

g. Performance Measures and Standard Procedures for Projects Seeking a Variance from Marine Facility Siting Guidelines

There may be circumstances when a new or expanded marina, dry storage facility, boat ramp, or other docking or mooring facility is proposed that is not consistent with Marine Facility Siting Criteria described in the preceding sections. Examples could include a proposal for more wet or dry powerboat slips than recommended at a location, or a proposal for a type of facility or operation that is not recommended at a particular location. Furthermore, types of facilities or vessel operations that were not specifically contemplated by this plan may be developed in the future. Also, technology or procedures may be developed in the future to mitigate or offset the potential impacts to manatees or their habitat that otherwise may have been caused by increased numbers of vessel trips associated with new or expanded facilities. It is recognized that in such situations, if it can be demonstrated that the non-conforming project and its operation does not adversely affect sensitive habitats and manatees, a process for consideration of a variance or exception should be available. This section of the MPP therefore provides performance measures and standard procedures for evaluation of requests for variances for non-conforming projects, with assurance that manatee protection requirements will still be met. These procedural requirements, performance measures and evaluation factors are described below

In order to qualify for a variance or exception, the proposed project must be able to demonstrate that it meets a set of requirements and measures intended to avoid or minimize potential impacts to manatees and especially sensitive habitats that could arise from the facility or the vessel trips that it may generate. As an alternative, a proposed increase in number of powerboats above what is recommended, or an increase in a type of vessel use that is not recommended, may be mitigated by removal and transfer of an equivalent number and type of slips or berths that are actively in use at a nearby location. Each of these procedures is described below. The measures and transfer procedure address only regulatory requirements related to manatee protection, and do not replace or obviate need for compliance with all other applicable local, state, and federal environmental and land use regulations. In both cases, the proposed project must demonstrate that all other specific permitting and land use requirements can be met, before requesting a variance or transfer procedure. The specific requirements include documentation that the proposal is consistent with local land use and zoning requirements as well as documentation that approval of the submerged land owner has been obtained. For cases involving encroachment into federal navigation channels, approval by federal authorities, such as the US Coast Guard or US Army Corps of Engineers is required.

g.(1) Variance Performance Measures

Requests for higher ratios for multi-family residential docking facilities subject to the 1-powerboat-slip-to-100-feet-of-shoreline restriction, or requests for uses proposed in a location not shown in the preceding narrative sections and maps as an acceptable site for that particular type of facility may be considered if it is demonstrated that the facility and its use would not adversely impact manatees. This demonstration would be satisfied if the facility met applicable Performance Measures from the following list. However, adherence to these

measures does not automatically ensure the applicant's ability to exceed the allowable powerboat restrictions as defined above. The plan restrictions will remain in effect, if at the time of review, additional information about manatees or the proposed facility indicates threats not addressed by these Performance Measures. Consideration can be given for additional site-specific factors or operating practices (e.g. seasonal operation, etc.) that may be proposed by either the applicant or the County, that may result in improved conditions for manatees or manatee protection. Any facility exceeding the allowable powerboat slip restrictions or use according to the Performance Measures defined below, must obtain and comply with an annual marina operating permit (MOP) and/or Class I Coastal Construction permit if required, and proffer a covenant in favor of the County which records the number and type of slips or berths. The applicable Performance Measures would be included as conditions of the MOP, Class I permit and covenant. The Performance Measures are:

1. The facility may not be located within a cold-weather aggregation area or other area where sensitive manatee behavior occurs, or in a sole travel corridor to or from the area. The cold-weather aggregation, sensitive sites, and travel corridors include Biscayne Canal, Little River, the Miami River/Tamiami Canal, Coral Gables Waterway, Virginia Key "no entry zone", and the vicinity of cooling canals at the FPL Turkey Point power plant. These areas are shown in Figure XXX.
2. The waters adjacent and marked or unmarked channels leading to the facility are designated "slow speed" or "idle speed" zones defined by state rule Ch. 68C-22.025 F.A.C., as authorized pursuant to the Florida Manatee Sanctuary Act, Ch. 379.231(2) F.S.
3. The facility must provide net benefit to manatees and/or their habitat above what would otherwise be required for the project. Mitigation needed to satisfy other local, state or federal government permitting cannot be applied to this requirement. For example, facilities may include creation or enhancement of a manatee "refuge" space as part of the design, a conservation easement, additional restoration of adjacent habitats or hydrology such as mangrove or seagrass to increase the net ecological value of the nearby area, reduced nutrient input to receiving waters, or requiring prop guards on any high traffic vessels such as water taxis or rental boats
4. The marine facility and channel construction and subsequent uses will neither destroy nor negatively impact coastal wetlands and benthic (seagrass, hard bottom, etc.) communities and the water quality.
5. The facility must have sufficient water depth (as defined herein) in the marina basin and in any marked or unmarked channel or waterway typically used for access to or egress from the basin, and does not require any new dredging or filling that would degrade shallow water habitat (this may exclude maintenance dredging, excavation into uplands or pile installation). Sufficient water depth shall mean water depth, measured at mean low tide, of 3 feet greater than the draft of vessels occupying the slips on a permanent basis, and/or 3 feet greater than the draft of vessels typically using the facility on a transient basis. Vessel drafts shall be obtained by using best available data. Entrance/exit channels near marinas shall be adequately marked, in accordance with state regulations, if marina repairs or expansion are proposed.
6. The site shall contain appropriate informational signage, and provide educational material to tenants advising boaters of essential manatee habitats and vessel speed regulations in the vicinity.

7. Multi-family residential docking facilities will require that all vessels moored at the site be registered to individuals residing at the site. Requests for more slips/berths than residential units at the site or at densities greater than 5 slips per 100 feet of shoreline shall not be approved.
8. Before expanding and exceeding the allowable powerboat slips defined above, an existing facility must demonstrate not less than 85% occupancy over the previous 2 years of operation.

g.(2) Removal of Slips or Berths in Use at a Location and Transfer to Another

Removal of dry or wet slips or berths in use at one or more locations may serve as a form of mitigation to compensate for the potential impacts to manatees from proposed new operations or expansion of marine facilities in sensitive habitats above the guidelines recommended for manatee protection. The transfer process requires a review and evaluation by DERM, in coordination with state and federal regulatory authorities, of the proposed transfer for potential adverse impacts to manatees as well as evaluation of other requirements of Chapter 24 of the Code of Miami-Dade County. The review will include an evaluation of the type of facility and typical uses associated with both the historically existing slips at the donor property and the proposed use of the slips at the recipient property. To assure that the impacts from proposed new slips would not exceed the potential impacts from the slips that are to be removed for mitigation, this analysis must be site specific and be based on a consistent set of mitigation rules applied to all such projects. Furthermore, to assure that the impact of new powerboat slips remains fully mitigated, a suitable restriction running with the land (i.e. restrictive covenant) on the donor property is required to record that the historical use was transferred, and assure that the original slips would never be reoccupied by powerboats. This is similar to other forms of environmental mitigation, or conservation easements, intended to preserve the mitigation benefits in perpetuity. Transfer applications shall not be approved without concurrence of federal and state regulatory agencies with authority for manatee protection.

This has implications for the owners or future owners of donor properties. These owners have an expectation that continuing use or reconstruction of historical motor boat slips will be found consistent with manatee protection guidelines. This would no longer be the case if the historical use had been transferred to another parcel. For these reasons, both from an assessment of the biological merits of the mitigation for a proposed project, and in fairness to owners whose slips are sought for transfer, slips cannot simply be “reallocated” to another property without participation and consent of the “donor”.

The following mitigation criteria will be used to evaluate requests for slip transfer.

1. Slip transfers only have the ability to offset potential impacts if they represent an actual reduction in use of equivalent slips at the donor site, and the slips from the donor site may not be reoccupied.

2. To assure no net increase in impact to manatees, the type and frequency of vessel use associated with the slips removed (transferred) from a donor site must be equivalent to the type and frequency of use at the receiving site.
3. To assure no net increase in impact to manatees, slips may only be transferred to a site that is a less sensitive or equivalent manatee habitat within the same tributary or geographic area. For example, for a project on a canal or river, both the donor and recipient sites should be located on the same waterway. Within cold weather aggregation areas and travel corridors to them, such as the Miami River, Little River, Coral Gables Waterway etc, slips may be transferred downstream or may be consolidated on one of several contiguous parcels. For a project in Biscayne Bay or adjoining bays and sounds, the donor and recipient sites should be located within 0.5 miles of each other.
4. Only slips in compliance with all required environmental and land use approvals are eligible for transfer. For slips located in or over the water, documentation of approval of the submerged lands owner is required. Illegal or unauthorized docking is ineligible for transfer.
5. Transfers require the consent of the property owner(s) involved (donor and receiving properties) and restrictive covenants running with the land in favor of Miami-Dade County must be recorded on the donor and recipient sites.
6. In order to preserve riparian property rights and to prevent net reduction of waterfront access sites, not all existing slips can be transferred away from a given donor site. At least one existing power boat slip per 100 feet of shoreline shall be retained at the donor site and shall not be eligible for transfer.
7. Slips located in areas recommended for expansion of commercial marinas, dry storage, transitory docks, boatyards, ramps, or large vessel (>100') berthing under the MPP do not qualify as donor slips.
8. Slip transfers may be allowed only if all federal, state, and local approvals at the receiving site are obtained for the proposed work and operations required for transfer.
9. A donor slip should be eligible for transfer once; subsequent transfers from the recipient site to other sites is not allowed under the MPP.