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BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

PLACEMENT: PUBLIC HEARINGS

PRESET: 2:00 PM

TITLE: PUBLIC HEARING TO CONSIDER ADOPTION OF AMENDMENTS TO ARTICLE 4, DIVISION 1, WETLANDS, MARTIN COUNTY LAND DEVELOPMENT REGULATIONS

AGENDA ITEM DATES:

MEETING DATE: 12/13/2011	COUNTY ATTORNEY: 11/21/2011
COMPLETED DATE: 12/1/2011	ASSISTANT COUNTY ADMINISTRATOR: 11/28/2011

REQUESTED BY:	DEPARTMENT:	PREPARED BY:
Name: Nicki van Vonno, AICP Growth Management Director	Growth Management	Clyde Dulin
Name:		Senior Planner

Procedures: None

EXECUTIVE SUMMARY:

The proposed amendments to the wetlands Land Development Regulations implement changes to the Comprehensive Growth Management Plan adopted in December 2009, specifically Chapter 8, Coastal Management and Chapter 9, Conservation and Open Space.

APPROVAL:

LEG
ACA
CA

BACKGROUND/RELATED STRATEGIC GOAL:

802934b7

The Evaluation and Appraisal Report (EAR) identified changes to various chapters of the Comprehensive Growth Management Plan. In 2009, amendments to Chapter 8, Coastal Management and Chapter 9, Conservation and Open Space reduced duplication of Plan policies by retaining the shoreline protection policies in Chapter 8 and retaining wetland protection policies in Chapter 9. The Plan language was also clarified by making a wetland buffer applicable only to wetlands connected to surface waters of the state. The LDR has been revised to implement the adopted changes in the Plan and thus deal with the protection of wetlands separately from the protection of the shoreline in the estuary.

Separate from EAR based Plan changes, the Board held a Strategic Planning meeting on December 16, 2010. One of the objectives from that meeting is shown below:

- Ability to improve upon 1 to 20 acre restriction by considering exclusion of wetlands from 20 acre base.

Drafts of the proposed LDR changes have been posted to the website throughout the process and email messages to the `gmd_courtesy` list have been sent to notify interested parties.

The *italic* text within the draft ordinance provides analysis of the proposed changes. The staff report also provides more detail on the issues discussed below.

ISSUES:

Staff has received input from land owners in western Martin County regarding the exclusion of wetlands from 20 acre lots. Those land owners report that loans have been sought and obtained based upon the ability to divide Agricultural land into 20 acre parcels, inclusive of wetlands. On September 29, 2011 a number of property owners and representatives met with staff and expressed concern that changing the rule will decrease the land value and inhibit the land owners' ability to obtain future financing so that existing agricultural activity can be continued, or initiated.

In response to this strategic objective, staff offered two different options for Section 4.2.J. in the draft LDR changes reviewed by the Local Planning Agency (LPA) on October 20, 2011 and at a continuation of the hearing on November 17. The LPA voted 3-2 to reject the alternatives and voted to delete the proposed Section 4.2.J. on both nights. The second of two options is included in the draft LDR. It permits lots proposed in the Agricultural and Agricultural Ranchette future land use designations to include wetlands within the lot boundaries.

Another issue to receive extensive public comment and review by the LPA has been a request to create an additional waiver in the shoreline protection zone for lots with seawalls. Toby Overdorf provided text for inclusion in the draft LDR that would allow an additional waiver for older residential lots with existing seawalls. Staff does not find the text consistent with Plan policy. The LPA voted 3-2 to recommend the text go forward to the Board of County Commissioners. As part of forwarding the text, the LPA recommended the Board initiate an amendment to the Comprehensive Plan. Please see the email from Toby Overdorf dated November 16, 2011 in the Public Comment. The text that follows that email was the subject of the LPA recommendation.

In addition to the recommendations on the issues discussed above, the LPA recommended approval of the proposed changes presented on November 17.

Most of proposed changes to the wetlands regulations are unrelated to the strategic objective or to the shoreline protection zone issue discussed above. As such, staff suggests the Board may wish to consider these two issues separately and take action on each. Then Staff recommends the Board take action on the balance of the proposed wetlands LDR changes because the LDR does not, presently, implement the Plan policy changes adopted December 9, 2009.

The recommended changes are shown in ~~strike~~ and underline. The *italic* text within the draft ordinance provides analysis of the proposed changes. The staff report also provides more detail on the issues discussed above.

RECOMMENDED ACTION:

RECOMMENDATION

- 1) Staff recommends approval of 1) the text provided in Section 4.2.J. regarding wetlands in the Agricultural Land Use Designations.

- 2) Staff recommends the Board review the waiver language suggested by Mr. Overdorf and determine that it is inconsistent with the Comprehensive Plan. Additionally staff recommends the Board give direction regarding the initiation of a Comprehensive Plan amendment to address the waivers allowed within the shoreline protection zone.

- 3) Lastly, Staff recommends approval of the draft ordinance with inclusion of any language addressing items 1) and 2) above. The staff notes will be removed prior to the Chairman signing the attached ordinance.

ALTERNATIVE RECOMMENDATIONS

1. Staff recommends the Board direct other changes to the ordinance and adopt the revised ordinance, including action on Items 1) and 2) of the staff recommendation.

2. Staff recommends the Board direct additional changes and continue the ordinance to a date certain.

FISCAL IMPACT:

RECOMMENDATION

Staff time.

ALTERNATIVE RECOMMENDATIONS

1. Staff time.

2. Staff time.

DOCUMENT(S) REQUIRING ACTION:

<input type="checkbox"/> Budget Transfer / Amendment	<input type="checkbox"/> Chair Letter	<input type="checkbox"/> Contract / Agreement	
<input type="checkbox"/> Grant / Application	<input type="checkbox"/> Notice	<input checked="" type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution
<input type="checkbox"/> Other:			

ROUTING:

<input type="checkbox"/> ADM	<input type="checkbox"/> BLD	<input type="checkbox"/> CDD	<input type="checkbox"/> COM	<input type="checkbox"/> ENG	<input type="checkbox"/> FRD	<input type="checkbox"/> GMD
<input type="checkbox"/> GSD	<input type="checkbox"/> ITS	<input type="checkbox"/> LIB	<input type="checkbox"/> MCA	<input type="checkbox"/> MPO	<input type="checkbox"/> PRD	<input type="checkbox"/> USD
<input checked="" type="checkbox"/> CA	<input checked="" type="checkbox"/> ACA	<input checked="" type="checkbox"/> LEG				



MARTIN COUNTY, FLORIDA Comprehensive Planning Division

Article 4, Division 1, Wetlands Land Development Regulation

Project: Amend Article 4 to be consistent with amendments to Chapters 8 and 9 of the Comprehensive Growth Management Plan (CGMP).
Staff: Clyde Dulin, Senior Planner; Darryl DeLeeuw, Compliance and Enforcement Administrator.
Date of this report: November 30, 2011

A. Background

Since at least 1990 the Comprehensive Growth Management Plan has approached two different subjects with separate Objectives and supporting Policies. One Objective concerned the shoreline of the various estuarine waters such as the Loxahatchee River, the St. Lucie River and the Indian River and only these water bodies and related tributaries. The other Objective concerned wetlands, both isolated wetlands on the interior of Martin County and wetlands found along the shoreline of the estuarine waters of the rivers mentioned above. These two different Objectives and supporting policies reflect the fact there are very different types of habitat existing along the shoreline of the estuarine water bodies.

When reviewing permits and site plans on lands along the estuarine water bodies, staff applied the most restrictive, which were frequently the wetland policies because the wetland policies required waters of the state to receive a “wetland buffer.” However, the term “waters of the state” is very broad and includes most types of surface water, wetlands and even ground water.

Ordinance 548 was adopted June 22, 1999. It was the first Martin County Land Development Regulation to provide implementing language and help people apply the policy language of the Comprehensive Growth Management Plan. In some ways it was helpful because it clearly said things like wetland buffers would not be applicable to ground water. However, it did not distinguish between shoreline protection and wetland protection in the estuarine waters of Martin County. Instead, the LDR made very little mention of the shoreline protection. The text quoted below is from Section 4.2.M. of the Land Development Regulations and requires the shoreline protection zone to be protected as “waters of the state” effectively requiring all estuarine waters to be protected with a wetland buffer. This results in a wetland buffer being applied to waters that cannot be delineated as wetlands. The LDR codified the blending of terms such as “buffer” and “shoreline protection zone” even though they are not used that way in the Plan. Notice how Section 4.2.M.1. states “Buffers within the shoreline protection zone shall be the same.

“4.2.M.

Shoreline protection zone. The shoreline protection zone shall include all of the Indian River, St. Lucie and Loxahatchee estuaries and their navigable tributaries along with connected wetlands and required buffers. This zone shall be the same as the waters of the State in Martin County as defined in section 4.1.C. Protection of shorelines throughout this zone is important to the health of

the estuary. Martin County shall protect the shoreline protection zone in order to protect the stability of the estuary, enhance water quality, and preserve shoreline mangrove communities. The following shoreline performance standards shall be enforced in review of estuarine development proposals, including docks:

1.

Buffers within the shoreline protection zone shall be the same as those required for waters of the State, section 4.2.E above. Buffer zones for waters of the State have a minimum width of 75 feet. The upland transition zone as identified in section 9-4.A.8.a.(2) of the Comprehensive Plan is included within the shoreline protection zone and shall be extended the same protection and restrictions.”

EAR BASED AMENDMENTS

In 2009, amendments to Chapter 8, Coastal Management and Chapter 9, Conservation and Open Space reduced duplication of Plan policies by retaining the shoreline protection policies in Chapter 8 and retaining wetland protection policies in Chapter 9. The Plan language was also clarified by making a wetland buffer applicable only to wetlands connected to surface waters of the state. The term “waters of the state” was also replaced in the Plan with the term “surface waters of the state.” It is no longer necessary to say in the LDR that ground water will be excluded from application of the term waters of the state so that wetland buffers will not be applied to ground water.

However the shoreline protection policies of the Plan must now be included in the wetlands land development regulations to protect portions of the estuarine shoreline that do not include wetlands as defined by the State Statute (and the Plan) and delineated pursuant to Chapter 62-340, Florida Administrative Code.

Distinguishing between terms that are used in separate Objectives of the Plan and have been used interchangeably in the Wetlands land development regulation for more than 10 years represents the single largest change in the proposed text.

B. Issues

The following table provides an outline of the sections in the existing and proposed LDR text.

Existing Section	Proposed Section
4.1. In General.	4.1. In General.
4.2. Wetland protection standards.	4.2. Wetland protection standards.
4.3. Waivers and exceptions.	4.3. Waivers and exceptions for delineated wetlands.
	<u>4.4. Shoreline protection.</u>
	<u>4.5. Waivers and exemptions to the Shoreline Protection Zone.</u>
	<u>4.6 Preserve Area Management Plan</u>
4.4. Violations; restoration and set-aside; correction; hearings.	<u>4.7. Violations; restoration and set-aside; correction; hearings.</u>

The proposed text changes to Article 4, Division 1 of the Land Development Regulations, Martin County Code (LDR) must be consistent with the CGMP language adopted on December 16, 2009. The Land Development Regulations may be more restrictive than the Comprehensive Plan policies but not less restrictive. Because of changes to the Comprehensive Growth Management Plan the following five issues must be addressed.

1. Clearly distinguish between the terms buffers (applicable to wetlands) and the landward extent of the shoreline protection zone so that use of the terms is more clearly understood to mean different types of shoreline within the estuarine waters. The term shoreline protection zone is inclusive of the land containing the rivers and extends 75 feet landward of the rivers. The shoreline protection zone may include wetlands and wetland buffers within it. However, the wetlands along the estuarine shoreline will continue to be regulated as they have been.
2. Reorganize the wetlands LDR to include a section implementing the shoreline protection Objective and policies of Chapter 8, Coastal Management.
3. Revise wetland protections to be consistent with the wetland protection Objective and policies in Chapter 9, Conservation and Open Space. Apply buffers to estuarine wetlands connected to surface waters of the state not all waters of the state. The wetlands that may be delineated within the shoreline protection zone will be given wetland buffers and limited waivers.
4. Establish waivers for the shoreline protection zone separate from the waivers for wetlands.
5. Establish a separate section for Preserve Area Management Plan language in the LDR so that it can be applicable to wetlands, wetland buffers and the landward extent of the shoreline protection zone.
6. The following strategic Objective from the Board retreat will also be addressed.
 “Ability to improve 1 to 20 acre restriction by considering exclusion of wetlands from 20 acre lot.”

Presently the uplands protection land development regulation states preserve areas shall not be part of single family lots. However, minimum 20 acre Agricultural lands have a primary purpose of agricultural crops. The first of the modern Agricultural subdivisions, Trailside, was approved in 1999. Wetlands and buffers were included in the Agricultural lots. There was/is not Plan policy on the subject. The attached graphic is another example of an Agricultural subdivision where a large portion of the site is composed of wetlands. If preserve areas are not part of the 20 acre minimum lots the number of units may be substantially reduced. Likewise, the value of the property may be substantially reduced.

Staff has received input from land owners in western Martin County regarding the exclusion of wetlands from 20 acre lots. Those land owners report that loans have been sought and obtained based upon the ability to divide Agricultural land into 20 acre parcels, inclusive of wetlands. After further review of the fiscal unintended consequences to Agricultural land owners, staff offered the Local Planning Agency (LPA) two different options to address the strategic objective.

On October 20, 2011 the LPA considered two options for text proposed in Section 4.2.J. At the October 20, 2011 public hearing the Local Planning Agency (LPA) voted 3-2 to recommend rejecting both options.

Following the October Local Planning Agency hearing the second option was modified to exclude wetlands from subdivision lots in all future land use designations except Agricultural and Agricultural Ranchette. The LPA completed review of the draft changes on November 17, 2011 and again recommended rejecting both options offered. The second of the two options offered at the November 17 public hearing is found in the draft ordinance attached.

7. Other issues addressed in the proposed draft text.
 - Performance bond for the restoration of a wetland. See page 13.
 - Relocating text in the LDR so that subject matter is covered in one location or in a more appropriate location. See the replanting requirements on Page 13.
 - New text is offered on Page 23, Section 4.3.H. concerning shoreline stabilization. Though areas of the estuary containing wetlands should not need shoreline stabilization a process for reviewing such proposals has been created.
 - Section 4.5.B. on Page 33 has been revised to distinguish between erosion caused by stormwater runoff and erosion caused by wave action and thus provide two different options for addressing the two different types of erosion.

8. At a Board workshop on May 24, 2011 members of the public proposed additional waivers to the shoreline protection zone. Likewise at the August LPA workshop and at the October and November LPA public hearings public comment included requests for additional waivers on smaller, older residential lots that have existing seawalls. At the October LPA hearing Toby Overdorf provided text for inclusion in the draft LDR that would allow an additional waiver for older residential lots with existing seawalls. At the November LPA hearing staff informed the LPA that the text does not comply with Plan policy. On November 16 Mr. Overdorf provided a new draft of the proposed waiver and it was presented to the LPA on November 17.

The LPA voted 3-2 recommending the text go forwarded to the Board of County Commissioners. As part of forwarding the text, the LPA recommended the Board initiate an amendment to the Comprehensive Plan. Both drafts of the text offered are included in the Public Comment. The text offered by Mr. Overdorf is not included in the draft ordinance.

9. At the October Local Planning Agency meeting Toby Overdorf identified the fact species such as the Gopher Tortoise are now listed as threatened and the requirements of the existing language, identified as Section 4.2.D.5 in the attached draft, may encourage the relocation of this species as provided by state regulations instead of retaining the population on site. Staff has provided revised text to address the issue and to update the language.

C. Analysis of proposed changes

Though large sections of the wetlands land development regulation appear stricken much of the text has actually been relocated to create new sections. In some cases text is duplicated so a waiver applicable to a wetland is also applicable to the shoreline protection zone. Staff notes in the text of the draft document identify the new location of text shown stricken. The staff notes will not be codified into the Land Development Regulations. The following analysis provides additional analysis not contained in the *italic* text and shown in the draft LDR.

1. Section 4.1.A. Purpose was revised to include shoreline protection.
2. Section 4.1.B., identifies sections 4.2, 4.3., 4.6 and 4.7 as applicable to wetlands.
3. Section 4.1.C., identifies sections 4.4, 4.5., 4.6 and 4.7 as applicable to shoreline protection.

4. At the back of this report a description of wetland identification is provided. It discusses the fact Section 62.340 FAC has provided a unified delineation method for State and local governments. However, it has not eliminated all conflict about the location and extent of wetlands.

Staff has reconsidered new text that was proposed for Section 4.2.B., Delineation. It is not necessary to reaffirm approved plans and Preserve Area Management Plans remain valid. Existing LDR language requires wetland buffers to be managed with a Preserve Area Management Plan. Policy 9.1G.1.(5)(i), CGMP prohibits “alteration of preserve areas except through a PAMP amendment approved by the Board of County Commissioners”. Likewise, Section 4.6.C.10 of the proposed LDR text states: “Preserve areas shall not be altered except by way of a PAMP amendment approved by the Board of County Commissioners.

5. The Basic information requirements in Section 4.2 require a long list of materials to be submitted. Staff proposes to reduce the submittal material. Delineations by qualified professionals have become more commonplace making the additional material frequently unnecessary. In other cases staff has better aerial photographs and wetland data than an applicant can produce. The proposed change is based upon staff experience implementing the wetlands LDR since 1999.
6. The wetland areas of special concern content was relocated to Section 4.2.B. Basic information requirements. Identifying whether a wetland is located in a wetland area of special concern is one of the first steps any environmental assessment must include.
7. The wetlands buffer language on Page 6 of the attached draft LDR text has been modified to eliminate the option of being measured from the delineation or the mean high water. The option was necessary when the buffer was applicable to areas that could not be delineated as wetlands pursuant to Section 62.340 FAC and thus had no delineation. This change strengthens the existing wetland protections by eliminating the potential interpretation that a wetland buffer may be measured from the mean high water line within a wetland.

D. Conclusion

The proposed revisions to the wetlands land development regulations do not change the core policy that all wetlands are protected. The language regarding isolated freshwater wetlands on the interior of the county remains unchanged as does the last section of the regulations concerning violations, restoration and set-aside.

Shoreline protection policies that have been in the Comprehensive Growth Management Plan since 1990 are being added to the land development regulations for the first time. As part of this change the language distinguishes between estuarine wetlands that may be delineated within a shoreline protection zone and properties where wetlands do not exist in the estuarine waters. Distinguishing between different types of shoreline and the applicable terms will improve communication and improved implementation of Plan policy.

E. Attachments

- Background description of Wetland Identification in Martin County.
- Site plan for an agricultural subdivision.
- Public comment.
- Draft ordinance.

WETLAND IDENTIFICATION IN MARTIN COUNTY.

In 1982 the Martin County Comprehensive Plan was adopted. It said “Wetlands are generally defined as forested saltwater areas, forested and mixed freshwater areas, and non-forested freshwater areas.” The text went on to list soil types (as identified in the Martin County Soil Survey) associated with each of the three areas. Similar language was carried forward to the Comprehensive Growth Management Plan adopted in 1990 and can still be found in the Plan, as amended, today. The location and extent of wetlands identified by Martin County in the 1980s were often different from the location and extent of wetlands identified by State agencies and both of those delineations were different from federal delineations.

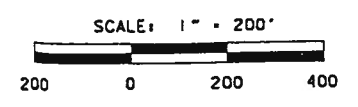
The State of Florida adopted Chapter 62-340 into the Florida Administrative Code (FAC) on July 1, 1994 and thus created the Delineation of Landward Extent of Wetlands and Surface Waters. The Department of Environmental Protection and the five Water Management Districts then developed a training manual describing the application of Chapter 62-340, FAC. for both isolated freshwater wetlands and estuarine wetlands. It took years and numerous environmental professionals around the state to define terms such as “waters of the state”, “surface waters of the state” “wetlands” and “other surface waters.” Chapter 62-340 effectively created one delineation methodology for state and local governments and started controlling the identification and delineation of wetlands prior to the adoption of the first Martin County wetlands Land Development Regulation in 1999.

The Comprehensive Growth Management Plan still makes reference to soils as a means of identifying wetlands. However, it was amended in the 1990s to add the state definition of a wetland.

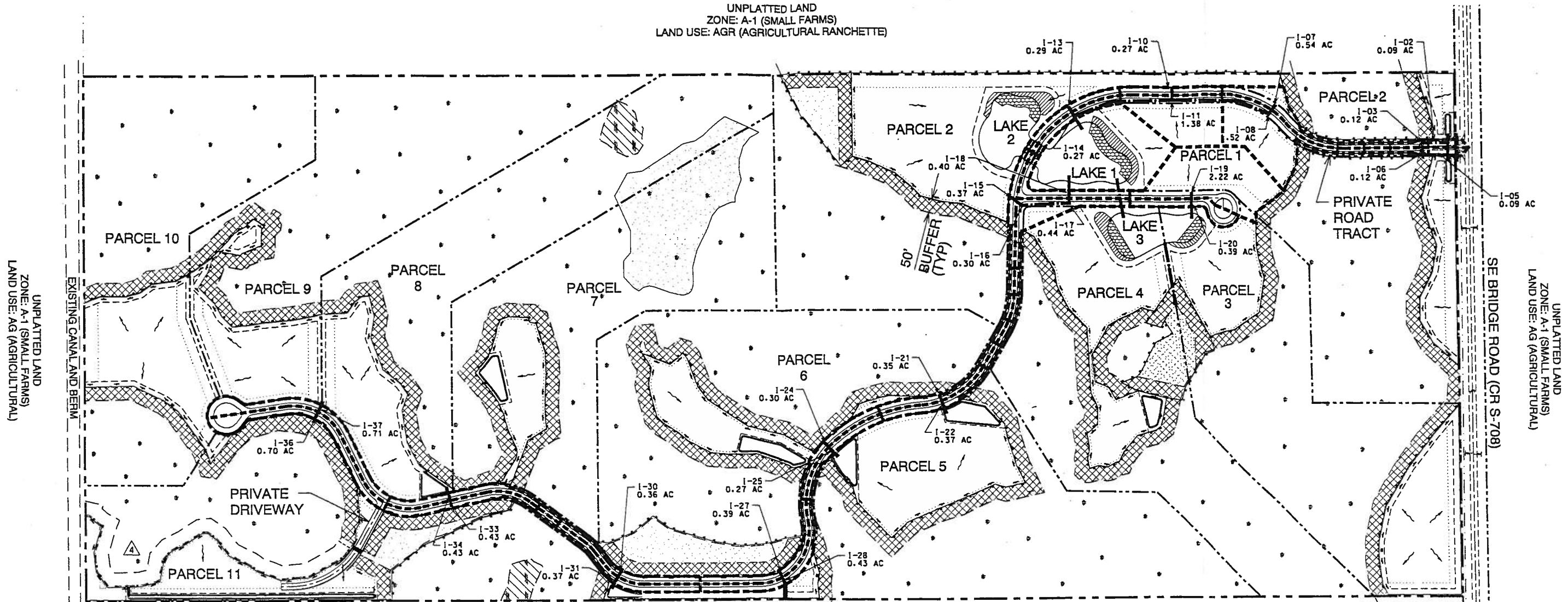
From 1982 to 1990 the Comprehensive Plan protected the shoreline in Article VIII. In 1990 the shoreline protection zone language was carried over to Chapter 8, Coastal Management and to Chapter 9, Conservation and Open Space of the Comprehensive Growth Management Plan. A separate Objective was also added to Chapter 8 and Chapter 9 applying a wetland buffer to wetlands and “waters of the state” as defined in F.S. Chapter 403. The term “waters of the state” is inclusive of the same estuarine river bodies, canals included in and protected by the term shoreline protection zone. The two separate Objectives protected many of the same waters and the same portion of ground along the estuarine rivers in much the same way. But, the waivers to shoreline protection language and the waivers to the buffer language were different.

The wetlands LDR, adopted in 1999, focused on just the wetland buffer and the application of that buffer to both isolated freshwater wetlands on the interior of the County and estuarine wetlands and “waters of the state” in the rivers. The LDR did not create implementing language for the Shoreline Protection Zone. Instead Section 4.2.M, Shoreline Protection refers the reader to the wetlands protection requirements. This was probably done because the 75 foot wetland buffer applied to “waters of the state” was more restrictive than the 50 foot upland area required for the Shoreline Protection Zone. The wetlands LDR thus applies a wetland buffer to waterbody that does not meet the definition of a wetland and cannot be delineated as a wetland pursuant to Chapter 62-340.

By not implementing the Shoreline Protection Zone policies of the Plan the LDR does not distinguish between a shoreline (with little or no vegetation) along the estuary and a portion of the estuary that can be delineated and fits the definition of a wetland. In creating the LDR the waivers to the wetland buffers found in the Comprehensive Growth Management Plan and the waivers to the Shoreline Protection zone, found in the Comprehensive Growth Management Plan were all included as waivers to wetland buffers. This is not consistent with the Plan.



UNPLATTED LAND
 ZONE: A-1 (SMALL FARMS)
 LAND USE: AGR (AGRICULTURAL RANCHETTE)



EROSION CONTROL NOTES

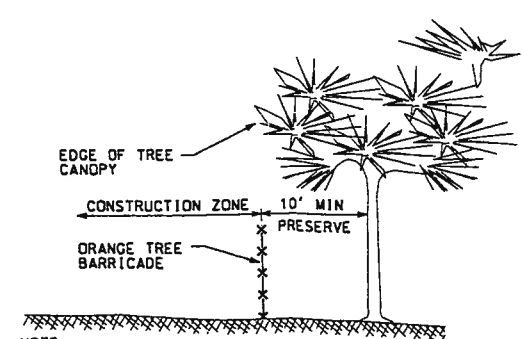
1. PRIOR TO CONSTRUCTION, SILT FENCE MUST BE INSTALLED ALONG ALL BUFFERS AND UPLAND PRESERVES AT A 10' SETBACK.
2. TREE BARRICADES MUST BE INSTALLED ALONG EXISTING VEGETATION RETAINED FOR BUFFER PURPOSES BETWEEN ADJACENT LANDS AND ALONG ALL PRESERVED LANDS. TREE BARRICADES MUST BE A MINIMUM OF 3' IN HEIGHT AND NOT ATTACHED TO ANY PLANT.
3. ALL SEDIMENT CONTROL DEVICES SHALL BE INSTALLED PRIOR TO ANY SOIL DISTURBING ACTIVITY UPSTREAM OF THE CONTROL DEVICE. EROSION CONTROL DETAILS IS FOUND ON SHEETS 6 AND 7 AND THE STORMWATER POLLUTION PREVENTION PLAN IS FOUND ON SHEET 12.
4. SILT FENCE MUST BE REPLACED AT A YEARLY INTERVAL AND ALL SEDIMENT REMOVED AND DISPOSED OF LEGALLY.
5. HAY BALES ARE TO BE REPLACED IN THREE (3) MONTH INTERVALS AND ALL SEDIMENT REMOVED AND DISPOSED OF LEGALLY.
6. QUALIFIED PERSONNEL SHALL INSPECT THE FOLLOWING ITEMS AT LEAST ONCE EVERY SEVEN (7) CALENDAR DAYS AND WITHIN 24 HOURS OF THE END OF A STORM OF 0.25 INCHES OR GREATER. WHERE SITES HAVE BEEN FINALLY STABILIZED, INSPECTIONS SHALL BE CONDUCTED AT LEAST ONCE EVERY MONTH.

POINTS OF DISCHARGE TO WATERS OF THE UNITED STATES
 POINTS OF DISCHARGE TO MUNICIPAL SEWER SYSTEMS
 DISTURBED AREAS THAT HAVE NOT BEEN FINALLY STABILIZED
 AREAS USED FOR STORAGE OF MATERIALS THAT ARE EXPOSED TO PRECIPITATION
 CONTROL STRUCTURES
 STORMWATER MANAGEMENT SYSTEMS
 LOCATIONS WHERE VEHICLES ENTER AND EXIT THE PROJECT

ALL INSPECTIONS SHALL BE DOCUMENTED AND ANY REPAIRS ARE TO BEGIN 24 HOURS AFTER INSPECTION AND COMPLETED WITHIN 72 HOURS.

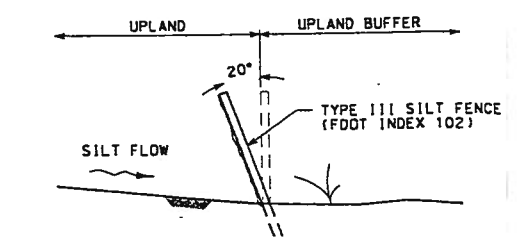
GENERAL NOTES

1. FIRE SPRINKLER SYSTEMS ARE TO BE INSTALLED ON COVERED BRIDGES.
2. WELLS AND SEPTIC TANKS ARE TO BE CONSTRUCTED PER MARTIN COUNTY HEALTH DEPARTMENT REGULATIONS.
3. PERMANENT IMPACT TO WETLANDS BY ROADWAY SHALL BE A MAXIMUM 40' WIDTH OVER THE CENTERLINE OF RIGHT OF WAY.
4. ALL UTILITIES IN WETLAND CROSSINGS SHALL BE BURIED BETWEEN THE ARCHITECTURAL BLOCK WALL AND EDGE OF PAVEMENT.
5. ALL EASEMENTS UTILIZED FOR DRAINAGE SWALES AND LAKES SHALL BE MAINTAINED BY THE COVERED BRIDGE ESTATES HOME OWNER ASSOCIATION.
6. THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL UTILITIES PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. ANY DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER. THE APPROPRIATE UTILITY COMPANY SHALL BE NOTIFIED PRIOR TO ANY CONSTRUCTION IN OR AROUND THAT UTILITY.



NOTE:
 ORANGE BARRICADE FENCE TO BE PLACED IN A READILY VISIBLE LOCATION SURROUNDING ALL MARKED TREES AND INSPECTED PRIOR TO CONSTRUCTION.

TREE BARRICADE DETAIL
 SCALE: NONE



NOTE:
 SILT FENCE TO BE INSPECTED PRIOR TO CONSTRUCTION.

SILT FENCE
 NOT TO SCALE

LEGEND

- WETLAND
- WETLAND LINE
- WETLAND BUFFER
- PARCEL /TRACT LINE
- PARENT TRACT PROPERTY LINE
- DRAINAGE EASEMENT (D.E.) (UNLESS NOTED OTHERWISE)
- BUILDING SETBACK
- FOOT TYPE III SILT FENCE
- INLET SUB-BASIN DRAINAGE BOUNDARY
- WETLAND MITIGATION
- UPLAND PRESERVE
- WETLAND BUFFER ENHANCEMENT
- OVERLAND FLOW DIRECTION

ENGINEER OF RECORD:
 JOEL N. WANTMAN, PE
 PE# 13772 FL

NO.	DATE	DESCRIPTION	BY
4	4/25/05	PARCEL 11 WETLAND & DRIVEWAY	JWR
3	3/11/05	ROAD RELOCATED	JWR
2	2/28/05	SUB-BASINS	JWR
1	7/22/04	MARTIN CO. & SFWMD COMMENTS	JWR

REVISIONS

Public Comment

Clyde Dulin

From: DGREGBRAUN@aol.com
Sent: Tuesday, May 03, 2011 9:10 AM
To: Clyde Dulin; jclb@gate.net; elzer@gate.net
Cc: Nicki VanVonno; president@audubonmartincounty.org; lshlaw@bellsouth.net; mhurchalla@hotmail.com; annecox@bellsouth.net
Subject: Re: Meeting Friday April 29.

OK, Clyde, and thank you for taking the time to brief us on the conceptual changes.

While it may take a little while for the Audubon of Martin County Board of directors or our Conservation Committee to formulate a specific position on this, in my opinion, one of the key points that I would like for you to consider is the nuance between "delineated wetlands" and "delineatable wetlands". The buffer zones need to extend landward from the edge of the delineatable wetlands. Using "delineated wetlands" may exclude areas that should be protected but may fall through the crack if the boundary has not been delineated.

Greg
Executive Director
audubonmartincounty.org
561-575-2028; mobile 561-758-3417

In a message dated 5/2/2011 5:39:00 P.M. Eastern Daylight Time, cdulin@martin.fl.us writes:

I want to thank each of you for meeting with me Friday afternoon to discuss the Wetlands LDR.

Clyde

From: Joan Bausch [<mailto:jclb@gate.net>]
Sent: Tuesday, April 26, 2011 4:13 PM
To: Clyde Dulin
Cc: Ginny Sherlock & Howard Heims; Greg Braun; Maggie Hurchalla; Martin County Conservation Alliance; Native Plant Society, Anne Cox; Nicki VanVonno
Subject: Re: Meeting Friday April 29.

I would be interested in the workshop, could be available for the afternoon meeting. Thank you for the invitation. Joan

Joan Bausch

Martin County Chapter of the

Florida Native Plant Society

772-219-8285

772-349-8285 cell

jclb@gate.net



The mission of the Florida Native Plant Society is
the preservation, conservation and restoration
of Florida's native plants and native plant communities

On Apr 26, 2011, at 1:59 PM, Clyde Dulin wrote:

Hello,

I have received word from Greg Braun. Does anyone else have an interest in meeting to discuss the Wetlands Land Development Regulation and changes staff is considering? Staff will begin preparation for an LPA meeting and we would like to get public input prior to the LPA meeting. If Friday is not a good day another day can be scheduled.

Clyde Dulin

Visit Martin County's Citizens' Online Service Desk:

<image001.jpg><image002.jpg>

click on the icon or go to www.martin.fl.us



Please consider the environment before printing this email or its attachments

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May 20, 2011

Martin County Board of County Commissioners
2401 SE Monterey Rd.
Stuart, FL 34996

Subject: Wetlands Land Development Regulations

Dear Commissioners:

Audubon of Martin County understands the need to make revisions to the Land Development Regulations that are not inconsistent with the Comprehensive Plan, and we agree that adopting well-thought-out Land Development Regulations takes the subjectivity out of day-to-day decisions by staff and land planners. On behalf our Board of Directors and members, please accept and consider these comments specifically as they relate to your discussions of the wetland-related LDRs.

Critical values of wetland protection are their ability to protect us from flooding, their ability to protect our rivers by reducing the degradation of surface water quality and maintaining wet-season connectivity. Preserving in-situ wetlands also makes fiscal sense, by reducing the need to construct and manage expensive storm-water treatment areas and retention basins. Wetlands also provide foraging, roosting and nesting habitat for wood storks and a variety of other state-designated and federally-designated species. For these environmental, economic and ecological reasons, Audubon of Martin County urges you to adopt wetland protection Land Development Regulations that refine and clarify the Comprehensive Plan's goal of wetland protection.

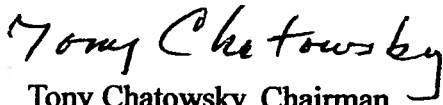
During the EAR process, we were advised that changes to the Comprehensive Plan were not going to result in a reduction of wetland protection. To that end, we ask the Board to direct staff to:

- 1) Include verbiage in the Wetlands LDR that specifically excludes wetlands from residential lots on 1 unit/20-acre and 1 unit/ 5-acre developments. This is without regard as to whether the wetlands are isolated or contiguous to other waters of the state, and whether or not they have been delineated. To protect the quality of our surface waters, upland buffers adjacent to bulkheaded shorelines should not be included in upland preserve calculations unless they consist of pre-existing natural habitat.

- 2) Please require performance bonds for projects in which a PAMP requires active restoration. Particularly in light of the current economic situation and the County's need to limit staff time directed to non-compliance, requiring a performance bond will increase the permittee's dedication to completing the work on a timely and cost-effective basis.
- 3) Please make revisions to the LDR to make it clear that the reduction in buffer zones from 75 feet to 20 feet apply only to situations where there is a previously-existing hardened shoreline, and that standard buffers apply to all other interior wetlands and other jurisdictional waters of the state.
- 4) Clearly, these protections need to be applied without regard as to whether the wetland boundaries have or have not been formally or informally delineated; wetland buffers also need to be required whenever a buffer would affect site planning, even if the wetland itself is on an adjoining property.

Thank you for your consideration.

Sincerely,



Tony Chatowsky, Chairman

Audubon of Martin County Conservation Committee

Clyde Dulin

From: Nicki VanVonno
Sent: Tuesday, May 24, 2011 10:13 AM
To: Clyde Dulin; Darryl Deleeuw
Subject: FW: Item 8.B.2. May 24, 2011, BCC Agenda

Nicki van Vonno, AICP
Growth Management Department Director
Martin County
nikkiv@martin.fl.us

Visit Martin County's Citizens' Online Service Desk:



click on the icon or go to www.martin.fl.us



Please consider the environment before printing this email or its attachments.

From: TomSeabbranch@aol.com [<mailto:TomSeabbranch@aol.com>]
Sent: Tuesday, May 24, 2011 9:49 AM
To: commissioners; Edward Ciampi; Doug Smith; Patrick Hayes; Sarah Heard; Ed Fielding; Don Donaldson; Nicki VanVonno; Krista Storey; Taryn Kryzda; Stephen Fry
Subject: Item 8.B.2. May 24, 2011, BCC Agenda

Commissioners,

I apologize that I may not be able to attend today's meeting to make my comments to you in person concerning Item 8.B.2. I was not aware of the agenda item until very recently and may not be able to re-arrange my calendar to be with you.

Would you consider the following?

Please make notice to all affected property owners telling them of your intent, why the change to wetland policies on 20-acre tracts is necessary, why it is necessary now and how Martin County will compensate the land owners for any loss of property values. Schedule a meeting after notice to discuss your concerns with them, giving them an opportunity to discuss their concerns with you at the same time. Thank you.

As a suggestion, it appears that one of your concerns is the resultant geography and dimensions of 20-acre tracts. This could be resolved by granting agricultural land owners the same rights as every other land owner in Martin County. That is the right to reconfigure their allowed density under the protections afforded a PUD. Agricultural lands are the only lands not given that right and opportunity without sacrifice of over half of their holdings. Protection of land value is essential to the maintenance of agriculture in our County. Thirty years ago agriculture was singled out as the only land use that lost rights as a result of the adoption of our Comprehensive Plan (I admit participation in taking of these rights.)

Please give you consideration to these suggestions. Thank you.

Tom Kenny

Clyde Dulin

From: Steven Surgeont [sargegxp@gmail.com]
Sent: Friday, August 12, 2011 12:24 PM
To: Clyde Dulin
Subject: Re: [Gmd_courtesy] Wetlands LDR Draft
Attachments: image001.jpg; image002.jpg

Clyde, I respectfully reject the change to the wetland exclusion of the 20 acre rule. Any manipulation that allows a weakening of that doesn't work for me. It works now so don't change it. Thanks much for the info and you are doing a great job. Steve

Steve Surgeont

On Aug 11, 2011 4:57 PM, Clyde Dulin <cdulin@martin.fl.us> wrote:

Hello,

The Growth Management Department will present draft changes to Article 4, Division 1, Wetlands before the Local Planning Agency on August 18, 2011. The draft changes are proposed to implement text of the Comprehensive Plan, as amended December 16, 2009. The meeting starts at 7:00 PM or as soon thereafter as the item may be heard. Below is a link to the Martin County web site. After selecting the link please select the document Wetlands and Shoreline Protection.

http://www.martin.fl.us/portal/page?_pageid=355,4439203&_dad=portal&_schema=PORTAL

Staff welcomes public comment on the proposed text changes. Please send public comment to: cdulin@martin.fl.us

Clyde Dulin

Senior Planner

Visit Martin County's Citizens' Online Service Desk:



click on the icon or go to www.martin.fl.us



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The comments and opinions expressed herein are those of the author of this message and may not reflect the policies of the Martin County Board of County Commissioners. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing

Clyde Dulin

Subject: FW: wetland appraisal issue
Attachments: Wynn Jones Wetlands Ltr.pdf

From: Ricou Hartman [<mailto:ricoue51@hotmail.com>]
Sent: Friday, October 07, 2011 5:06 PM
To: Nicki VanVonno
Subject: wetland appraisal issue

Mrs. Van Vonno , here is a letter from Mr. Wynn Jones concerning property values if the county were to take wetlands out of 20 acre agricultural lot .

Hope this helps .

Have a great weekend ,

Rick Hartman

ANGUS INVESTMENTS, INC.
Real Estate Brokerage & Appraisal



EDWIN A. JONES, JR., ARA, President
Accredited Rural Appraiser/ASFMR
Licensed Real Estate Broker
State-Certified General RE Appraiser RZ-1331

9659 Landings Drive
Port St. Lucie, FL 34986
Ph 772-462-3003
Fax 772-462-3005
anguseaj@comcast.net

October 4, 2011

Mr. Ed Walpole
Walpole Inc.
269 N.W. 9th Street
Okeechobee, FL 34972

Re: Proposed Amendment to Article 4, Division 1, Wetland Land
Development Regulation, Martin County, Florida.

Dear Ed:

You asked me to attend the meeting with the Martin County land planners and listen to the comments, review the proposed amendment to the Martin County Land Development Regulation with respect to the exclusion of wetlands and protection buffers from the 20-acre lot minimum area, and provide you with my estimate of the most likely affect the proposed amendment would have on the market value of Agriculturally-zoned properties in Martin County.

It is my opinion that the amendment will substantially decrease the market value of Agriculturally-zoned properties. This value decrease will serve to affect the ability of the landowners to obtain the financing necessary to continue agricultural operations by lowering appraised values but also lower the price the properties will bring in the open market.

Presently, wetlands and the required protection buffers are included in the area of Agricultural lots to meet minimum area requirement. But, the wetlands are buffered and protected. They still perform their intended function. An Agricultural-zoned lot must have a minimum area of 20-acres with a primary purpose of agriculture. The majority of the agricultural lands in Martin County are located in areas where wetlands typically represent 20% to 30% of the gross area. Some properties have wetlands that are concentrated in one or more areas; however, other properties have wetlands that are small, isolated, and scattered throughout the property. If wetlands and their protection buffer are excluded from the minimum lot area and wetlands represent 20% to 30% of a

typical agricultural tract in Martin County, it is obvious that density will be reduced. However, the percentage that density will be reduced is greater than the actual percent wetlands on a property because of the buffers required. Additionally, the percent reduction will be greater for those properties that have numerous, scattered, isolated wetlands as lot boundaries must be gerrymandered to exclude all of the wetland pockets. Therefore, the actual affect of the proposed amendment for the Agricultural-zoned lands will likely be greater than the actual percent wetlands present on a property would indicate.

The basis for valuing real estate is a property's highest and best use. There is a methodology appraisers use to determine a property's highest and best use. It's not a random opinion. The highest and best use must be legally permissible, physically possible, financially feasible, and maximally productive. Agriculture may be a property's interim highest and best use, but the property's maximally productive use may be rural residential development at some unspecified date in the future. The market anticipates a more intense use in pricing. The date at which such could occur is unknown. There are many agricultural properties that are subject to a conservation easement. Here, a governmental entity has purchased the property's permitted density units and certain rights in order that the property might continue to be used for agriculture in perpetuity. These purchases demonstrate that the market places a value on permitted density units. The value of the density units has typically averaged 75% to 90% of the fee simple value. In other words, where a property has been stripped of its density units, a value decrease of 75% to 90% resulted. There are numerous sales of encumbered fee properties that can be used to affirmatively demonstrate this value reduction.

The proposed amendment is a down-zoning. It serves to reduce the density of the parent tract. Any reduction in permitted density serves to reduce market value for most agricultural properties. If the number of permitted density units is reduced by 25%, it is reasonable to conclude that a value decrease of a minimum of 25% is likely. Looking at discounted cash flow analyses for 5-year, 10-year, and 15-year periods, the results indicate substantial value decreases if rents and taxes remain constant because the maximally productive value of an agricultural property will be based on its ultimate highest and best use.

"Land is a commodity whose value lies in its contribution to a finished product"¹. In real estate that finished product includes a multitude of land uses -- shopping centers, office buildings, residential subdivisions, single-family residences, etc. If a 1,000-acre agricultural-zoned tract has a maximally productive highest and best use of rural residential and a maximum potential permitted density under the Agricultural classification of 50 density units, the value of that tract can be expressed as a price/density unit. During the real estate boom period, it was typical to find properties priced on a price per permitted density unit. That reflected the way properties were analyzed and purchased. In fact, for many properties, this unit of comparison was most consistent from property to property. For maximally productive land uses of rural

¹ The economics of vacant land and its valuation, February 25, 2011, William Pittenger MAI

residential or residential, this unit of comparison is more appropriate than the price per acre. If the number of density units is reduced by 25% by exclusion of wetlands from minimum lot size, then the maximally productive value is, in turn, reduced by a minimum of 25%. Again, in my opinion, the value reduction would be greater because of the inclusion of the protection buffers. Buyers will view a density reduction as a decrease in the tract's utility. Appraisers will mirror that view since the purchase of the appraisal is to estimate the market value that a knowledgeable buyer will pay for the property with requisite knowledge and financial resources.

Zoning has been used by state and local governments for a variety of reasons. These include separating incompatible uses to avoid conflict and prevent negative externalities, retaining open space, agricultural land, and wooded areas, decreasing the cost of public service and infrastructure expenses, and in some case prevent lower-income individual from purchasing homes in the area, i.e. for exclusionary purposes. A change in zoning, particularly "down-zoning" or reducing the density at which housing units could be constructed, has been demonstrated to impact land value. Studies examining down-zoning have found negative changes as much as 62% decrease in land value. This is consistent with the value change where density units were removed by a conservation easement.

Financing is critical to many agricultural operations. The ability of the owner-operator to obtain lines of credit, mortgage financing, etc. is essential to finance operations until the crops are harvested, sold, and the revenue received. This is true for cattle, citrus, and row crops. If a land development regulation reduces the intensity at which the property can be placed for its maximally productive use, then the appraisal performed to estimate market value will reflect the density reduction in the market value estimated. A reduction in market value, particularly a substantial reduction, will affect how a financial institution assesses the property in performing its due diligence and underwriting process. A reduction in value may serve to reduce the amount of financing that the lender will make available or cause the lender to terminate the line of credit. Therefore, the proposed land development regulation may have the unintended consequence of bringing more agriculturally-zoned properties to the market for lack of adequate agricultural-related financing as owners find lenders unwilling to lend or lending in reduced amounts. During the meeting with the county's planning staff, several landowners mentioned unintended consequences of ill-conceived land use regulations with which they were aware. I can envision the proposed amendment having numerous unintended consequences that adversely affect an Agricultural-zoned property's market value.

Respectfully,

Edwin A. Jones Jr. ARA, President
State-certified Real Estate Appraiser RZ-1331

Clyde Dulin

From: john long [jsl66@hotmail.com]
Sent: Tuesday, October 11, 2011 11:57 AM
To: commissioners; Nicki VanVonno; Clyde Dulin; Stephen Fry; Gary Roderick; Roger Baltz; barbara@gcyinc.com; lawrenb@martin.k12.fl.us; cdamon@warddamon.com; nuplan77@aol.com; benchcat@aol.com; jsleightoniii@bellsouth.net

Dear Commissioners,

My name is John Long. I am the owner and manager of Agri-Gators Inc. a vegetable farm in Martin County. My ability to farm is directly linked to my ability to borrow money as a Line of Credit against my equity in my land. You are well aware that the values of land have decreased significantly in recent years, critically affecting my borrowing power. The new proposal to take wetlands out of the calculations for lots on 1 to 20 zoned property will further reduce the value of my land. This has been confirmed to me by a certified appraiser. If this happens it is totally possible that this reduction in land value could be an insurmountable problem for my farm and the 18 full time employees and their families all of which but one live in Martin County.

I have lived and farmed sweet corn and potatoes in this county since 1994. The whole time I have heard how Martin County wants to protect Agriculture and the benefits it brings to the county. It certainly appears this is not the case here. There does not seem to be anything you could do to hurt us more as Ag producers than this. Even the language you used to direct Staff " How can we improve on the 1 to 20" seems to be a back door way to take our lands value. I ask that you reconsider this action and direct Staff to take it off the Table.

Sincerely,

John Long

Hopping Green & Sams

Attorneys and Counselors

October 18, 2011

Via U.S. Mail and E-mail

Honorable Barbara Essenwine, Chair
Martin County Local Planning Agency
c/o Growth Management Department
2401 SE Monterey Road
Stuart, FL 34996-3397

Re: Proposed Revisions to Wetlands Land Development Regulations

Dear Chairwoman Essenwine:

We write on behalf of our clients Consolidated Citrus, Evans Properties, Inc. and St. Lucie River Company Ltd. concerning proposed revisions to the Martin County Land Development Regulations (LDRs). Collectively, our clients own over 18,000 acres of mostly agricultural designated lands in Martin County. Most of this land is today used for agriculture, consistent with its land use designation. Our clients are very concerned about the impact of burdensome revisions proposed by County planning staff to Article 4, Division 1, Wetlands Land Development Regulations. Because of their large agricultural land holdings, our clients would be forced to shoulder a disproportionate amount of the burden of these revisions.

We present this letter to Martin County as notice that the proposed revisions to the aforementioned LDRs may inordinately burden, restrict or limit our clients' private property rights in violation of State law. Specifically, we object to the proposed Section 4.2.I – Subdivision Site Design exclusion of wetlands from agricultural lot calculations since as this directly impacts private property rights. By excluding wetlands from agricultural lot calculations in § 4.2.I., the County would impact existing density calculations and in turn impede upon vested property rights. Further, it is unclear whether many of the most restrictive LDR provisions (as compared to the Plan) are consistent with Plan goals, objectives, and policies regarding wetlands or economic improvement and development. The focus of this letter is with the most problematic provision, Section 4.2.I¹.

¹ See Attachment "A" for a description of additional deficiencies with the proposed LDR revisions.

The Proposed Wetlands LDR Package is Seriously Flawed

At the outset, we commend Staff in all efforts to streamline, simplify, and consolidate provisions related to wetlands and shore protection. These regulations are indeed some of the County's most confusing. Staff appears to have taken a serious look at the inconsistencies between the LDRs and the Martin County Comprehensive Plan (Plan), and among the LDR provisions themselves. We do not intend our criticisms and concerns expressed herein to hinder the County's progress on these fronts.

We maintain, however, that the application of these proposed revisions has disproportionate impact on agricultural holdings by imposing restrictions which increase land analysis costs, provide purported public benefit at the uncompensated expense of agricultural land owners, and otherwise devalue agricultural land holdings such that the ability to preserve existing agricultural operations may be compromised. Consequently, we have serious reservations about the wetland and shoreline protection LDRs, as presented in the Martin County Comprehensive Planning Division's August 11, 2011 Staff Report.

Proposed § 4.2.I. is Ill-Considered and Unnecessarily Burdensome

The most disconcerting of the proposed wetlands LDR package is § 4.2.I., which states:

Subdivision site design. Master and Final site plans dividing land into three or more parcels or lots shall identify a wetland and the required wetland buffer as a preserve area. All such preserve areas shall be isolated from the individual lots or parcels of all subdivisions with all future land use designations.

The corresponding Staff note attempts to explain this confusing provision: “[f]or 2011 the Board of County Commissioners established a strategic objective to improve upon the one unit per 20 acre restriction by considering exclusion of wetlands from 20 acre minimum lot size [and this] text is offered in response to that strategic objective.” The Staff Report expands upon how this language was offered in response to the Board's “strategic objective”:

Presently the uplands protection land development regulations state preserve areas shall not be part of single family lots. However, minimum 20 acre Agricultural lands have a primary purpose of agricultural crops. The 20 acre Agricultural lots are not residential. The first of the modern Agricultural subdivisions, Trailside, was approved in 1999. Wetlands and buffers were included in the Agricultural lots. **There was/is not Plan policy on the subject.** The attached graphic is another example of an Agricultural subdivision where a large portion of the site is composed of wetlands. **If preserve areas are not part of the 20 acre minimum lots the number of units may be substantially reduced. Likewise, the value of the property may be substantially reduced.**

Staff Report, at 3 (emphasis added).

There are at least two serious deficiencies with § 4.2.I. First, Staff has exceeded the Board's "strategic objective" to "consider" the wetlands issue. Clearly, the Board sought an evaluation of the impacts on wetlands and landowners if it pursued a regulation prohibiting wetlands to be included within the agricultural lot size. Staff, however, has assumed a problem and unilaterally drafted a regulatory solution with no technical studies, participation from the affected parties, or other data or analysis. It is unclear whether many of the most restrictive LDR provisions (as compared to the Plan) are consistent with Plan goals, objectives, and policies regarding wetlands or economic improvement and development. In the absence of evidence of a problem or an evaluation of solutions to such problem, the County's adoption of § 4.2.I. would be arbitrary, capricious, and unreasonable.

Second, the provision that Staff proposes is vague, ambiguous, and confusing. How are preserve areas to "be isolated from the individual lots or parcels"? It is not at all clear that § 4.2.I. will actually accomplish what Staff suggests in the corresponding note and Staff Report. In fact, it may serve only to encourage litigation.

Our clients, and the public at large, deserve clear and transparent LDRs that speak directly to intent and application. Staff should not be allowed to disguise either through provisions written in the manner currently proposed. If the County intends to disallow wetlands in the calculation of agricultural lots, then it should be frank in saying so.

The Proposed Wetlands LDRs will Subject the County to Legal Claims

In addition to the deficiencies described above, revised § 4.2.I. imposes on agricultural land owners a drastic elimination of development rights. This will subject the County to litigation claims under the Bert Harris Act, section 70.001, Florida Statutes. The Act obligates government to compensate land owners when:

an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property ... such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.

§ 70.001(3)(e), Fla. Stat. (2011). The 2011 Florida Legislature clarified the Harris Act to reinforce the protections afforded property owners. Among those revisions was a clarification that "existing use" under the Act is an alternate analysis which includes:

such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have

created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

§ 70.001(3)(b)(2), Fla. Stat. (2011) (as amended by Enrolled CS/CS/HB 701 (2011)). The 2011 Legislature also clarified that Bert Harris Act claims are not subject to sovereign immunity and that moratoria exceeding one year may be actionable under the Act.

Rarely in law do we encounter such gratuitous admissions as that offered by Martin County staff in its Report. There, staff concedes the most critical elements of a Harris Act claim. Residential uses are existing uses, as defined by the Bert Harris Act. Agricultural lands are already allowed, within certain limits, to be developed at one unit per twenty acres. Staff acknowledges that § 4.2.I is confiscatory because it “substantially” reduces the number of units allowed on these properties. In case the intent was not absolutely clear, staff also observes that property values would be “substantially reduced.”

We believe these staff comments were, if anything, an understatement of the damages our clients would suffer if § 4.2.I is implemented. As the County is aware, it is not uncommon for a typical agricultural holding in Martin County to contain in the vicinity of 30% wetlands, often isolated from one another. Requiring owners to eliminate this acreage from what may be the most productive (or highest and best) use of a parcel is confiscatory and in turn compensable under the law.

The County has at its disposal a much more effective tool for guiding development away from wetlands and shorelines. For example, PUD zoning would allow more efficient and environmentally-friendly development because units could be clustered away from sensitive areas. The County supports PUDs because the “the resulting development will be of superior quality and design while protecting the health, safety and welfare of the general public.” § 3.241. Areas designated Agricultural on the future land use map are not eligible for PUD zoning. § 3.244.B. Thus, agricultural properties in the County already bear disproportionate treatment in comparison to other land categories.

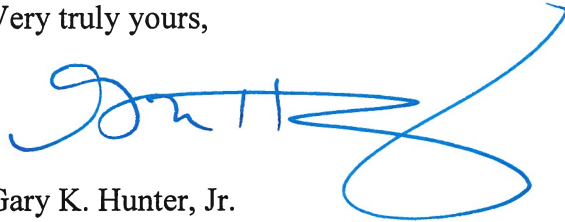
Conclusion

Wetlands offer important benefits to Martin County residents. Agricultural landowners, however, should not be forced to shoulder the burden of perpetual preservation. Given Martin County’s extensive existing protections for wetlands, we urge the County to thoughtfully reflect on the impacts of these proposed revisions. Although no landowner seeks to litigate with the County, the elimination of existing property rights leaves few alternatives.

Honorable Barbara Essenwine, Chair
October 18, 2011
Page 5

Should you have any questions, please do not hesitate to call. Otherwise and with kind regards, we remain

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Hunter, Jr.", with a large, sweeping flourish extending to the right.

Gary K. Hunter, Jr.
Jacob T. Cremer

Attachment A

cc: Commissioner Edward Ciampi, Chairman
Commissioner Ed Fielding
Commissioner Patrick Hayes
Commissioner Sarah Heard, Vice Chairwoman
Commissioner Doug Smith
Honorable John Leighton, III
Honorable James Haley
Honorable Conrad Damon
Honorable James Moir
Honorable Boyd Lawrence
Stephen Fry, County Attorney
Taryn Kryzda, County Administrator
Nicki Van Vonno, Growth Management Director

Attachment A

Section 4.2.B-Wetland Protection

- Landowners will be forced to preserve lands in perpetuity which the regulatory authorities, during permitting analysis, determined to not be regulated wetlands. Recognizing the importance of agriculture to our economy, Florida has very aggressive “right to farm” legal protections to which this language may run afoul.
- Any opportunity for mitigation appears extinguished by the proposed local regulation.
- Modifications to wetland boundaries permitted by a regulatory agency with statutory oversight authority are trumped by local discretionary approval from the Board of County Commissioners.
- The change in application submittal from the Growth Management Department to the County Administrator creates an added layer of bureaucracy to an office lacking professional training, license and/or certification in environmental matters.
- The proposed text regarding the number of documents for submittal lack a complementary change from the “and” to “or” in sub-section c. Although minor, this scrivener’s error is significant to an applicant’s ability to follow the submittal requirement.

Section 4.2.F – Performance Standards

- The change in the approval for vegetation removal by the County Administrator rather than by the concurrence of the Environmental Division of the Growth Management Department is illogical as this should be a technical assessment performed by licensed, trained environmental professionals rather than discretionary approval by staff outside its professional purview. The proposed change in regulatory approval occurs throughout the revisions package.

Section 4.2.F – Replanting

- The timing of complete replanting prior to the approval of the first Certificate of Occupancy is overly burdensome reflective of a an absence of comprehension of the land development and construction process. Often, planting in general is deferred to the completion of a project (lot, tract or phase) so as to increase and maintain plant viability.
- The financial burden upon agricultural landowners is greatly increased by provisions requiring 100% bonding.

Clyde Dulin

From: Nicki VanVonno
Sent: Monday, October 24, 2011 3:10 PM
To: Clyde Dulin
Subject: FW: Proposed wetland rules

Nicki van Vonno, AICP
Growth Management Department Director
Martin County
nikkiv@martin.fl.us

Visit Martin County's Citizens' Online Service Desk:

click on the icon or go to www.martin.fl.us P Please consider the environment before printing this email or its attachments.

-----Original Message-----

From: Joseph Gilio [<mailto:jlgilio@mac.com>]
Sent: Monday, October 24, 2011 2:56 PM
To: Nicki VanVonno
Subject: Proposed wetland rules

Dear Ms. VanVonno'

After reviewing the referenced modifications to the MCCP, I recommend staff consideration of the following three issues:

1. Under 4.2.J.G.2.a. the assumption is that all Martin County wetlands are naturally vegetated. This is an error.

Some fresh water wetlands of extreme water depths less than 6 feet are naturally unvegetated or vegetated only along the periphery.

The specific wetlands I have studied in Martin County are in almost pure sand concave depressions with natural hydroperiods of up to 5 feet.

During the dry season the water cover of up to 3 feet is completely lost due to evapo-transpiration of approximately 50 inches = 4 feet so that there

are insufficient conditions to create and maintain vegetative covers. The existing Rhynchospora sp. cover does not germinate and survival the

drastic hydroperiodicity of these wetlands and hence the wetland acreage is naturally unvegetated.

Thus to codify that all preserved, enhanced, restored or created wetlands must be vegetated (with native species) would lead to major impediments to permit conditions.

2. The shoreline protection sections must address the documented and continuing sea level rise on upland encroachment in these regulations. Since 1927 approximately 0.9 feet vertical sea level rise in Martin County has been determined. This rate of increase will increase in the next century regardless of man made attempts to regulate.

3. The issue of including or excluding wetlands in A-1 (1 -- 20 ac) parcel is controversial for obvious reasons of losing density and real estate value.

I understand that staff recommends continued inclusion of wetlands with buffers within the 20 acre parcel. From 25 years experience, these wetlands are significantly damaged by intrusion of "agricultural" activities such as maintaining cattle for ag exemption status on ad valorem taxes.

My suggestion is that these included and "preserved" wetlands would truly not be negatively impacted if the landowner would automatically be granted the highest ag exempt status for the wetland/ upland complex ONLY IF cattle or other ag grabbing use were NOT USED.

Sincerely
Joseph L. Gilio, formerly, P.W.S. , retired

The following was provided by **Tobin R. "Toby" Overdorf, MS, MBA**

President, Founder, Crossroads Environmental Consultants, Inc. on October 20, 2011.

Suggested Hardened Shoreline Waiver

4.3.A.5.d For single family lots as of record as of April 1, 1982 that have existing hardened shoreline as of the June 22, 1999, the owner may enhance water quality through the installation of Best Management Practices (BMP's). BMP's include pervious pavers, swales, berms, stone, decking, or other industry accepted materials that limit or eliminate the nutrient runoff into the wetland or surface waters of the state thus limiting the negative impacts of nutrient run-off. BMP's will require the approval of the county administrator prior to installation and be in compliance with 4.3.A.9 and 4.5.A.8.

Wetland Rules Commentary

I do not understand why the county chose to add 4.2.J and remove wetlands from 20 acre lots. This is an absolute taking and it will harm land values for agricultural owners. Who directed staff to include this item? I have reviewed the materials from the BOCC retreat and I have yet to find where a majority of the commission directed staff to include this item. Please explain. Also, please remove this provision, entirely from the LDR.

Why does the county continue to afford hardened canals the same protections as natural creeks, wetlands, and tributaries. Yes there may be some reduced buffers, but to say the canal community of Lighthouse Point is a wetland seems ludicrous to me. The biggest concern for this region should be water quality, not that the land owner has a 20 foot strip of fertilized grass going down to the canal. Adhere to the intent stated in 4.1.A and improve water quality through the use of BMP's and the use of structures that reduce or eliminate the "first flush" of nutrients into the canal and/or waterbody.

The County is adding three (3) new sections to the LDR. I guess I can understand the PAMP insertion, but why 4.4 and 4.5. There are conflicting values, numbers and terms when you compare 4.2 and 4.3 with 4.4 and 4.5. This does not alleviate confusion and conflict, but adds to it.

For example, in 4.3.A.5 requires that structures be built inside the shoreline protection zone (berms and swales) but 4.4.A.3 says you cannot have structures. Are the berms/swales there for water quality? Why not other BMP's? I also believe this provision impacts the safety of residents as well as water quality controls. I have a client that could not put a child and dog fence at the end of their property because staff said it was a structure and therefore not allowed in the shoreline protection zone. Isn't item 4.5.A.2 in conflict with 4.3.A.5? The first refers to a 25 foot protection zone while the second says 20? Please eliminate 4.5.A.2 as it is in conflict.

The County also states numerous times that it wants to eliminate confusion yet it continues to interchange terms such as buffer and shoreline protection zone. Why not eliminate the use of the term "shoreline protection zone" altogether and JUST use the term "buffer"? If the property qualifies for the protections of a "wetland of special concern" then just use the buffer associated with that OR the provisions that allow for a waiver of that buffer.

Why add the additional language in section 4.2.B? If a PAMP is approved by the BCC it can ONLY be modified by an action of the BCC. Condition 1 of ANY PAMP that is approved in Martin County is as follows:

"This Preserve Area Management Plan (PAMP) will be recorded by the Martin County Clerk of Courts and labeled with the appropriate O.R. Book and Page Number. One copy of the recorded document will be provided to the Martin County Environmental Planning Administrator within thirty (30) days of the Recording date. This PAMP may be altered or amended only with the agreement of the Martin County Environmental Planning Administrator and the owner/developer and with the approval of the Martin County Board of County

Commissioners. If the PAMP is altered or amended, the revised document will be recorded by the Martin County Clerk of Courts and one copy of the revised document will be provided to the Martin County Environmental Planning Administrator within thirty (30) days of the Recording date."

So why create MORE regulation within the context of the LDR? I thought you were trying to make this easier, yet strong? *(Als, as an aside, please correct the spelling of the word "labeled" vs "labled" on the County template for PAMPS.)*

In the definition section (4.1.D), please add the words "Wetland and" at the beginning of subsection "a" under the definition for Navigable. Again, why even use the term "shoreline protection zone" over and over? Why not just use the term "buffer" and eliminate confusion?

To avoid confusion, please leave the term "of special concern" within 4.2.D.5.a.

Leave the term "within wetlands of special concern" in 4.2.D.5.b. Also in this section I believe that there is the potential for a taking and or major landowner impact. We have a client along Bessey Creek that will have the required wetland of special concern buffer. However, based on the habitat, there is a gopher tortoise burrow within the buffer. The gopher tortoise has been elevated to a threatened species thus it now qualifies for a 300 foot protection zone under this provision. The State requires a 25 foot buffer from the entrance of the burrow or the land owner can relocate the tortoise. If the landowner is forced, under this provision, to place a 300 foot buffer around the burrow I would suggest it will likely affect their project as well as those properties around it. It will also likely force the relocation of that gopher tortoise. Isn't it better to allow the tortoise to stay in the buffer and not force it to relocate? Can this provision be adjusted to force the landowner to adhere to State and/or Federal regulations as they pertain to the particular species?

Section 4.2.G.1.d – how is the County complying with this provision to remove exotics from their preserve areas?

In section 4.2.G.3.b you continue to not recognize that some excavations have a control elevation equal to or greater than an "adjacent" wetland. In many cases, the excavation will have a positive effect on the wetland through re-hydration. Why does the County continue to take this tact? Why not just accept the SFWMD ERP and Basis of Review regarding excavations near wetlands?

I believe you have a citation conflict in 4.3.A.8 – please review. Did you mean to say 4.3.A.5?

In section 4.3.B.1 what does staff consider "an acceptable proposal for mitigation"? Does an approved SFWMD or FDEP permit suffice?

In section 4.3.K.5.g – what is a "large and undisturbed" wetland system? What State system are you using to address water quality? WRAP? EWRAP? UMAM?

In section 4.5.A.5 staff is again reiterating hardened shorelines – why here?

Why are you forcing landowners covered by Section 4.5.A.6 to have to “restore” the first 20 feet of “unhardened” shoreline? I thought the County was trying to treat all landowners with similar lots in the same manner. Why wouldn’t the person with the unhardened shoreline just go and get it hardened?

Wasn’t section 4.5I already stated in 4.4? Why the duplication?

Clyde Dulin

From: Toby [toby@crossroadsevenvironmental.com]
Sent: Wednesday, November 16, 2011 4:27 PM
To: Clyde Dulin; Darryl Deleeuw; Nicki VanVonno
Subject: Waiver Review - Hardened Shorelines
Attachments: Suggested Hardened Shoreline Waiver - Crossroads Enviro - 11-16-11.docx

Here is another crack at the waiver...I have also included a review of the existing comp plan as well as the existing LDR provisions that support this waiver.

Thank you for your consideration and see you tomorrow night at LPA.

Tobin R. "Toby" Overdorf, MS, MBA
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Suggested Hardened Shoreline Waiver

4.3.A.5.d For single family lots of record as of April 1, 1982 that have existing hardened shoreline as of June 22, 1999, the owner may enhance water quality through the installation of Best Management Practices (BMP's) within the 20 foot shoreline protection zone. BMP's include pervious pavers, swales, berms, porous stone, decking materials, or other industry accepted materials that limit or eliminate nutrient runoff into the adjacent County protected waterbody thus further limiting the negative impacts of nutrient and/or turbid runoff. Selected BMP's will require the approval of the County Administrator and be approved by a Florida registered professional engineer prior to installation and be in compliance with 4.3.A.9 and 4.5.A.8.

4.3.A.9 –refers to “structure” setbacks and view corridors

4.5.A.8 – refers specifically to the protection of adjacent water quality and gives the County Administrator the ability to protect adjacent water quality.

The above Waiver is supported by the following Comprehensive Plan provisions:

Objective 8.1C – To protect and preserve...flood control and erosion control.

Policy 8.1C.1 - ...enforce performance standards...protect the estuarine rivers and the shoreline in order to protect the stability of the estuary, enhance water quality.....

Policy 8.1C.3.c.5 – Gives the “Growth management Director” the ability to approve any request for access – and the decision is appealable to the BOCC.

Policy 8.1C.3.f – Filling in the shoreline protection zone – this is a stretch but there are no conflicts with this for BMP's.

Policy 8.1C.3.h.2 – “Protection of adjacent water quality through stormwater control shall be required...

Policy 8.1C.3.h.5 – For residential lots of record as of 1982...within the shoreline protection zone, adequate stormwater controls shall be incorporated to protect and/or enhance the adjacent water body.

Policy 8.1C.3 – Alteration numbers 1 through 6 – it would appear that new BMP's would support each of these policy items.

Policy 8.1C.7 – Use of innovative techniques to preserve estuary functions. – BMP's are certainly a new and blossoming technique for preservation of water quality.

PLEASE NOTE: The waiver is restricted to (1) lots of record as of the adoption of the original Comp Plan (April 1, 1982) and is restricted to homes with existing hardened shorelines as of the adoption of the June 22, 1999 wetland rules that initiated the regulation of a shoreline protection zone.



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

ORDINANCE NUMBER

AN ORDINANCE OF MARTIN COUNTY, FLORIDA, AMENDING ARTICLE 4, DIVISION 1, WETLANDS PROTECTION, LAND DEVELOPMENT REGULATIONS, MARTIN COUNTY CODE; PROVIDING FOR CONSISTENCY WITH THE CHANGES TO THE MARTIN COUNTY COMPREHENSIVE GROWTH MANAGEMENT PLAN; PROVIDING FOR APPLICABILITY; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, these proposed amendments to Article 4, Division 1, Wetlands Protection, of the Land Development Regulations, Martin County Code, have received public hearings before the Local Planning Agency and the Board of County Commissioners; and

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

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

PART 1: AMENDMENT OF ARTICLE 4, DIVISION 1, WETLANDS PROTECTION, LAND DEVELOPMENT REGULATIONS.

Text amendments to Article 4, Division 1, Martin County Land Development Regulations, Martin County Code, as set forth in Exhibit "A" attached hereto and incorporated by reference.

PART 2: APPLICABILITY OF ORDINANCE.

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

PART 3: CONFLICTING PROVISIONS.

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

PART 4: SEVERABILITY.

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

PART 5: FILING WITH THE DEPARTMENT OF STATE.

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

PART 6: CODIFICATION.

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

PART 7: EFFECTIVE DATE.

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

PASSED AND DULY ADOPTED THIS 13TH DAY OF DECEMBER , 2011.

ATTEST:

BOARD OF COUNTY COMMISSIONERS,
MARTIN COUNTY, FLORIDA

MARSHA EWING, CLERK

EDWARD V. CIAMPI, CHAIRMAN

APPROVED AS TO FORM AND
CORRECTNESS:

KRISTA A. STOREY
SENIOR ASSISTANT COUNTY ATTORNEY