Hayden referred to artificial waterbodies and mangroves, and asked if there should be a definition added. The navigable channel definition only pertains to natural waterbodies. Staff agreed to review.

Page 17. Mr. Keene asked if there had been complaints about boat houses blocking views. The comment was made that a vessel could block the view more than the boat house. The

restrictions for boathouses are more restrictive than what could be built to block the views. But boathouses can't be enclosed – it's just a roof and supporting structures; but that is why a special exception process is warranted when someone wants to increase the size of a boathouse.

Page 18. Mr. Ward had questions relating to the handrail criteria. Mr. Mendez said there is an administrative deviation process specifically carved out for handicapped situations to increase the size of walkways in the instances Mr. Ward referenced.

Page 20. Ms. Hayden referred to (d)2, where "minimal" was struck out, leaving "average 12" in diameter." She referred to (a)(2) above suggesting that change be made to the last sentence in that section as well. Staff agreed to fix that oversight.

Page 22 (26-80(a)). Ms. Hayden referred to paren (a) "*transfer of watercraft slip credits to and from single family docks as defined...*" She didn't see a definition for a watercraft slip credit. Mr. Mendez responded that this was intended to point the reader to "Boat slips" and not necessarily to slip credits which is handled in the Manatee Protection Plan.

**Mr. Bill deDeugd made a motion to accept the amendments with the suggestions and revisions that staff agreed to review.** Ms. Hayden summarized her list: staff will check the definition of multi-slip docking facilities within Sec 26-41; staff will check the definition for paddlecraft. Staff agreed to review the wording in Sec 26-46 regarding variances or special exceptions with respect to construction of the primary structure; staff will look at whether a definition is needed for navigable channels in artificial waterbodies with mangroves. Staff will address the oversight in Sec 26-75 (a)2.

**Mr. Knight seconded.**

Mr. Keene referred again to page 7 of 27 (26-46) asking if staff was going to consider changing the wording to take into consideration the extent of the deviation being requested. Mr. Mendez responded that dock structures can be built without the primary structure if they don't exceed what is permitted by right. It would be difficult to establish a tier system or make a judgment as to what is minor and what is not for structures exceeding the standard.

**After discussion the original motion remained unchanged. The motion was called and passed unanimously.**

Ms. Hayden announced that the next meeting was scheduled for July 13, 2022.

There was no further business. Ms. Hayden adjourned the meeting at approximately 3:00 p.m.

# **MEMORANDUM FROM DIVISION OF NATURAL RESOURCES**

**TO: Executive Regulatory Oversight Committee**

**Date: September 14, 2022**

**From: Steve Boutelle**

**RE: Lee County Manatee Protection Zones Ordinance**

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The attached draft ordinance proposes changes to designated manatee zones and regulatory signage in three Lee County areas given the need to protect manatees from potential increased risk of boat strikes and concurrently come into compliance with Florida Statute. Staff seeks a recommendation as to whether the proposed ordinance should be adopted by the Board of County Commissioners.

## **Background and Summary**

Manatee protection speed zones can be implemented by Florida Fish and Wildlife Conservation Commission (FWC), or by local government ordinance adoption in compliance with the requirements of Section 379.2431, Florida Statutes. This County ordinance would be subject to approval by FWC, and in accordance with statute, would be reviewed with the best available scientific data.

FWC does not have current plans to review Lee County speed zones. Therefore, Natural Resources Staff compiled and reviewed the best available scientific data including aerial surveys (2007-09), State winter synoptic (one-day) surveys (1991-2019), state carcass recovery data (1975-2019), seagrass maps, and navigation charts.

Based upon the best available scientific information, manatees inhabit the bayside areas along Captiva Island (quarter- mile buffer including Roosevelt Channel), North Captiva (Safety Harbor), and Gasparilla Island (Boca Grande Bayou) on a regular basis including winter use. Maps 3A-C depict areas proposed to be year round slow speed zones for manatee protection under a new County ordinance.

The areas along Captiva Island (quarter-mile buffer including Roosevelt Channel), North Captiva (Safety Harbor), and Gasparilla Island (Boca Grande Bayou) were previously regulated as idle speed under previous County Ordinances or are currently seasonal slow speed manatee zones April 1 through November 15 under state law. These areas were previously regulated as year round idle speed zones for approximately 30 years under the Lee County boating safety ordinance. These idle speed zones are not consistent with state statute and need to be removed. That removal would cause an increased risk to

manatees in these areas that was not considered when FWC adopted the state zones. Consequently, there is a need to post these areas as year round slow speed zones for manatee protection.

#### Process

Lee County Board of County Commissioners gave Natural Resources staff direction at the November 16<sup>th</sup>, 2021 Board meeting to draft a manatee speed zone ordinance for these 3 areas.

In accordance with Florida Statute 379.2431(2)(p), this ordinance is subject to approval by FWC. FWC staff has reviewed this draft and find the proposed zones warranted.

This proposed ordinance would go to Public Hearing.

#### Attachment:

The Lee County Manatee Protection Zones ordinance (draft)

## **EROC ORDINANCE EVALUATION GUIDELINES**

### **Proposed Ordinance: Lee County Manatee Protection Zones**

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

The protection and preservation of the Florida Manatee. Based upon the best scientific information, manatees are frequently sighted in and inhabit the manatee protection zones identified in the ordinance. Providing additional measures for the protection of manatees benefits the welfare of the community at large by demonstrating that the conservation of manatees is important to quality of life, recreation, and tourism in SW Florida.

**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.

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

It does not duplicate programs. The state developed and required the implementation of manatee conservation zones in Lee County more than 20 years ago, but have no short-term plans to reexamine.

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

N/A

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

N/A

**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?**

N/A

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

No.

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

N/A

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

Yes, there is no other means to accomplish the goal of protecting manatees in these areas.

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

Yes, other local jurisdictions including the City of Sanibel and the Town of Fort Myers Beach have recently adopted manatee slow speed zone ordinances. The adoption of such ordinances is also a common practice for local governments around the state with manatee populations. Implementation of slow speed zones in areas frequently inhabited by manatees is widely accepted as a successful method of reducing manatee collisions with boats.

**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?**

No increase cost is associated with this ordinance as Lee County already maintains regulatory signs and buoys in these locations. Sign and buoy costs are reimbursed to Lee County by the West Coast Inland Navigation.

LEE COUNTY ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, RELATING TO BOATING REGULATORY ZONES FOR THE PROTECTION OF MANATEES; ESTABLISHING SLOW SPEED MINIMUM WAKE MANATEE PROTECTION ZONES IN PLACES WITHIN THE COUNTY KNOWN TO BE INHABITED BY MANATEES ON A REGULAR BASIS; PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (Board) is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the Florida Legislature has declared the State of Florida a refuge and sanctuary for the manatee; and

WHEREAS, pursuant to section 379.2431(2)(p), Florida Statutes (F.S.), a local government may regulate, by ordinance, motorboat speed and operation on waters within such local government's jurisdiction where the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, supports the conclusion that manatees inhabit these areas on a regular basis; and

WHEREAS, section 379.2431(2)(p), F.S., requires that for any such ordinance to take effect, it must first be reviewed and approved by the Florida Fish and Wildlife Conservation Commission ("FWC"); and

WHEREAS, following review of the best available scientific information and other relevant data, Lee County ("County") has determined that manatees inhabit several areas within the jurisdiction of the County and wishes to protect them via the regulation of motorboat speed and operation in such areas.

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

**SECTION ONE: INCORPORATION OF RECITALS**

The above recitals are true and correct and are hereby incorporated by reference.

**SECTION TWO: TITLE**

This Ordinance shall be known and cited as "The Lee County Manatee Protection Zones Ordinance".

**SECTION THREE: LEE COUNTY MANATEE PROTECTION ZONES**

**(a) DEFINITIONS**

The Definitions shall apply to all terms used herein.

*Motorboat* shall mean a vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation.

*Regulatory marker* shall mean a device used to alert the mariner to various regulatory matters such as horsepower, speed, wake, or entry restrictions in conformity with the Florida Uniform Waterway Marking System and the United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations.

*Slow speed or slow speed minimum wake* may be used interchangeably and shall mean that a vessel must be fully off plane and completely settled into the water as set forth in section 68C-22.002(4), Florida Administrative Code (F.A.C.), as amended, or its successor provision. The vessel must then proceed at a speed which is reasonable and prudent under the prevailing circumstances so as to avoid the creation of an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels or other persons using the waterway. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, there is no specific numerical speed assigned to slow speed. A vessel that is:

- (a) operating on plane is not proceeding at this speed;
- (b) in the process of coming off plane and settling into the water or coming up onto plane is not proceeding at this speed;
- (c) operating at a speed that creates an excessive wake or other hazardous condition which unreasonably or unnecessarily endangers other vessels or other persons using the waterway, or is likely to do so, is not proceeding at this speed;
- (d) completely off plane and which has fully settled into the water and is proceeding at a reasonable and prudent speed with little or no wake is proceeding at this speed.

## **(b) FINDINGS**

### **Finding of Manatee Inhabitation**

The Board finds that the primary purpose of vessel speed regulations established in this ordinance is for manatee protection, and based upon the best scientific information, manatees are frequently sighted in and inhabit the manatee protection zones defined herein on a regular basis, and there is a need to post these areas as year round slow speed zones. The Board further finds that the adoption of this ordinance regulating motorboat speed and operation will increase the protection of manatees from harmful collisions with motorboats, within said protection zones.

## **(c) ZONES ESTABLISHED**

### **Establishment of Year-Round Manatee Protection Zones**

The Board hereby establishes year-round manatee protection zones identified below for the purpose of protecting manatees located therein. To accomplish this purpose, this ordinance establishes manatee protection zones, and authorizes all subsequently permitted regulatory markers, as hereinafter defined, delineating said zones. Composite sketches of the manatee protection zones are set forth in Exhibit A, attached to this ordinance and incorporated herein by reference.

### **Slow Speed, Minimum Wake Zones**

It shall be unlawful to operate any motorboat at any speed greater than slow speed minimum wake where slow speed minimum wake regulatory markers designate a zone, unless exempt pursuant to Section Four (c) below. Designated Slow Speed Minimum Wake Zones are as follows:

(1) Captiva Island Area: All waters of Pine Island Sound south of a line that bears 90° from the northernmost tip (approximate latitude 26° 33' 11" North, approximate longitude 82° 11' 55" West) of Captiva Island, north and west of the Wulfert Channel, and west of a line one quarter (1/4) mile east of and parallel to the general contour of the eastern shoreline of Captiva Island and Buck Key, including all waters of associated bayous, canals and channels north and east of the centerline of the Sanibel-Captiva Road and all waters of Wulfert Channel, which connects Pine Island Sound with the Gulf of Mexico through Blind Pass, east of the centerline of the Sanibel-Captiva Road Bridge and west of red Wulfert Channel Marker "16" (approximate latitude 26° 29' 24" North, approximate longitude 82° 10' 41" West).

(2) North Captiva Island Area: All waters of Safety Harbor west and northwest of a line that bears 8° from the southeasternmost tip (approximate latitude 26° 35' 6" North, approximate longitude 82° 12' 50" West) of the peninsula lying on the northeastern side of Safety Harbor.

(3) Gasparilla Island Area:

All waters of Gasparilla Sound bounded by the eastern shoreline of Gasparilla Island and waters west and southwest of a line beginning at the northwest corner of the 16th Street bridge, following the bridge east across the bayou and then the shoreline north and east approximately 2,600 feet to a mangrove point (approximate latitude 26° 45' 52" North, approximate longitude 82° 15' 25" West), thence continuing due west approximately 1,090 feet to the eastern edge of marked navigation channel, thence following the eastern edge of the channel approximately 1,900 feet northwest to the southern tip of an unnamed mangrove island (approximate latitude 26° 46' 07" North, approximate longitude 82° 15' 46" West) and following the island's western shoreline to its northern tip (approximate latitude 26° 46' 21" North, approximate longitude 82° 15' 48" West) thence continuing north approximately 2,215 feet to the southern tip of an unnamed mangrove island (approximate latitude 26° 46' 43" North, approximate longitude 82° 15' 48" West) and following the island's western shoreline to its northern tip (approximate latitude 26° 46' 54" North, approximate longitude 82° 15' 48" West) thence continuing northwest perpendicularly across the marked channel to the shoreline of Gasparilla Island (approximate latitude 26° 46' 56" North, approximate longitude 82° 15' 49" West) and following the shoreline southerly to the point of beginning.

All areas of Boca Grande Bayou bounded by the 16th Street bridge and entrances from Charlotte Harbor described by lines from the southeast end of Treasure Lane (approximate latitude 26° 45' 33" North, approximate longitude 82° 15' 24" West) that bears 138° southeast to the northeast corner of the Gasparilla Inn golf course (approximate latitude 26° 45' 31" North, approximate longitude 82° 15' 22" West) and from the southern tip of the Gasparilla Inn golf course (approximate latitude 26° 44' 58" North, approximate longitude 82° 15' 16" West) due south approximately 540 feet to the northern tip of an unnamed mangrove peninsula (approximate latitude 26° 44' 52" North, approximate longitude 82° 15' 16" West) including all waters of connected embayments, canals and channels.

Composite sketches of the manatee protection zones are set forth in Exhibit A, attached to this ordinance and incorporated herein by reference.

#### Regulatory Markers

Implementation of the manatee protection zones described in this ordinance is contingent upon receipt of all applicable state and federal authorizations required to ensure compliance with Chapter 68D-23, F.A.C., and the United States Aids to Navigation System; and the posting of regulatory markers.

### **SECTION FOUR: ENFORCEMENT AND PENALTIES**

#### **(a) ENFORCEMENT**

The provisions of this ordinance may be enforced by any law enforcement officer as defined in section 943.10, F.S., as may be amended from time to time.

#### **(b) PENALTIES**

Any owner, operator, or person in command of a vessel found to have violated any provision of this ordinance shall be in violation of section 379.2431(2)(r), F.S., and as such may be amended from time to time. Nothing contained herein shall prohibit the County from enforcing any provision of this ordinance by any other lawful means.

#### **(c) EXEMPTIONS**

(1) The operators of motorboats owned or leased by the Federal Government, the State of Florida, the Lee County Sheriff's Office, and Lee County government shall be exempt from the provisions of this section while performing their official duties.

(2) A person engaging in activity reasonably necessary to prevent the loss of life or property due to emergency circumstances, or to render emergency assistance shall be exempt from the provisions of this section while engaging in such activity.

### **SECTION FIVE: SEVERABILITY**

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

### **SECTION SIX: SCRIVENER'S ERROR**

The Board of County Commissioners intend that this ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

### **SECTION SEVEN: MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING**

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during public hearing(s). Such modifications shall be incorporated into the final version.

**SECTION EIGHT: EFFECTIVE DATE**

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner \_\_\_\_\_ made a motion to adopt the foregoing ordinance, seconded by Commissioner \_\_\_\_\_. The vote was as follows:

Kevin Ruane	_____
Cecil Pendergrass	_____
Raymond Sandelli	_____
Brian Hamman	_____
Mike Greenwell	_____

DULY PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:  
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

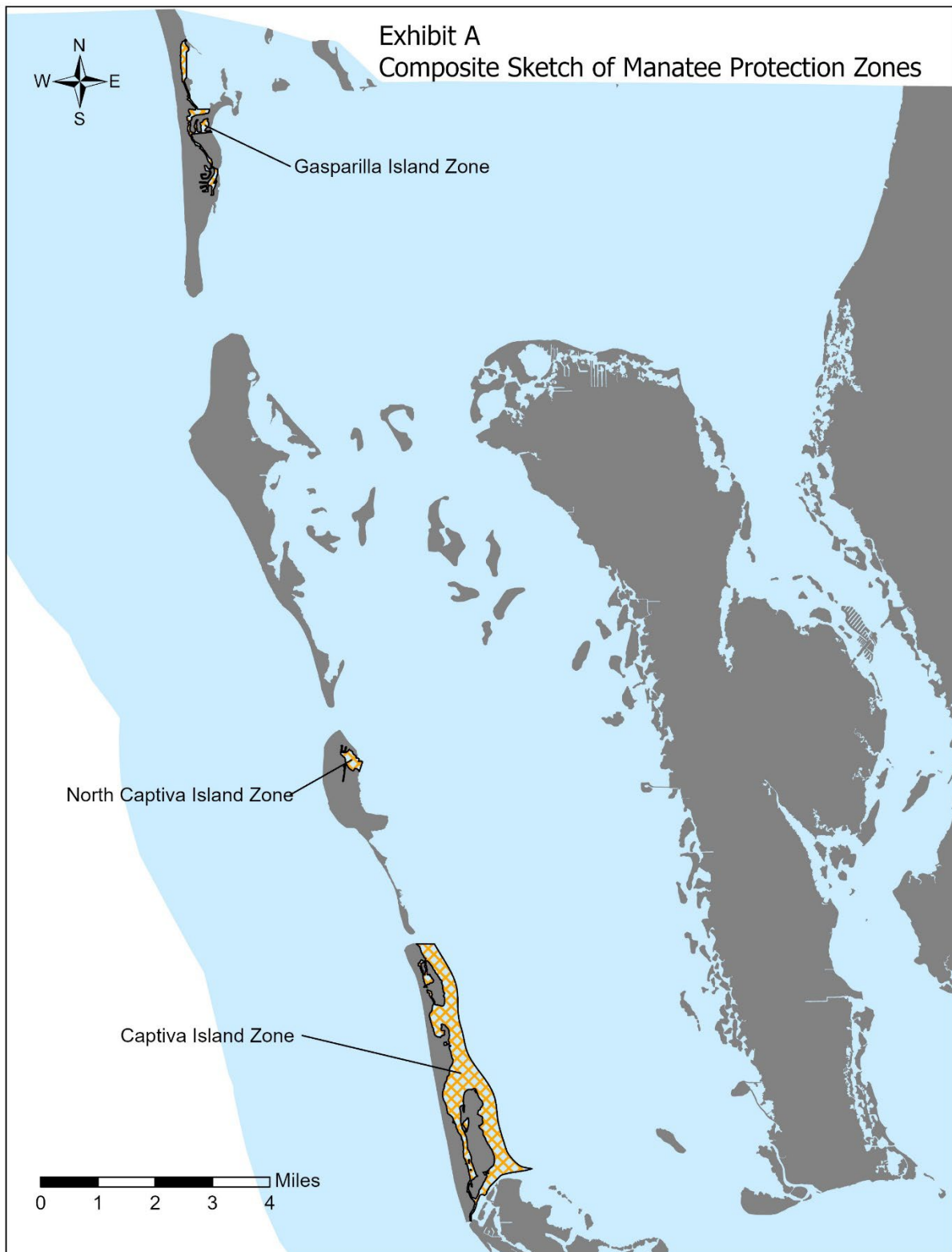
BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Cecil Pendergrass, Chair

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

By: \_\_\_\_\_  
Office of the County Attorney

CAO DRAFT August 30, 2022



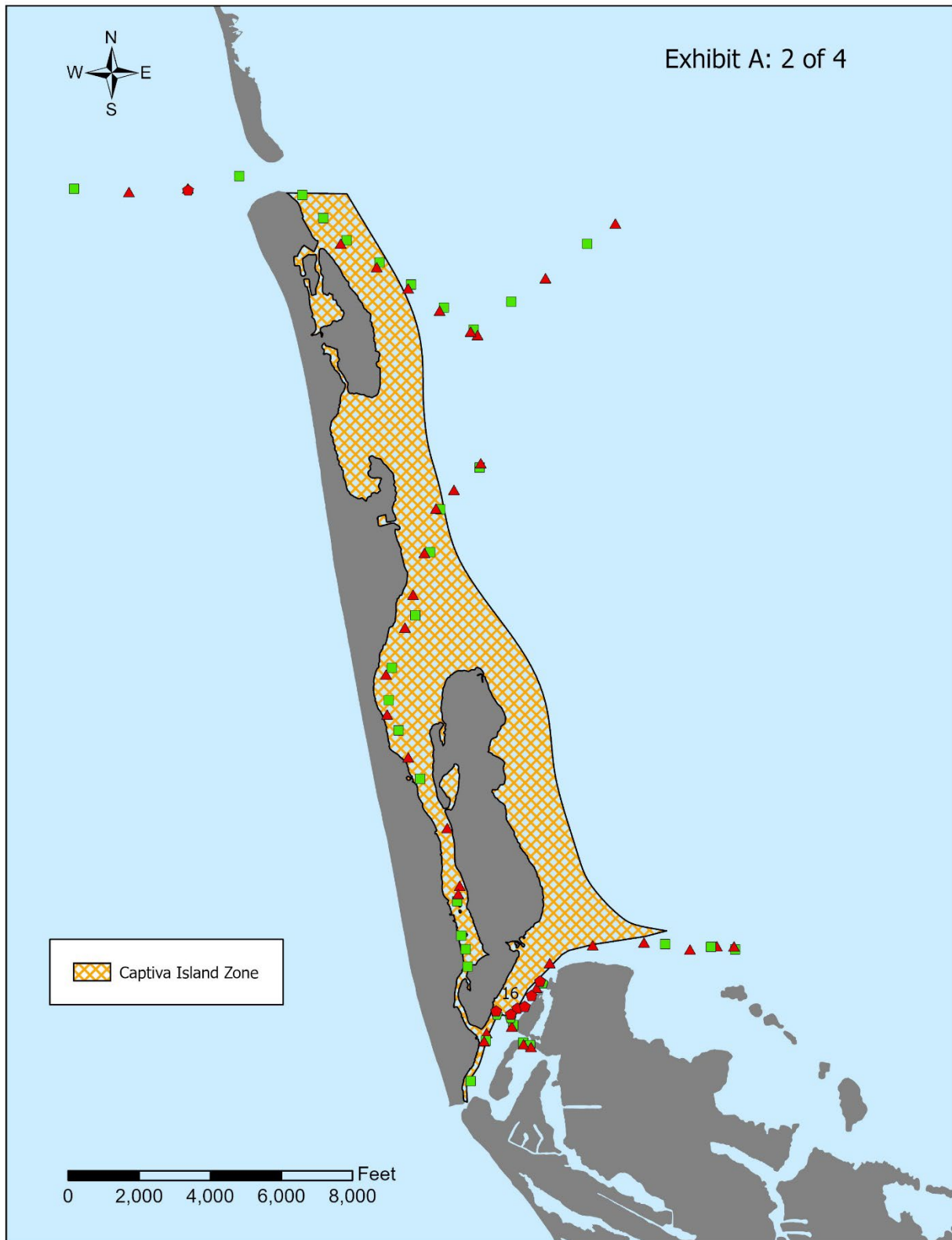
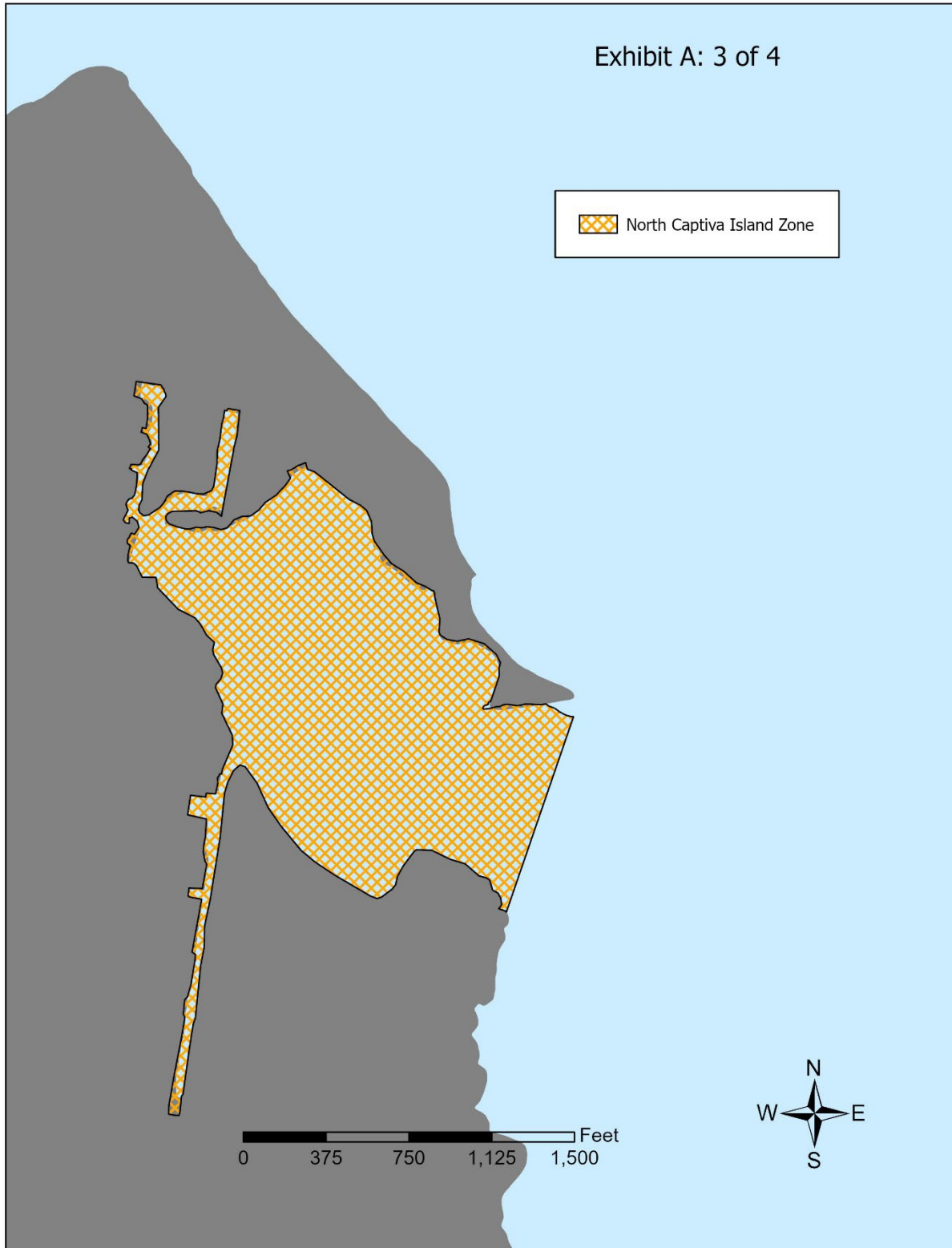
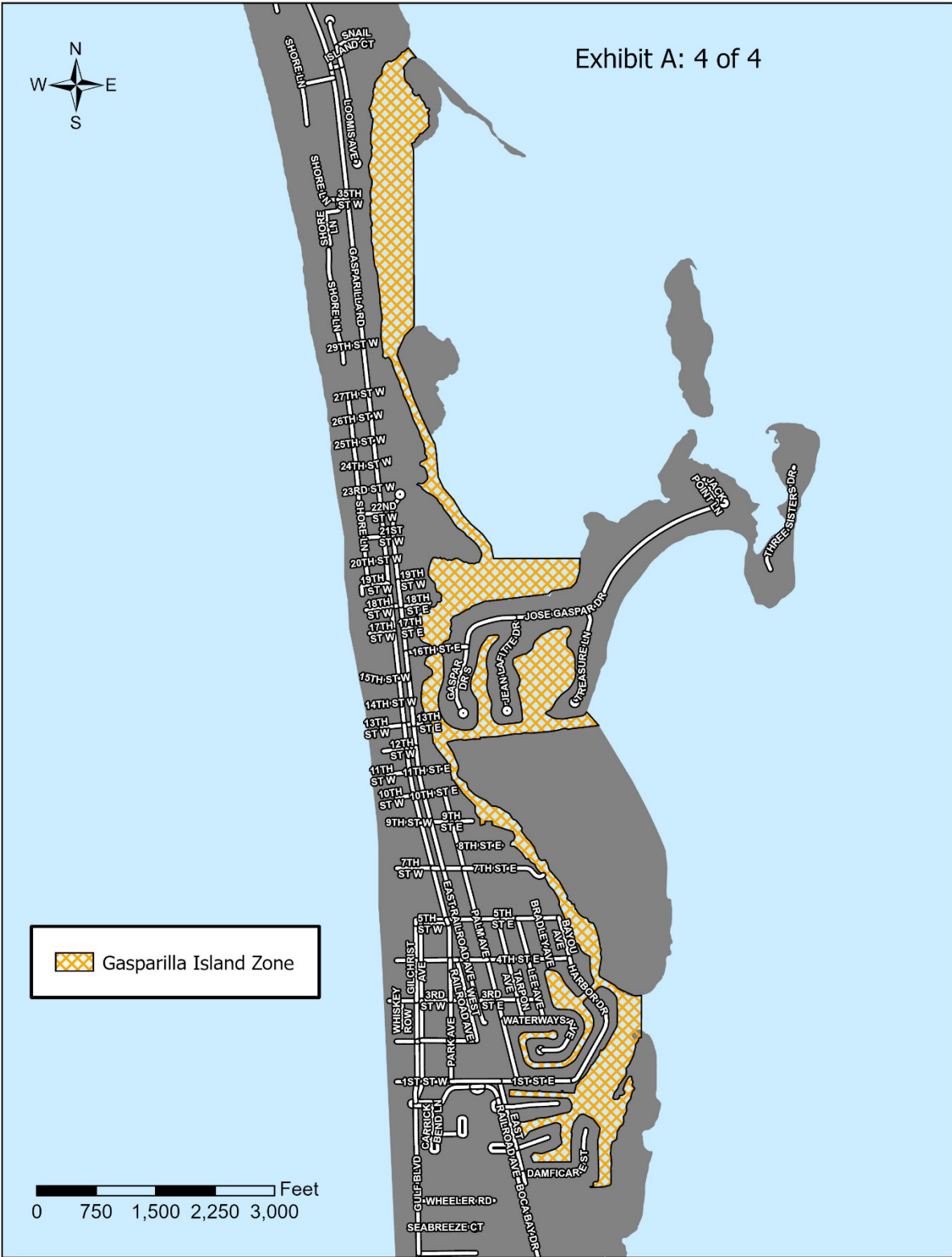




Exhibit A: 3 of 4





**MEMORANDUM**  
**FROM**  
**THE DEPARTMENT OF**  
**COMMUNITY DEVELOPMENT**

**TO:   Executive Regulatory**  
**Oversight Committee**

**DATE:   August 31, 2022**

**FROM:   Anthony R. Rodriguez, AICP**  
**Zoning Manager**

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**RE:    LDC Amendments**  
**Seasonal Farmers' Markets**

The attached Land Development Code amendments, scheduled for consideration at the September 14, 2022 EROC meeting, have been prepared to broaden existing regulations affecting seasonal farmers' markets. Staff seeks input and a recommendation on whether the proposed amendments should be adopted by the Board of County Commissioners (BoCC).

**BACKGROUND AND SUMMARY**

In June of 2022, the BoCC, in response to a request from Commissioner Ruane, directed staff to review existing regulations pertaining to seasonal farmers' markets and to prepare amendments to these regulations to better align the County's regulations with those of other jurisdictions in the region. Staff completed the requisite research, received input from an industry representative, and subsequently prepared draft amendments to achieve this objective in July of 2022. On August 2, 2022, the BoCC directed the attached amendments through the advisory committee review process prior to final consideration for adoption.

If adopted, the proposed amendments will:

- permit farmers' markets as a temporary use throughout the calendar year, which assures consistency with other local jurisdictions;
- prohibit farmers' markets from operating within easements consistent with prohibition on other uses within easements;
- require coordination with Lee County Sheriff's Office where off-site parking is proposed;
- prohibit operation of more than four days per week on the same premises;
- add fine art, arts and crafts, jewelry, apparel, and booths operated by local businesses, non-profits, and local governments to list of permitted vendors; and

- establish a percentage maximum for sale of non-agriculture-related goods/services as ancillary sales to the principal farmers' market use, which is consistent with the approach of other local jurisdictions.

#### COMMITTEE REVIEW COMMENTS

- This item was considered by the LPA on August 29, 2022, who offered no substantive comment and unanimously voted to find the proposed amendments consistent with the Lee Plan.
- This item will be considered by the LDCAC on September 9, 2022. Staff will provide a summary of the LDCAC's input when introducing this item to the committee for review and comment.

#### Attachments

Ordinance Evaluation Guidelines

Proposed amendments with staff annotations

## **EROC ORDINANCE EVALUATION GUIDELINES**

### **Proposed Ordinance: LDC Amendments - Farmers' Markets**

- 1. What is the public interest that the Ordinance is designed to protect?**  
The proposed amendments are intended to broaden existing regulations related to farmers' markets while providing protection of public health, safety, and welfare to the extent that this use affects the general public.
- 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.
- 4. Does the regulation duplicate State or Federal programs? If so, why?**  
No.
- 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?**  
No.

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

The proposed amendments are focused on broadening existing regulations.

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

Yes. The proposed amendments will align county regulations more closely with regulations of other jurisdictions as it relates to farmers' markets.

- 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 cost of the proposed regulations will not change when compared to the cost of the existing regulations.

## Sec. 34-3048. Seasonal ~~f~~Farmers' markets.

Staff summary: This section is being revised to permit farmers' markets as a temporary use throughout the calendar year. Current regulations permit farmers' markets to operate between the months of October and April. Permitting farmers' markets all year assures consistency with other local jurisdictions. Amendments to this section also propose revisions to the list of items permitted to be sold at farmers' markets, subject to certain restrictions, to assure consistency with other local jurisdictions.

- (a) Farmers' markets are allowed in the parking lot or grassed areas of properties developed with churches, schools, clubs, ~~as defined in section 34-2 (df)~~, parks (section 34-622(c)(32)), commercial or industrial uses, or on-site recreational facilities, ~~as defined in section 34-2 (df)~~. Farmers' markets are prohibited on vacant lots.

Staff note: revise subsection (a) to provide cross-reference to definitions. Pluralize "markets."

- (b) Farmers' markets are permitted in accordance with the following requirements: from October through April. A temporary use permit may be issued for no more than four days a week in the same location. A year round farmers' market requires compliance with this Code.

(1) A farmers' market must obtain a temporary use permit from the Department of Community Development. The application for the temporary use permit must include the following:

- a. A site plan indicating the layout and number of vendors, boundaries of the market, and proposed parking areas.
- b. If parking is not located on the same premises as the market, then the permittee must coordinate with the Lee County Sheriff's Office to provide traffic control, and must submit written approval from the Sheriff's Office indicating that traffic control will be provided.
- c. An initial list of vendors, with a description of goods sold or services offered as identified in subsection (d). Vendors may be changed and substituted without notification to the county provided that the market remains compliant with subsections (d) and (e).
- d. The days of the week and hours of operation for the market.

(2) The market may be located within parking areas with written consent of the property owner. The market is not permitted in open space or preserve areas, as designated on an approved local development order, within an easement, or within a County right-of-way. Adequate pedestrian and vehicular access to the site must be demonstrated;

(3) A farmers' market may not operate more than four days per week on the same premises.

~~(c) The application for the temporary use permit must include the following:~~

- ~~(1) A site plan indicating the layout and boundaries of the market. The market may be located within parking areas with written consent of the property owner. The market is not permitted in open space or preserves areas, as designated on an approved local development order, or within a County right-of-way. Adequate pedestrian and vehicular access to the site must be demonstrated;~~
- ~~(2) The day of the week and hours of operation for the market.~~

Staff note: Revise subsection (b) to consolidate existing subsections (b) and (c). Add language prohibiting farmers' markets from operating within easements consistent with prohibition on other uses within easements. Add language requiring coordination with Lee County Sheriff's Office where off-site parking is proposed. Clarify that farmers' markets may not operate more than four days per week on the same premises. Require list of vendors by type to assure compliance with items permitted to be sold as permitted by subsections (d) and (e).

~~(c)(d)~~ Each vendor within the farmers' market is responsible for securing and displaying all necessary licenses, including but not limited to any license/approval required when offering prepared food for consumption, etc. (i.e., Florida Department of Agriculture, Food Safety, and Department of Business and Professional Regulation, etc.).

**Staff note:** Revise to renumber subsection (d) to subsection (c). Clarify that regulation applies to individual vendors within the farmers' market and not the farmers' market operator.

(d) Allowed products and services are limited to:

- (1) Unprocessed agricultural products such as fruits, vegetables, grains, flowers, and plants;
- (2) Processed agricultural products such as milk, cheese, oils, vinegars, meats, poultry, eggs, honey, spices, coffee, jams, nuts, sauces, pasta, soaps, ice cream, herbal preparations, jellies;
- (3) Prepared foods such as ready-to-eat baked goods, breads, meats, cheeses, cakes, and pies;
- (4) Mobile food vendors ~~Food booths~~, with proper licensing, where preparation of food occurs on site;
- (5) Agriculture-related crafts, such as handmade wreaths, swags, dry flower arrangements, pressed flowers, scented sticks and potpourri, ~~candles, and raffia-scented sticks~~;
- (6) Non-agriculture-related goods including fine art, arts and crafts, jewelry, and apparel, subject to compliance with subsection (e).
- (7) The advertising, promoting, or offering of non-agriculture-related goods or services by local businesses, subject to subsection (e).
- (8) Community outreach activities by local non-profit organizations, local governments, or other similar organizations.
- ~~(9)(6)~~ Items designed to promote water, soil, or energy conservation, such as rain barrels, organic fertilizer, compost boxes, and related educational materials;
- ~~(10)(7)~~ Musical entertainment may occur only at one location within the market area and must comply with the County noise ordinance; and
- ~~(11)(8)~~ Other goods and services determined by the Zoning ~~Manager~~ Director to be substantially similar to the above vendor types.

**Staff note:** Reorganize to create subsection (d) for ease of administration. Update "food booths" to "mobile food vendors" consistent with current definition. Add fine art, arts and crafts, jewelry, apparel, and booths operated by local businesses, non-profits, and local governments to list of permitted vendors. Correct reference to position title of zoning section manager.

(e) Vendors selling non-agriculture-related goods or advertising, promoting, or offering non-agriculture-related goods or services may constitute a maximum of 20 percent of the total number of vendors within a farmers' market.

**Staff note:** Create new subsection (e) establishing a percentage maximum for sale of non-agriculture-related goods/services as ancillary sales to principal farmers' market use. Permitting sales of these goods/services subject to a maximum percentage makes County regulations more consistent with how other local jurisdictions permit and regulate the number of non-agriculture-related vendors within farmers' markets.

~~(f)(e)~~ Prohibited items and vendors: Used goods, antiques, collectibles, and all other goods and services not expressly set forth above.

~~(g)(f)~~ The Department of Community Development has the authority to modify or revoke the farmers' market temporary use permit upon a finding of a violation of any condition of the temporary use permit approval or the provisions of this section. Prior to revoking a permit, the permittee will be given written notice of the violation and the action necessary to correct the same. The notice will be delivered in compliance with F.S. § 162.12. The notice will provide that failure to correct the violation will result in the revocation of the temporary use permit.

**Staff note:** Renumbers subsections (e) and (f) to (f) and (g). Revise subsection (g) to require compliance with provisions of this section.