BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: Tues., May 16, 2006 Division: BOCC

Bulk Item: Yes ___ No XX Department: Commissioner David Rice, District 4

Staff Contact Person: Tamara Lundstrom

AGENDA ITEM WORDING: Discussion and direction to staff regarding the Waterfront Development Moratorium due to expire July 11, 2006.

ITEM BACKGROUND: Due to the rapid loss of commercial and working waterfront, and public access to conversion to private condominiums and docks, the BOCC requested an interim development ordinance to temporarily halt the acceptance of development applications until a comprehensive study could be completed of the current stock of marinas and working waterfront and protective policies put in place. The County contracted with the South Florida Regional Planning Council to do the study and provide recommendations for protective steps, which was completed earlier this year.

PREVIOUS RELEVANT BOCC ACTION: The BOCC approved Ordinance #017-2005 on July 20, 2005 adopting an Interim Development Ordinance deferring the acceptance of development applications for the redevelopment and conversion of marine facilities, including commercial marinas and the working waterfront, until land development regulations and comprehensive plan amendments are drafted.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

TOTAL COST:_____ **BUDGETED:** Yes ___ No ___

COST TO COUNTY:_____ **SOURCE OF FUNDS:**_____

REVENUE PRODUCING: Yes ___ No ___ **AMOUNT PER MONTH**____ **Year** ____

APPROVED BY: County Atty ___ OMB/Purchasing ___ Risk Management ____

DIVISION DIRECTOR APPROVAL: *David P. Rice*
(David P. Rice, Commissioner)

DOCUMENTATION: Included XX Not Required_____

DISPOSITION:_____ **AGENDA ITEM #**_____

Revised 2/05

ORDINANCE NO. 017-2005

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AN INTERIM DEVELOPMENT ORDINANCE DEFERRING THE ACCEPTANCE OF DEVELOPMENT APPLICATIONS FOR THE REDEVELOPMENT AND CONVERSION OF MARINE FACILITIES INCLUDING COMMERCIAL MARINAS AND THE WORKING WATERFRONT UNTIL LAND DEVELOPMENT REGULATIONS AND COMPREHENSIVE PLAN AMENDMENTS ARE DRAFTED; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRANSMITTAL TO FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS (DCA); AND PROVIDING FOR EXPIRATION WITHIN 270 DAYS OF THE EFFECTIVE DATE OF THE ORDINANCE OR WHEN THE AMENDMENTS BECOME EFFECTIVE, WHICHEVER COMES FIRST.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. Section 9.5-185 of the Monroe County Code is hereby created to read as follows:

Section 9.5-185. Interim Development Provisions Relating To Working Waterfront Areas And Public Access To Beaches And Shorelines.

1. Definitions. As used in this Ordinance, the following terms shall have the definitions provided, unless the context clearly provides otherwise:

a. "Commercial marina" shall mean any facility or facilities, having three or more slips, docks, or docking spaces, conducting business involving the sale, repair, rental, storage, and servicing of boats, and including accessory retail uses. The term includes a licensed commercial facility which provides secured public moorings or wet storage for private pleasure vessels or commercial vessels on a leased basis. The term does not include privately owned individual berths or docks accessory to land based dwelling units.

b. "Existing structures and uses" shall mean a structure in existence as of February 28, 2005, and the customary and regular uses of that structure up to and including February 28, 2005.

c. "Marine facility" shall mean commercial marinas, the working waterfront, boat ramps, and any other locations that provide public access to the navigable waters of the state.

d. "Public access" shall mean the ability of the public to physically reach, enter, or use beaches and shores. The term shall have the same meaning as defined in Rule 9J-5.003(97), Florida Administrative Code.

e. "Working waterfront" shall mean a parcel or parcels of real property that are used for water dependent boatyards, wet storage of boats and vessels, commercial fish houses (fish landings, processing and packaging) and commercial fishing vessel dockage. The term does not include commercial marinas providing dockage for pleasure watercraft.

f. "Water-dependent uses" shall mean 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, and recreation. The term shall have the same meaning as defined in Rule 9J5-003(137), Florida Administrative Code.

g. "Water-enhanced uses" shall mean activities that are not water-dependent uses but benefits economically or aesthetically by its location adjacent to or on the waterfront. The term includes dock side bars, restaurants, hotels, motels, and residential uses.

2. Findings by Board of County Commissioners. The Board of County Commissioners, based upon minutes of prior meetings of the Board, presentations of staff, comments by the public, provisions of Florida Statutes and Florida Administrative Code Rules, and Monroe County public records, hereby finds as follows:

a. The Board of County Commissioners at a public meeting held on August 18, 2004, directed county staff to have a public water access and marine facilities plan prepared for Monroe County.

b. The Board of County Commissioners discussed a policy of "No Net Loss" of working waterfront or public access at a public meeting held on December 16, 2004.

c. Monroe County is experiencing the loss of working waterfront and the loss of public access due to the redevelopment of marine facilities, commercial marinas, and the working waterfront, including boatyards, wet storage of vessels and boats, fish houses and commercial fishing vessel dockage, at an unprecedented rate.

d. The continued loss of working waterfront and public access in the County is and will be detrimental to the economic and social well-being and the health, safety, and welfare of the citizens of Monroe County.

e. If the Comprehensive Plan and land development regulations are not amended to control certain conversions and redevelopments, future losses of working waterfront and public access will negatively affect the economy and bring an end to critical marine-related services, including boat yards, commercial marinas that are available to the public, and traditional trades associated with commercial fishing.

f. It is necessary to undertake a comprehensive and deliberate analysis of the economic, social, and quality of life implications of continued conversions and redevelopments and the impact of same on the public access and the working waterfront.

g. Preserving the status quo while undertaking the analysis will ensure that the County's problems related to diminished public access and further loss of working waterfront will not be exacerbated during the time it takes to prepare a well-reasoned and equitable planning and regulatory program.

h. Preserving the status quo for a temporary period of time will prevent development that could be inconsistent with the Comprehensive Plan and/or with pending changes to the Comprehensive Plan or land development regulations.

i. A number of waterfront property owners are exploring the possible change of use of their property to private residential uses and private exclusive use of docks and docking spaces which will further decrease the public access and/or working waterfront.

j. Goal 212 of the 2010 Comprehensive Plan provides that "Monroe County shall prioritize shoreline land uses and establish criteria for shoreline development in order to preserve and enhance coastal resources and to ensure the continued economic viability of the County".

k. Goal 213 of the 2010 Comprehensive Plan provides that "Monroe County shall ensure adequate public access to the beach or shoreline.

l. Objective 502.1 of the 2010 Comprehensive Plan provides, in pertinent part, that Monroe County shall promote the preservation and enhancement of the existing ports and port related activities.

m. Monroe County needs to update and augment its inventory of public access and waterfront facility locations and specific waterfront uses in order to have a thorough and accurate understanding of the socio-economic data relating to the existing situation.

n. Accepting or processing of development applications during the term of this ordinance would result in confusion for property owners, inefficiencies in governmental services, potentially redundant review processes, and may unreasonably affect the expectations of property owners.

o. The approval of development applications for working waterfront property conversions and redevelopment will result in the continued and irreversible loss of public access and working waterfront.

p. The exemption of certain specified uses and development activities advances the intent of this Ordinance and will not diminish public access or further the loss of working waterfront.

q. The Board of County Commissioners recognizes the need to develop comprehensive plan and land development regulations and programs to preserve marine facilities, including commercial marinas, and to protect public access and the working waterfront.

r. The Board of County Commissioners at a public meeting held on January 19, 2005, voted to contract with the South Florida Regional Planning Council to prepare a public access and marine facilities plan and suggested implementation measures, including Comprehensive Plan amendments and Land Development Regulations.

s. Monroe County has committed necessary staff and resources to the development of policies and regulations relating to the working waterfront and public access.

t. This interim Ordinance and the planned amendments to the Comprehensive Plan and Land Development Regulations are necessary to protect the health, safety, and general welfare and to advance the policies set forth in the Comprehensive Plan.

u. The Board of County Commissioners finds that it is necessary to enact an Interim Development Ordinance deferring the acceptance of development applications that seek development approval for the conversion or redevelopment of waterfront properties.

v. The Board of County Commissioners finds that a 270-day deferment of development applications and approvals as provided herein is reasonable and is the minimum necessary to protect the health, safety, and general welfare of the citizens of Monroe County and to implement the Comprehensive Plan.

w. The temporary deferral of development applications and approvals as provided in this Ordinance is not intended nor shall it be construed to inhibit the existing lawful use of properties in accordance with the Comprehensive Plan and land development regulations.

x. Chapter 125, Florida Statutes, authorizes the Board of County Commissioners to adopt ordinances to provide standards protecting against imminent and immediate threat to the health, safety and welfare of the citizens of Monroe County.

y. This Interim Development Ordinance constitutes a valid exercise of the County's police power and is otherwise consistent with Sections 163.316, *et seq.*, Florida Statutes, which, *inter alia,* encourages the use of innovative land development regulations to implement the adopted Comprehensive Plan.

z. The Board of County Commissioners at a public meeting held on January 19, 2005, directed staff to prepare an ordinance deferring acceptance of applications for redevelopment of marine facilities, including commercial marinas and the working waterfront (boatyards, wet vessel and boat storage, fish houses and commercial fishing vessel dockage), that would diminish public access or further result in the loss of working waterfront, while staff prepares amendments to the 2010 Comprehensive Plan and Land Development Regulations.

aa. As directed by the Board of County Commissioners, the Growth Management staff immediately undertook the development of this Interim Development Ordinance and preparation of a contract for the development of a public access and marine facilities plan and suggested implementation measures including Comprehensive Plan amendments and Land Development Regulations.

bb. The Monroe County Planning Commission reviewed the draft Interim Development Ordinance at a public hearing held on May 11, 2005, and voted to not recommend approval of the ordinance to the Board of County Commissioners.

cc. The Board of County Commissioners has reviewed and considered the draft Interim Development Ordinance voted on by the Planning Commission and recommended by the Planning staff.

3. Purpose and Intent. This Interim Development Ordinance implements the Board of County Commissioners' intent to temporarily curtail further redevelopment and conversion of marine facilities that result in the loss of working waterfront and diminish public access, in order to implement the Commission's policy of "No-Net-Loss" of working waterfront and public access while legislation is being prepared.

4. Development Allowed.

a. During the period that these Interim Regulations are in effect, notwithstanding any other provisions of this Chapter,

(1) the holder of a Conditional Use Permit issued prior to the effective date of this Ordinance shall be entitled to develop according to the provisions of the Conditional Use Permit; and

(2) none of the restrictions set forth in this Ordinance shall prevent issuance of a permit for general maintenance, repair and/or safety improvements, nor for any modification, improvement or expansion to an existing marine facility that does not diminish public access and does not result in the loss of working waterfront; and

(3) none of the restrictions set forth in this ordinance shall apply to an application for a building permit or development approval submitted to the County on or before February 28, 2005.

b. The provisions of this Ordinance shall not apply to an application for or issuance of a building permit or development approval for any development or redevelopment that is otherwise allowed pursuant to the Monroe County Land Development Regulations and the 2010 Comprehensive Plan.

5. Application of Ordinance. This Ordinance shall be applicable to redevelopment and conversion of existing uses and structures which involve:

a. Any change of use of a commercial marina from a water-dependent use to a water-enhanced or a non-water-dependent use.

b. Any division of uplands and/or bay bottom of existing marine facilities into individual parcels regardless of type of ownership.

c. Any modification, improvements or expansions of existing marine facilities which would diminish public access or result in a loss of working waterfront.

d. Any change of use of a parcel of parcels of working waterfront to a commercial marina or a non-water dependent use.

6. **Deferrals.**

a. Commencing on the effective date of this Ordinance, a within unincorporated Monroe County, the Growth Management Division shall defer:

1). Accepting or processing development applications relating to redevelopment or conversion of existing uses and structures as listed in sub-sections 5a through 5d.

2). Issuance of building permits for redevelopment or conversion of existing uses and structures as listed in sub-sections 5a through 5d.

3). Issuance of development orders and development permits of existing uses and structures as listed in sub-sections 5a through 5d.

b. Any application for a building permit or development approval, submitted on or after March 1, 2005, for any development or redevelopment of structures or uses identified in sub-section 5 shall not be accepted or processed by the Growth Management Division.

7. **Interim Regulations.** Pursuant to its lawful authority and the pending legislation doctrine as set forth in *Smith v. City of Clearwater, 383 So.2d 681 (Fla. 2d DCA, 1980),* the Board of County Commissioners hereby establishes the interim development regulations set forth in this Ordinance, which shall remain in full force and effect until the date the Comprehensive Plan amendments and Land Development Regulations become effective, or until repeal of this Ordinance, whichever first occurs.

8. **Administrative Appeal.** Any property owner adversely affected by the application of this Ordinance may seek an administrative determination that, prior to March 1, 2005, the owner's proposed development or redevelopment met the vested rights standards set forth in Section 9.5-181, Monroe County Code. To request an administrative determination, the property owner shall file an Application For Determination of Vested Rights with the Director of Growth Management. The application, together with an administrative filing fee of Four Hundred Dollars ($400.00), must be filed within sixty (60) days from the effective date of this Ordinance.

9. **Duty of County Administrator.** The County Administrator is directed to have the Growth Management Division immediately begin preparing draft amendments, regulations and other supporting studies, in cooperation with the Monroe County Planning Commission, to address the issue of redevelopment and conversion of marine facilities that result in diminished public access or loss of working waterfront.

10. **Repealer Provision.** This ordinance shall stand repealed as of 11:59 p.m. on the 270th day after the effective date of the Ordinance, unless repealed sooner by the Board of County Commissioners or upon the adoption by the Board of County Commissioners and approval by the Florida Department of Community Affairs of amendments to the Comprehensive Plan and Land Development Regulations addressing public access and marine facilities.

Section 2. If any section, subsection, sentence, clause, item, charge or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 4. This ordinance shall be transmitted to the Florida Department of Community Affairs pursuant to Chapter 380, Florida Statutes, and the DCA is requested to review and approve it by Immediate Final Order in accordance with Section 120.569(2)(n), Florida Statutes, in recognition of the public importance of retaining the working waterfront, marine facilities, and public access, and to prevent the threat of further loss thereof as "an immediate danger to the public health, safety, or welfare".

Section 5. This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission approving this ordinance pursuant to Florida Statutes, Chapter 380.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the day 20th of July 2005.

Mayor Dixie M. Spehar	Yes
Mayor Pro Tem Charles "Sonny" McCoy	Yes
Commissioner Murray Nelson	Yes
Commissioner George Neugent	Yes
Commissioner David Rice	Yes

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: Dixie M. Spehar
Mayor Dixie M. Spehar

05 JUL 29 AM 10:08
DANNY L. KOLHAGE
CLK. CIR. CT.
MONROE COUNTY, FLA

(SEAL)
ATTEST:
DANNY L. KOLHAGE, CLERK

By: Pamela Stancorb
Deputy Clerk

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 7/28/05