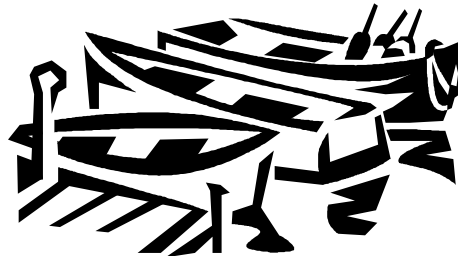


**Creating a Recreational and Commercial Working Waterfront Program
to Implement Chapters 2005-157 and 2006-220, Laws of Florida:**

A Model Comprehensive Plan Amendment with Policy Options



November 9, 2006

Submitted to
Waterfronts Florida Partnership Program
State of Florida Department of Community Affairs

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A Model Comprehensive Plan Amendment with Policy Options

In both its 2005 and 2006 legislative sessions, the Florida legislature has addressed the significance of public access to the navigable waters of the state.¹ In Chapter 2005-157, Laws of Florida, the Legislature required that local governments, through their comprehensive plans, address development activities that diminish access to the state’s navigable waters. The recreation and open space element of all local comprehensive plans now must include waterways.² In addition, all coastal counties and municipalities in Florida now have a legislatively-mandated duty to include, in the coastal management element of their Comprehensive Plan, strategies that will be used to preserve recreational and working waterfronts.³ In addition, coastal counties must amend the future land use element of their comprehensive plan to create “*regulatory incentives and criteria*” that encourage the preservation of recreational and commercial working waterfronts.⁴ The reason for this distinction between the duties of counties and municipalities is not apparent. This model comprehensive plan amendment takes the approach that strategies can include “regulatory incentives and criteria,” and thus addresses both.

In Chapter 2006-220, Laws of Florida, the legislature again took up the issue of public water access and comprehensive planning.⁵ Section 2(2) of Chapter 2006-220 encourages, but does not require, a local government that has a coastal management element in its comprehensive plan to adopt recreational surface water use policies that consider and include applicable criteria for

¹ See Chapter 2005-157, Laws of Florida and Chapter 2006-220, Laws of Florida.

² Fla. Stat. § 163.3177(6)(e) (2006) (codifying Chapter 2005-157, § 1).

³ Fla. Stat. § 163.3178(2)(g) (2006) (codifying Chapter 2005-157, § 2).

⁴ Fla. Stat. § 163.3178(2)(g) (2006).

⁵ Chapter 2006-220, Laws of Florida. The Legislature recognizes that there is an important state interest in facilitating boating and other recreational access to the state’s navigable waters. This access is vital to recreational users and the marine industry in the state, to maintaining or enhancing the \$57 billion economic impact of tourism and the \$14 billion economic impact of boating in the state annually, and to ensuring continued access to all residents and visitors to the navigable waters of the state. The Legislature recognizes that there is an important state interest in maintaining viable water-dependent support facilities, such as public lodging establishments, boat hauling and repairing and commercial fishing facilities, and in maintaining the availability of public access to the navigable waters of the state. The Legislature further recognizes that the waterways of the state are important for engaging in commerce and the transportation of goods and people upon such waterways and that such commerce and transportation is not feasible unless there is access to and from the navigable waters of the state through recreational and commercial working waterfronts.

factors such as natural resources, manatee protection needs, protection of working waterfronts, protection of public access to the water, recreation demands, and economic demands.⁶

A Model Working Waterfront Program

Local governments can comply with their statutory duty to implement Chapter 2005-157 by amending their comprehensive plan to create a “Working Waterfront Program” based on each jurisdiction’s unique circumstances. This Model Working Waterfront Program brings together a variety of tools to direct development in a manner that protects and promotes recreational and commercial working waterfronts within a community. The legal justification for these tools and examples where they have been applied in similar or analogous contexts (best policy practices) are provided in a companion report referred to as the “recreational and commercial working waterfronts policy menu.”⁷ Some of the suggested tools are mutually exclusive and some may be inappropriate to a given community. In addition, creation of a model designed to support decision-making across the broad spectrum of Florida waterfront communities necessarily entails a level of generality that would not be found in a jurisdiction-specific comprehensive plan. This model is designed to offer a range of policies that may be appropriate for a waterfront community, and not to offer a comprehensive amendment that can simply be “cut and pasted” into an existing plan.

Data and Analysis

Any amendments to a local government comprehensive plan must be supported by data and analysis.⁸ Florida Department of Community Affairs rule 9J-5 provides guidance on the data and analysis required to support comprehensive plan provisions, including that related to public access to navigable waters.⁹ In this model program, new data and analysis development is considered within the context of the plan amendment itself. However, since data and analysis is a precondition to plan amendment approval, local governments may wish to consider it separately, perhaps through adoption of a resolution directing the planning staff to move forward in the manner that the model suggests, as modified to serve local needs. In many cases local governments have already developed or begun developing the data and analysis necessary to formulate appropriate goals, objectives and policies. In some cases, this data and analysis has been used to establish levels of service standards (LOSS) for some forms of public water access, especially boat ramps. Researchers from Florida Sea Grant have been working at the state, regional and local level to develop practical methodologies to assess waterway management and boating access needs. These are summarized in a companion report to this model entitled “A Manual of Methods to Plan for Public Access to Florida’s Coastal Waterways.”¹⁰

Land Use and Zoning

⁶ This 2006 language to “encourage” consideration of criteria to protect working waterfronts seems superfluous in light of the 2005 requirement that specifies that the shoreline-use component, part of the coastal management element required of all coastal jurisdictions, *must* contain strategies to preserve recreational and working waterfronts. *See* Fla. Stat. § 163.3178(2)(g) (codifying Fla. Laws Chapter 2005-157, § 2).

⁷ Available at: <http://www.law.ufl.edu/conservation/waterways/waterfronts/access.htm>.

⁸ Fla. Stat. § 163.3177(10)(i) (2006).

⁹ Fla. Admin. Code 9J-5.012(g).

¹⁰ Available at <http://www.law.ufl.edu/conservation/waterways/waterfronts/access.htm>.

Land use categories and zoning districts represent the most significant basis for the creation of regulatory incentives and criteria for any local government in Florida. Most local governments already have waterfront specific zoning districts, and most adopt a water-dependency test for land use approvals on the waterfront. Nevertheless, these have not been sufficiently strict to avoid the loss of recreational and commercial working waterfronts. For illustrative purposes, this model creates a hypothetical future land use category and zoning districts based entirely on the statutory definition of recreational and commercial working waterfronts. Land uses permitted as of right are only those that conform to the statutory definition. Overlaying this new land use category on present uses makes all existing uses non-conforming and can have the effect of “re-FLUMing”¹¹ and rezoning present land use categories and zoning districts, which may or may not have the effect of “downzoning” from current allowed uses. Local governments pursuing a land use and zoning strategy will probably be more interested in “tweaking” their own land use categories and zoning districts, perhaps by adjusting uses permitted as of right, special exceptions and conditional uses listed in their existing categories and districts. Given the diversity of local waterfront zoning in Florida, the hypothetical category and districts in this model only serve to illustrate an idealized approach to working waterfront preservation in the context of land use and zoning. The model also offers alternative language to prohibit or discourage conversions of existing recreational and commercial working waterfronts through a “no net loss” policy. Both the re-FLUMing and rezoning and “no net loss” approaches seek to reduce or eliminate the extent to which residential land uses may be considered as “lesser” included uses within waterfront related land use and zoning districts.

Industrial and Commercial Working Waterfronts

This model emphasizes the need to protect recreational and commercial *boating* access to navigable waters of the state. However, boating access is just a piece of the working waterfront puzzle, especially when considering the “water-related” needs of “water-dependent” industrial and commercial activities, such as commercial fishing and boat-building. In such cases, more holistic solutions, including special waterfront districts, may be appropriate.¹² Moreover, the concept of public water access is significantly broader and includes both physical access to the shoreline for other recreational and commercial activities such as fishing, walking, wading, dining, and visual access for the enjoyment of vistas and breezes.¹³ These activities should also be considered in any holistic program designed to promote public access to the state’s navigable waters.

¹¹ “FLUM” is an acronym for Future Land Use Map.

¹² Several commercial fishing communities in Florida have adopted the waterfront district approach. These include the communities of Cortez in Manatee County and Mayport in Jacksonville Duval County.

¹³ This model Working Waterfront Program does not address beach access. Existing statutes mandate that local governments address beach access, and most Florida coastal counties and communities already include language regulating and protecting beach access in their comprehensive plans and land development regulations.

ORDINANCE NO. 2006-_____
(A Comprehensive Plan Amendment
for the hypothetical City or County of Grouper, State of Florida.)

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF
GROUPER CITY/COUNTY¹⁴ FLORIDA, AMENDING THE
COMPREHENSIVE PLAN TO IMPLEMENT CHAPTER 2005-157, LAWS
OF FLORIDA, ESTABLISHING THE GROUPER CITY/COUNTY
WORKING WATERFRONT PROGRAM.**

WHEREAS, the Legislature has recognized the significance of the coastal zones and coastal resources of the State and determined that local government comprehensive plans should restrict development activities that diminish, damage, or destroy coastal zones and resources, including access to navigable waters;

WHEREAS, the Legislature has enacted Chapters 2005-157, and 2006-220, Laws of Florida, in recognition of and in response to the need to preserve and promote recreational and commercial working waterfront communities in Florida;

WHEREAS, Grouper City/County continues to experience an increase in coastal development and recreational boating and other water-related activities;

WHEREAS, increased development pressure, rising land values and increasing property taxes in the coastal zone of Grouper City/County has contributed to a loss of recreational and commercial working waterfronts in the City/County;

[Comment: These assertions provide the policy justification for embarking on a program that commits the financial resources of a community and imposes a regulatory burden on landowners. Accordingly, they should be based on community specific factual data that has been reviewed by the local governing body prior to the adoption of any comprehensive plan amendments and land development regulations]

WHEREAS, Chapter 163, Florida Statutes, requires the Board of City/County Commissioners of Grouper City/County, Florida to adopt comprehensive plans and implementing land development regulations;¹⁵

WHEREAS, Section 163.3202, Florida Statutes, encourages the use of innovative land development regulations, including design standards and guidelines, and requires that the specified, detailed regulations are to be combined and compiled into a single land development code for the jurisdiction;

¹⁴ See Fla. Stat. § 163.3164(9) (2006) (defining “Governing body”).

¹⁵ Fla. Stat. §§ 163.3201, 163.3202, 163.3204, and 163.3213 (2005) (regulating land development codes in relation to comprehensive plans).

WHEREAS, in exercise of its authority, the Board of City/County Commissioners of Grouper County, Florida, has determined that the Grouper City/County Working Waterfront Program promotes and protects the general health, safety and welfare of its residents.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Grouper City/County, Florida, as follows:

Section 1. Purpose and Intent.

1.1 The purpose of the Grouper City/County Working Waterfront Program is to implement the relevant provisions of Chapter 2005-157, and Chapter 2006-220 of the Laws of Florida. More specifically, the purpose is to protect and promote Grouper City/County as a recreational and commercial working waterfront community; protect and improve public access to the shorelines and waters of Grouper City/County; preserve and protect the cultural heritage and physical character of the area as a working waterfront community; and enhance the aesthetic character of the area by directing development in a manner that maintains the working waterfront identity of the City/County.

Section 2. Definitions.

Recreational and Commercial Working Waterfront: a parcel or parcels of real property that provide access for water-dependent commercial activities, including hotels and motels as defined in s. 509.242(1), or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term also includes: water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water.¹⁶

Water-dependent Use: activities which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for: waterborne transportation including ports or marinas; recreation; electrical generating facilities; or water supply.¹⁷

[Comment: In 2006, the Legislature added “hotels and motels” to the definition of “recreational and working waterfronts” and characterized them as “water-dependent commercial activities.”¹⁸ A reasonable interpretation of this addition that would be consistent with the definition above would be that it was intended to include only those hotels and motels that provide public boating access to marine and coastal waters.]

¹⁶ Chapter 2006-220, Laws of Florida. This definition is the definition currently found in the Florida statutes. The words “hotels and motels” were added in 2006.

¹⁷ Fla. Admin. Code 9J-5.003(137).

¹⁸ Chapter 2006-220, Laws of Florida.

Water-related Use: activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses.¹⁹

Public Water Access: As used in this amendment, public water access means the availability of opportunities to utilize the navigable waters of Grouper City/County on a “first come, first served” basis for recreational and commercial purposes.²⁰ Public water access includes visual access.

Industrial and Commercial Waterfront Access: As used in this amendment, industrial and commercial waterfront access means access for water-dependent uses that may not be open to the public, but is necessary for the conduct of a water-dependent use.

Section 3. Amendment of Existing Comprehensive Plan.²¹

The Grouper City/County Comprehensive Plan is amended in part to include the following:

GOALS, OBJECTIVES AND POLICIES - COASTAL MANAGEMENT ELEMENT²²

GOAL 1:

To ensure adequate present and future public access to the navigable waters of the State of Florida for all residents of Grouper City/County based upon current and projected demand.²³

Objective 1: [Program established; inventory and future demand analysis required]

To establish a comprehensive program to promote and protect public access to the marine and coastal waters of the City/County, and to ensure the economic viability of recreational and commercial working waterfronts.

¹⁹ Fla. Admin. Code 9J-5.003(139).

²⁰ Under the State’s sovereignty submerged lands regulations, first-come, first-served means “any water dependent facility operated on the sovereign lands of the state the services of which are open to the general public with no qualifying requirements such as club membership, stock membership, or equity interest, with no longer than one-year rental terms and with no automatic renewal rights or conditions.” 18 FL. ADMIN. CODE r. 18-21.003(23) (2006).

²¹ This model amends three elements of a local government comprehensive plan: Recreation and Open Space, Coastal Management and Future Land Use. A local government should review its Comprehensive Plan to determine if other elements of the plan are affected and these should be amended accordingly.

²² Fla. Stat. § 163.3178(2)(g) (2006) (requiring identification of public access, the need for water-dependent and water-related facilities, and strategies to preserve recreational and commercial working waterfronts).

²³ A narrow reading of Fla. Stat. §§163.3177 & 163.3178, might suggest that the Legislature has mandated only preservation of *existing* recreational and commercial working waterfronts but did not specifically include creation or promotion of *new* recreational and commercial working waterfronts. Nonetheless, in light of the continuing increase in vessel registrations in Florida, failing to consider future demand for public water access, will result in an effective diminution in the availability of access as a percentage of the population served.

[Comment: Inventory and future demand analysis represent the “data and analysis” that is normally antecedent to amendment of a local government comprehensive plan. These are included within this model plan amendment in order to create a locally binding mandate on the local government to accomplish this task, and because some of the policies in this model may not require the development of new data. A date certain is provided to ensure that this portion of the plan is timely accomplished. An alternative approach might be to frame the data and analysis portion of this model as a local government resolution that precedes plan amendment.²⁴]

Policy 1.1:

The Grouper City/County Working Waterfront Program is hereby established.

Policy 1.2

The City/County shall identify, inventory and characterize all existing publicly-accessible recreational and commercial working waterfronts in Grouper City/County on a parcel-by-parcel basis, including but not limited to public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water.

[Comment: This list is drawn directly from Florida Statute section 342.07, defining working and recreational working waterfronts. Local governments can and should tailor this list to the particularized nature of their waterfront]

Policy 1.3

The City/County shall identify, inventory and characterize all private facilities that would otherwise qualify as recreational or commercial working waterfronts because they provide access to the marine and coastal waters of the City/County.

²⁴ It should be noted the Department of Community Affairs currently requires a significant level of data and analysis related to recreational and working waterfronts. Rule 9J-5.012 provides in relevant part...

(2) Coastal Management Data And Analysis Requirements. The element shall be based upon the following data and analyses requirements pursuant to subsection 9J-5.005(2), F.A.C.

(a) Existing land uses in the coastal planning area shall be inventoried. Conflicts among shoreline uses shall be analyzed and the need for water-dependent and water-related development sites shall be estimated. Any areas in need of redevelopment shall be identified. An analysis of the economic base of the coastal planning area based on the future land use element shall be included. A map or map series showing existing land uses and detailing existing water-dependent and water-related uses shall be prepared.

(g) Public access facilities shall be inventoried, including: all public access points to the beach or shoreline through public lands, private property open to the general public, or other legal means; parking facilities for beach or shoreline access; coastal roads and facilities providing scenic overlooks; marinas; boat ramps; public docks; fishing piers; or other traditional shoreline fishing areas. The capacity of and need for the above facilities shall be analyzed. Public access facilities shall be shown on the map or map series required by paragraph (2)(a) as water-dependent uses or facilities. These inventories and analyses shall be coordinated with the recreation and open space element and any countywide marina siting plan if adopted by the local government.

Policy 1.4:

The City/County shall identify, inventory and characterize all parcels suitable for future development as publicly-accessible recreational and commercial working waterfronts in Grouper City/County. Suitable for future development includes vacant parcels and developed parcels not currently being used for water dependent activities which, because of their proximity, biophysical nature or other factors, could become recreational and commercial working waterfronts through a change in land use.

Policy 1.5:

The City/County shall identify, inventory and characterize existing right-of-ways, easements and other public property interests adjacent to or capable of providing public access or enhancing public access to the shorelines and waters of Grouper City/County.

[Comment: Other states have recognized the importance of protecting waterfront right-of-ways. For example, Maine has developed a grant program, the Right-of-Way Discovery Program, which is funded by the Maine Coastal Program and helps communities research forgotten or overlooked rights-of-way to the shore. The program helps communities take action to assert and safeguard these public rights.²⁵]

Policy 1.6: **[Water-related support facilities]**

The City/County shall inventory all water-related uses that provide essential support services for recreational and commercial working waterfronts, but are not themselves water-dependent.

[Comment: Commercial and industrial working waterfronts are especially dependent on activities and uses that may not themselves be water-dependent. These water-related activities are subject to the same sorts of development pressures as water-dependent activities and their cumulative loss can contribute to the demise of a community's working waterfront. For example, an ice-house is not itself a water-dependent use, but local commercial fishing businesses cannot survive without an ice-house.]

Policy 1.7: **[Demand analysis; levels of service]**

Based on data and analysis, the City/County shall assess the future demand for public water access to the shorelines and waters of Grouper and shall establish activity-based levels of service standards for public water access.

[Comment: Level of Service Standards (LOSS) is an analytic planning tool that is used for the purposes of complying with the concurrency requirements of Florida's growth management legislation. Florida law requires levels of service for certain activities and allows local governments to set their own for others.²⁶ Public water access LOS might be considered within the LOS for recreation facilities required by law, but may not be disaggregated in a way that becomes meaningful for public water access. Some efforts

²⁵ For a greater discussion of right-of-ways and the Maine program, please refer to the Right of Ways to the Water policy menu item. Available at: <http://www.law.ufl.edu/conservation/waterways/waterfronts/access.htm>.

²⁶ Fla. Stat. § 163.3180(1)(a)(2006).

have been directed to establishing Levels of Service for boat ramps,²⁷ but none were found to deal with other aspects of public water access such as boat slips and moorings.]

Objective 2.0: [Coordination; public participation; advisory committee established]

To ensure adequate coordination of, and public participation in, planning and decision-making concerning recreational and commercial working waterfronts in Grouper City/County.

Policy 2.1:

The City/County shall establish a Working Waterfront Program Advisory Committee comprised of one member from each of the program area units.

[Comment: Most coastal local governments already have some sort of marine advisory committee that can be charged with the duties set forth in this model. Depending on the composition of the committee, consideration can be given to adding members to be sure all working waterfront interest groups are adequately represented.]

Policy 2.2

The Committee shall be consulted on all planning and land use decisions affecting the Working Waterfronts Program and make recommendations to the Board of Commissioners concerning such decisions.

Objective 3.0: [Strategies to protect and promote public access]

To develop realistic and proactive strategies to ensure that the City/County remains a jurisdiction that provides ample opportunities for residents, businesses, and visitors to have access to marine and coastal waters for recreational and commercial purposes.

[Comment: As noted in the introduction to this model, the 2005 working waterfronts legislation called for all coastal local governments to amend their coastal management element to address strategies and for coastal counties to amend their future land use plan to consider regulatory incentives and criteria. For the purposes of this model, land use and zoning strategies, including regulatory incentives and criteria, are included in the amendments to the future land use element. This section amending the coastal management element addresses only non-regulatory strategies, including acquisition, financial incentives and the voluntary use of private lands for public access.]

Policy 3.1

The City/County shall develop strategies to ensure continued public access to navigable waters through the identification and implementation of regulatory incentives and criteria set forth in the future land use element and its implementing land development regulations.

Objective 4.0 [Acquisition/public ownership – use]

²⁷ See e.g. Collier County Beach and Boat Access Report (2003), available at http://www.vbpoa.org/BeachAccess/boat_and_beach_access_report.htm.

To ensure an adequate stock of publicly-owned boating access to marine and coastal waters.

Policy 4.1: [Acquisition; acquisition priorities]

The City/County shall establish a recreational and commercial working waterfront acquisition program to purchase suitable parcels or the non-water dependent development rights to suitable parcels as determined by the inventory created under the Coast Management Element of the comprehensive plan.

[Comment: Many counties in Florida have some sort of environmentally endangered lands acquisition program, approved through a local bond referendum and supported by a levy on property taxes. A review of these programs suggest that most limit their scope to acquiring lands for conservation purposes and do not contemplate acquisition of working waterfront parcels, unless they happen to be subsumed within a larger conservation tract. Hence, consideration could be given to amending existing programs, which may require voter approval, or creating a new one dedicated to the acquisition of waterfront property. The high cost of waterfront property will still be a significant factor for local land acquisition programs.²⁸]

Policy 4.2:

The City/County shall establish a fund dedicated to acquiring lands suitable for recreational and commercial working waterfronts. Funding may come from exactions, fees, bonds, community redevelopment district financing, or other sources and may be supplemented through revenue sharing with appropriate state and federal programs.

Policy 4.3

The first dollar of each boating registration collected by the City/County shall be spent on boating infrastructure.

*[Comment: Pursuant to Section 15, Ch. 2005-157, Laws of Florida, counties that spend at least one dollar of each vessel registration fee on boating infrastructure and that can demonstrate this through detailed annual accounting are **not** required to transmit this dollar to the Marine Resources Conservation Trust Fund.²⁹]*

Objective 5: [Publicly-owned public access]

To protect and increase the extent of publicly-owned public access to its shorelines and navigable waters.

Policy 5.1: [Vacations of publicly-owned access discouraged]

²⁸ Palm Beach County, for example, adopted through referendum a \$50 million dollar marine recreational access acquisition program. The County spent almost \$30 million to acquire an interest in the property where two marinas are located. The facilities include fuel stations, restaurant, ship store, walkways, and at least 44 slips that will remain open to the public. *County to Spend \$29 Million to Keep Parts of Two Marinas Open to Public*, The Palm Beach Post, March 1, 2006, at 1B, 2006 WLNR 3583187.

²⁹ Fla. Stat. § 328.72(15) (2006).

The City/County shall not vacate, diminish, or otherwise impair publicly-owned pathways, sidewalks, roads, parking areas, docks or boat launching facilities, and other access points that are currently used, or susceptible to use, by the public to access the shorelines.

[Comment: Many coastal communities in Florida have road right of ways, utility easements other undeveloped public parcels that run along or to the shore. Communities can be pressured to sell or trade these parcels to consolidate lands for private non-water dependent development. Several local governments in Florida have prohibited the conversion of public rights of way that lead to the waterfront, and the State of Maine has established a grant program to encourage discovery of these parcels. These policies are discussed in greater detail in the policy menu that accompanies this model.³⁰]

Policy 5.1.1

The City/County may vacate or impair publicly-owned access as described above provided that specific findings are made, the vacation is necessary and suitable mitigation measures are or will be in place and only after a public hearing and decision by a super majority of the Council/Board of Commissioners, upon the recommendation of the Working Water Front Advisory Committee.

[Comment: This policy recognizes that the vacation of a right of way or other property in public ownership that offers potential public water access may serve an important public purpose other than access, and thus allows vacation provided that there is appropriate mitigation. A public hearing and super majority vote by the governing body ensures that the alternative public purpose is especially compelling. State law already places certain notice requirements on county governments that wish to vacate ROWs, see Fla. Stat. §§ 336.09 and 336.10, but the requirements in this model comprehensive plan amendment offer greater protection for ROWs from potential loss through possible politicking at the local level.]

Policy 5.2 [Managed anchorage and mooring field(s)]

The City/County shall inventory the waters of Grouper City/County to determine appropriate sites for one or more municipal anchorages and mooring fields that shall be available to the boating public on a first come, first served basis.

Policy 5.3

If one or more suitable sites are found, the City/County may establish a municipally-managed anchorage and mooring field(s), taking into account environmental protection requirements and the concerns of shore side residents.

[Comment: A municipally-managed anchorage and mooring field (MAMF) represents an important means to provide public boating access to navigable waters and can be an important catalyst for community waterfront redevelopment areas. Several local governments currently enjoy MAMFs and a number of others are moving forward in the permitting process. A Community Guide to Managed Anchorages and Mooring Fields

³⁰ “Rights of Way,” available at <http://www.law.ufl.edu/conservation/waterways/waterfronts/access.htm>.

describes the process for creating new MAMFs and is offered as a companion document to this model.^{31]}

Objective 6.0 [Use of private lands for public recreational access encouraged]

To increase the amount of available public access to the navigable waters through incentives to private property owners holding parcels to non-publicly accessible recreational and commercial waterfronts.

[Florida law recognizes that waterfront property owners have a qualified riparian right to “wharf out.”³² In many cases waterfront property owners have dock or mooring space that is not utilized or underutilized. Policies implementing this objective would encourage private waterfront property owners to make underutilized fixed or floating mooring facilities available for public water access.]

Policy 6.1:

The City/County shall develop a comprehensive program of incentives for encouraging private waterfront property owners to make their properties available for public use for purposes that are consistent with the uses permitted in recreational and commercial working waterfronts.

Policy 6.2

The City/County shall implement a maintenance reimbursement program whereby cooperating private waterfront property owners may be reimbursed for maintenance costs associated with the public recreational use of their property.

Policy 6.3

The City/County shall develop and implement a city/county-wide campaign to educate private property owners and the general public on the comprehensive program of incentives available, including maintenance reimbursement associated with public access and the Liability Waiver Statute which protects private property owners from liability for harm resulting from making their property available for recreational access.³³

Objective 7 [Working waterfront property tax deferral program]

To lessen the tax burden on current and potential recreational and commercial working waterfronts and to help reduce the economic pressures for their conversion to non-working waterfront uses, the following tax deferral program shall be developed.

³¹ “Community Guide to Managed Anchorages and Mooring Fields,” available at: <http://www.law.ufl.edu/conservation/waterways/waterways/management.htm>.

³² See Theresa Bixler Proctor, *Erosion of Riparian Rights Along Florida’s Coasts*, 20 J. OF LAND USE & ENV’T L 117, 124 (2004).

³³ Pursuant to Fla. Stat. §375.251, private property owners who open up their land for free public recreational use owe only a limited duty of care to the public. For an in-depth discussion of Liability Waivers and Florida’s statute, please refer to the Liability Waivers menu item, available at www.law.ufl.edu/conservation/waterways/waterfronts/pdf/liability_waivers.pdf.

Policy 7.1

The City/County shall adopt a recreational and commercial working waterfront tax deferral ordinance; the deferred taxes shall be repaid in full if the property is converted to non-working waterfront uses.

[Comment: The Florida constitution prohibits counties from assessing property at a rate other than its “highest and best use,” which for waterfront properties may be residential.³⁴ This results in burdensome property taxes for owners of working waterfront parcels. Since the legislature cannot change the basis for assessment, it authorized local governments to create a recreational and commercial working waterfront tax deferral program, which at least two local governments have done. An Annotated Model Tax Deferral Ordinance for Recreational and Commercial Working Waterfronts is included as a companion document to this model.³⁵ The extent to which the tax deferral program will serve its intended purpose remains unclear. An unscientific survey of recreational and commercial working waterfront property owners completed as a companion report to this model concluded few property owners would avail themselves of a tax deferral program.³⁶]

GOALS, OBJECTIVES AND POLICIES - RECREATION AND OPEN SPACE ELEMENT

GOAL 1: [Waterway System Established]

To create a publicly-accessible local system of waterways linked to a larger regional system that contributes to the greatest possible recreational access to the navigable waters of the State of Florida.

[Comment: The nature of waterway management suggests that in most cases it is best accomplished on a regional as well as local level. Accordingly, local governments should ensure that regional consideration to waterway management is given through intergovernmental coordination. An excellent example of this sort of approach can be found in the activities of the Southwest Florida Marine Advisory Committee, which operates under the auspices of the Southwest Florida Regional Planning Council³⁷]

Objective 1

³⁴ See University of Florida Conservation Clinic, Conservation Easements, Conservation Purposes & Property Taxes, available at: www.law.ufl.edu/conservation/pdf/easements.pdf.

³⁵ “An Annotated Model Tax Deferral Ordinance for Recreational and Commercial Working Waterfronts,” available at: www.law.ufl.edu/conservation/waterways/waterfronts/access.htm.

³⁶ “Property Tax Deferral as a Tool for Working Waterfronts: A Survey of Recreational and Commercial Working Waterfronts,” available at: www.law.ufl.edu/conservation/waterways/waterfronts/access.htm.

³⁷ Available at: <http://swfrpc.org/>.

To ensure that the waterways of Grouper City/County provide the greatest possible recreational and commercial opportunities in a manner that does not jeopardize their environmental values.

Policy 1.1

The City/County shall identify, inventory and characterize its system of waterways in terms of use, capacity and relationship to recreational and commercial working waterfronts.

[Comment: The Florida Sea Grant College Program has developed a Manual of Methods to Plan for Public Access to Florida's Coastal Waterways as a companion report to this model.³⁸ Through its waterfront communities program, Sea Grant researchers have tested these methods in a variety of local contexts, especially in Southwest Florida.³⁹]

Policy 1.2

The County/City shall use this data when identifying future public access opportunities, for integrating waterways with recreational and commercial working waterfronts and when coordinating with other jurisdictions on the potential regional aspects.

GOALS, OBJECTIVES AND POLICIES - FUTURE LAND USE ELEMENT

GOAL 1:

To manage future growth and development in order to promote and preserve the recreational and commercial working waterfronts of Grouper City/County.

Objective 1: (Land use and zoning)

To ensure that a permanent stock of suitable recreational and commercial working waterfronts is available to meet the present and future demand for public water access to navigable waters.⁴⁰

[Comment: As discussed in the introduction, for illustrative purposes this model provides an idealized land use and zoning scheme that is tailored exclusively to recreational and commercial working waterfronts. The key attribute of this scheme is that recreational and commercial working waterfronts are the only land uses allowed as of right on the waterfront. To the extent other uses may be permitted it can only be done by including recreational and working waterfront as a component of the use or through mitigation. Most local governments already have future land use categories and zoning districts in place for their waterfronts that reflect at least some degree of "water-dependency."]

³⁸ R.S. Swett & Charles Sidman, A Manual of Methods to Plan for Public Access to Florida's Coastal Waterways (2006), available at: <http://www.law.ufl.edu/conservation/waterways/waterfronts/access.htm>.

³⁹ See http://www.flseagrant.org/program_areas/waterfront/waterfront_cr.htm.

⁴⁰ The suitability and availability of parcels for recreational and commercial working waterfronts shall be based upon the assessments and inventories completed under the Coastal Management Element.

These should be reviewed to determine what policies and zoning regulations are contributing to loss of recreational and working waterfronts; an example might be the allowance of non-water-dependent uses as a conditional use or special exception. Adjusting any land use and zoning scheme that does not already limit uses to recreational and commercial working waterfronts may result in down-FLUMing or down-zoning.]

Policy 1.1: [Future land use category established]

The City/County shall amend the future land use map to include a future land use category known as recreational and commercial working waterfronts (RCWW).

Policy 1.2:

The following terms are defined for the purposes of this Comprehensive Plan:

Recreational and Commercial Working Waterfront: a parcel or parcels of real property that provide access for water-dependent commercial activities, including hotels and motels as defined in s. 509.242(1), or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term also includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water.⁴¹

Water-dependent Use: activities which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for: waterborne transportation including ports or marinas; recreation; electrical generating facilities; or water supply.⁴²

Water-related Use: activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses.⁴³

Public Water Access: As used in this amendment, public water access means the availability of opportunities to utilize the navigable waters of Grouper City/County on a “first come, first served” basis for recreational and commercial purposes. Public water access includes visual access.

Industrial and Commercial Waterfront Access: As used in this amendment, industrial and commercial waterfront access means access for water-dependent uses that may not be open to the public but is necessary for the conduct of a water-dependent use.

⁴¹ Chapter 2006-220, Laws of Florida. This definition is the definition found in the Florida statutes. The words “hotels and motels” were added in 2006.

⁴² Fla. Admin. Code 9J-5.003(137).

⁴³ Fla. Admin. Code 9J-5.003(139).

Policy 1.2

The RCWW land use category shall apply to lands bordering navigable waterways and water bodies except for those lands designated for conservation, unsuitable for development as recreational and commercial working waterfronts due to environmental or geophysical constraints, or other areas inappropriate for the designation as determined by the RCWW parcel inventory provided for in the Coastal Resources Element Policy's 1.3, 1.4, 1.5 and 1.6.

Policy 1.3 [Working waterfront zoning districts established]

The City/County shall amend its land development regulations to establish one or more zoning districts, which may include but not be limited to recreational working waterfronts (RWW), commercial working waterfronts (CWW) and industrial working waterfronts (IWW). All parcels within the recreational and commercial working water front land use category identified on the future land use maps shall be placed in the appropriate zoning category.

Policy 1.3.1: [Uses permitted as of right]

The Land Development Regulations shall specify those uses that may be permitted as of right in each of the zoning categories. The uses shall, at a minimum, include, public lodging establishments (provided they are appurtenant to and support public access), docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water.

[Comment: This list of uses represents the statutory list provided in the 2005 statute defining recreational and commercial working waterfronts. However, it is not exclusive and should be tailored to the individual local government.]

Policy 1.3.2

Residential and other non water-dependent uses, except those necessary to the permitted use, shall not be permitted in the RWW, CWW & IWW zones unless it can be demonstrated that these uses will not affect the functional integrity of the parcel or parcels as publicly-accessible recreational and commercial working waterfronts.

[Comment: This policy would permit "mixed use" developments, including residential land uses, provided that the permitted development provided meaningful public water access, such as a public marina or boat ramp and parking. For further discussion of water-dependency and water-related uses issues, see the companion document to this report.⁴⁴]

Policy 1.3.3

Residential uses and other non-water dependent uses that do not support public access may be permitted provided the publicly-accessible water dependent facilities that the parcel or parcels supports or can support are off-set onsite or offsite through regulatory incentives and criteria

⁴⁴ "The Water Dependency Test as a Means to Preserve Recreational and Commercial Waterfronts," available at www.law.ufl.edu/conservation/waterways/waterfronts/access.htm.

Objective 2.0: [Conversions; no net loss]

Policy 2.1: [Conversions prohibited]

The City/County shall amend its Land Development Regulations such that conforming uses subject to the RCWW land use category may not be converted to any use other than those meeting the definition of Recreational and Commercial Working Waterfronts and accessory uses that support the primary use.⁴⁵

(Alternative 2.1) [Conversions discouraged]

Proposals for conversion of conforming uses within the RCWW land use category to non-RCWW uses shall be reviewed by the Working Waterfront Program Advisory Committee to ensure that the proposed conversion does not result in a net loss of current or projected public access or adversely affect levels of service for public access facilities.

Policy 2.2 [Conversions between and among IWW, CWW & RWW zoning]

Parcels in the RCWW land use category may be converted to any use that is permitted as of right in a zoning district in the land use category upon a determination by the City/County that the conversion does not adversely affect public access to the navigable waters of the state.

Objective 3: [Regulatory incentives and criteria]

To provide a range of regulatory incentives and criteria to ensure the continued availability of publicly accessible recreational and commercial working waterfronts.

Policy 3.1: [Bonuses for public access]

The City/County shall provide land-use bonuses to encourage development that provides public access to the shorelines and waters of Grouper City/County. These bonuses may be granted in the form of increased FAR, increased number of slips, increased parking, increased area for water-related uses, or other measure of land use intensity appropriate to permitted uses on the parcel(s) proposed for development.

[Comment: The City of Ft. Myers Beach offers a density bonus for developments that provide “water-dependent uses open to the public.” This policy is analogous to land use regulations that allow increased residential units for development that provides specified public goods. Since working waterfront areas should prohibit new residential development, bonuses appropriate to the proposed development. In an area where the zoning allows waterfront parcels to use a specified percentage of the parcel for “water-related” uses, increasing this percentage may present an effective bonus strategy for increased public access. This ordinance and density bonuses in general are discussed in the policy menu that is a companion report to this model.⁴⁶]

Policy 3.2: [Public water access exaction]

⁴⁵ This is a “no net loss policy.” Mitigating the effects of any action diminishing or impairing existing access for the public may be done through the acquisition program and should be based on the assessment and inventory completed under the Coastal Management Element. For greater discussion on no net loss policies, please refer to the policy menu item.

⁴⁶ See <http://www.law.ufl.edu/conservation/waterways/waterfronts/access.htm>.

The City/County shall impose a public-access exaction for any development that displaces public water access.

[Comment: public water access exactions and impact fees will both require that the local government demonstrate that there is a rational nexus between the impact of the development and the loss of public water access and that the loss can be “roughly attributable to the development from which the exaction or fee is sought. Extensive studies will be required to justify the exaction.”⁴⁷]

Policy 3.3: [Public water access impact fees]

The City/County shall develop an impact fee program which serves to fund the need for increased need for public water access created by development/redevelopment and to offset the increased pressure on existing public water access caused by new development and redevelopment.

Policy 3.4: [Expedited land use approvals for public water access facilities]

The City/County shall provide expedited processes for land development approvals for development that increases public water access in Grouper City/County.

GOAL 2:

To preserve and protect the cultural heritage and physical character of the area as a working waterfront community; and enhance the aesthetic character of the area by directing development in a manner that maintains the working waterfront identity of the City/County.

[Comment: The provision of public water access is the key to maintaining a working waterfront community. However, waterfront communities benefit from maintaining their character as well. The more “character” a waterfront community has the more likely it is to maintain its public and commercial and industrial water access. Communities that celebrate their unique waterfront identity stand a better chance of maintaining and even increasing their public access.]

Objective 1:

The City/County shall preserve and enhance the cultural heritage, identity, and physical character of Grouper City/County as a recreational and commercial working waterfront.

Policy 1.1 [Special overlay district established]

The City/County of Grouper may establish Working Waterfront Overlay Districts within the RCWW to provide for use restrictions, development regulations and guidelines to address specific characteristics and needs of the identified area.

[Comment: Special overlay districts represent an important tool in protecting the unique area or sub-area of a community. In overlay districts, traditional and subdivision regulations are varied in order to ensure that character is not replaced over time by new

⁴⁷ For greater discussion on public access exactions, please refer to the policy menu item “Exactions,” available at: <http://www.law.ufl.edu/conservation/waterways/waterfronts/access.htm>.

development. Special districts are commonly associated with historic preservation, but “character districts” can also be created regardless of their age. In Florida several waterfront communities have created special overlay districts to preserve their unique character. Among these are the commercial fishing communities of Mayport, Cortez and San Carlos Island.]

Policy 1.1: [Design guidelines authorized]

The City/County shall amend, when appropriate, its Land Development Code to establish consistent Design Guidelines and Development Standards for specific areas within the RCWW.

[Comment: Design guidelines represent the most significant factor in preserving community character. Design guidelines for working waterfront communities should emphasize the attributes that create present character and that promote public access. Maintaining public waterfront access, including visual access, is especially important. Maintaining those site planning and architectural attributes that contribute to water-dependent activities is equally important. While there may be some generally applicable principles, design guidelines tend to be community-specific]

Policy 1.2.1:

The City/County shall consider the following non-exclusive criteria in developing the Grouper City/County Working Waterfront Program Design Guidelines and Development Standards:

- Set backs, build-to lines and buffers
- Architectural conformity to traditional character
- Visual access to the waterfront
- Physical access to the waterfront
- Circulation patterns to encourage pedestrian traffic
- Scale of buildings
- Height restrictions for buildings, accessory buildings and fences
- Storm water management
- Live/work areas
- Signage

Objective 2.0

To promote the traditional maritime activities in the City/County of Grouper waterfront overlay district.

Policy 2.1 [Traditional maritime businesses permitted]

Traditional home occupation maritime activities shall be permitted within all land use categories and zoning districts within the City/County of Grouper RCWW.

Policy 2.2

The City/County shall allow commercial and recreational fishing vessels and fishing equipment, such as crab traps and fish netting, to be maintained and repaired in all land use categories and zoning districts within RCWW.

Policy 2.3 [Working waterfront district acknowledgment]

Prior to any development approval issued by the City/County of Grouper, the applicant must sign an acknowledgment that she is aware of the policies and regulations of the City/County of Grouper working waterfront district, including the fact that the district is a location where traditional maritime businesses are encouraged.

Policy 1.6: [Clean Marina Program]

The City/County shall require that all marinas within the RCWW participate in the Clean Marina Program.

Objective 3.0: [Visual access, regulations and incentives]

To protect and promote visual access to the navigable waters and shorelines for the general public.

[Comment: Visual access is a form of public water access. Visual access is also a landowner's riparian right under Florida law, and many local governments have sought to make it a community prerogative as well. Protecting visual access can be accomplished through many of the same strategies (including regulatory incentives and criteria) that promote public water access. Additional discussion concerning visual access as well as several local examples can be found in the companion policy menu to this model.⁴⁸]

Policy 3.1:

The City/County shall protect the public's view of the waterfront by enforcing side yard setbacks and height restrictions on buildings, accessory buildings, fences, and other structures as set forth in the Grouper City/County Design Guidelines and Development Standards.

Policy 3.2:

The City/County shall include visual access in its working waterfront land acquisition program with a special emphasis on less than fee simple acquisitions (easements).

Section 4. Applicability.

This ordinance shall apply to all development, including redevelopment, remodeling, reconstruction, and renovation, within the Grouper City/County Working Waterfront Program.

Section 5. Severability.

If any section or provision of this ordinance is declared void, unconstitutional, or unenforceable by a court of competent jurisdiction, all remaining sections or provisions of this ordinance shall remain in full force and effect.

Section 6. Conflict With Other Ordinances.

⁴⁸ See "Visual Access," available at www.law.ufl.edu/conservation/waterways/waterfronts/access.htm.

This ordinance shall not repeal, annul, or otherwise impair or remove the necessity of compliance with any federal, state or other local laws or ordinances. Where this ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this ordinance shall prevail.

Section 7. Effective Date.

This ordinance shall take effect on _____, ____.

PASSED AND DULY ADOPTED, with a quorum present and voting, by the Board of County Commissioners of the City/County of Grouper, Florida this ____ day of _____, 2006.

BOARD OF CITY/COUNTY COMMISSIONERS
OF GROUPER CITY/COUNTY, FLORDIA

By: _____
Chairman

ATTEST: