



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS 20Z00009 Marker 24 Marina, LLC

Conditional Use Permit (CUP) for Commercial/recreational and Commercial/industrial Marina

Tax Account Number: 3018251
Parcel I.D.: 25-37-06-CX-00-15.08
Location: 1357, 1360, and 1385 South Banana River Drive; and 1880 West Virginia Avenue, Merritt Island (District 2)
Acreage: 7.08 acres

Planning and Zoning Board: 07/20/2020
Board of County Commissioners: 08/06/2020

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	RU-1-11 with a CUP for a mitigated marina and BU-2 with a non-conforming marina	BU-2 and RU-1-11 Propose a CUP for Commercial/recreational and Commercial/industrial marina
Potential*	104-berth marina	104-berth marina
Can be Considered under the Future Land Use Map	Yes** Residential 4	Yes** Residential 4

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **BU-2 zoning is an existing use pursuant to Section 62-1188 (9) of Brevard County Code and vested against the Comprehensive Plan.

Background and Purpose of Request

The applicant is seeking a modification to an approved Conditional Use Permit (CUP) for mitigating a nonconforming 104-berth marina and to legitimize the marina use located on the east side of S. Banana River Drive. The request will combine both locations (west side which contains a CUP for a mitigated marina and the east side of S. Banana River Drive which contains a nonconforming marina) as one unified marina facility.

Regarding the existing east-side development, the Property Appraiser's Office states the site was developed in 1949. On May 22, 1958, Brevard County adopted its first Zoning Code. At that time,

the property lying east of S. Banana River Drive was zoned BU-2. The aerials identified the lot as Jaren Boat Works. Within the BU-2 zoning classification, marina use (as a permitted use) was added on September 7, 1972. The Zoning Code was amended and reflected in the June 22, 1993 version showing that marina use was removed from the listing of permitted uses to become a conditional use. Therefore for the period from 1972 – 1993, marinas were noted as a permitted use. As this is no longer the case, marina uses continuing in operation would be considered as a non-conforming use.

This new CUP application proposes to retain all 21-existing noted conditions identified in Zoning Resolution **19PZ00080** adopted on September 5, 2019, except for condition #5 where the owner/applicant wishes to transfer/relocate 17-slips of the approved 104-slip (18-dry and 86-wet) marina to that portion of the site lying east of S. Banana River Drive (see application page # 23:40 for previous 104-slip count).

The requested uses for the portion lying east of S. Banana River Drive are: ship store, power boat: repair, washing, detailing and rentals; 17-wet power boat slips; 4-parking spaces for transient (trailer) boats; fuel (gas and diesel) sales at designated fuel dock; live bait sales; wholesale and retail seafood sales; short-term rentals; and, a private club with tiki bar/grille with pool.

The BU-2 zoning classification requires that all uses take place within an enclosed structure and that seafood processing plants are not to be located within 300-feet of any residential zone boundary. Boat service is a permitted with conditions use. Bait and tackle shops are a permitted use. Retail and wholesale activities are allowed uses. Resort Dwellings (short-term rentals) are a permitted use as well as is a private club. Alcoholic beverage consumption is not allowed under this application and will require its own CUP application; however, package sales may be allowed.

The west side contains 6.04 acres while the east side contains 1.04 acres. This CUP will encompass both lots for an area total of 7.08 acres.

Land Use

The subject property retains the RES 4 (Residential 4) FLU (Future Land Use) designation. The RU-1-11 (Single-Family Residential) zoning is consistent with the RES 4 FLU designation. The Retail, warehousing and wholesale commercial, BU-2 zoning is non-conforming to the RES 4 FLU designation as this use predates the adoption of the 1988 Brevard County Comprehensive Plan.

Environmental Constraints

The proposed CUP modification will combine commercial and recreational uses on the east and west portions of Marker 24 Marina (Marina), that spans the east and west sides of Banana River Dr. The Marina was originally developed in 1940s. Two previous CUPs approved on September 12, 2013 (Resolution 13PZ-00008) and August 19, 2019 (Resolution 19PZ00080), that addressed uses for the west portion of the marina only. NRM recommends that Condition 3 of Resolution 19PZ00080 be amended to incorporate all uses proposed in the application (e.g., ship store/retail; transient boat docking; boat repair, wash, and detail; boat rentals; fueling; live bait sales; wholesale and retail food; short/long term rentals/resort; and other recreational amenities).

If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan, or permit submittal. NRM

reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Preliminary Concurrency

The closest concurrency management segment to the subject property is S. Banana River Drive which lies to the south of Highway 520, which has a Maximum Acceptable Volume (MAV) of 12,480 trips per day, a Level of Service (LOS) of E, and currently operates at 20.16% of capacity daily. The maximum development potential from the proposed rezoning does not increase the percentage of MAV utilization. The corridor is anticipated to continue to operate at 20.16% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the proposed marina development does not create any residential development.

The subject property is served by potable water by the City of Cocoa. Sewer, by Brevard County, is currently provided to the portion lying west of S. Banana River Drive. No sewer service has been extended to the portion lying east of S. Banana River Drive.

Applicable Land Use Policies

FLUE Policy 1.7 – The Residential 4 Future land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within the Future Land Use Element.

Staff analysis: The request will abide by the 4 du/ac limitation set by the land use designation. This request will not allow an increase in density.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. This site is surrounded by residential lots to the north, west and south. The entire area is under the FLUM designation of Residential 4. Several lots lying east of S. Banana River Drive have commercial BU-2 zoning. The undeveloped lots (when developed) would need either to be rezoned for residential use consistent with the RES 4 FLUM or a Small-Scale Comprehensive Plan amendment be adopted in order to retain the existing undeveloped commercial zoning.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The character of the area is residential. The marina use, west-side of S. Banana River Drive established under Zoning Resolution **Z-2398**, was adopted February 27, 1969 and has possibly been in operation for over 50 years. This use became nonconforming with Section 62-1901 (d) (3) when Special Use Permit uses were removed from Brevard County Code on August 2, 1973 and later became nonconforming to the Comprehensive Plan when the Future Land Use Element was adopted on September 9, 1988.

Regarding the east-side of S. Banana River Drive, the Brevard County Property Appraiser notes that the marina use dates back to 1949.

The previous zoning action to **19PZ00080** was **13PZ-00008** adopted on September 12, 2013. The marina (west side of S. Banana River Drive) encompassed an area of 8.88 +/- acres. The site had a prior SUP (Special Use Permit) approved under **Z-2398** that allowed a marina to include sales of gasoline, groceries, bait, tackle, and sundries provided that an approved fence was erected on the north line and on the west line south to Jaren Avenue. The subject property was approved for marina use through the approval of a SUP for a marina in February, 1969. Subsequently, all SUP provisions were removed from the County Code in August of 1973. At that time, any legally, active use allowed under the SUP became a nonconforming use by definition pursuant to section 62-1181.

Surrounding Area

The surrounding properties are zoned RU-1-11 (Single-Family Residential) to the north, south and west, with BU-2 (Retail, Warehousing, and Wholesale Commercial) to the east across South Banana River Drive. The RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet, and a 1,100 square-foot minimum house size.

The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. This area of Merritt Island is characterized by detached single-family residential uses and an existing commercial marina located east of South Banana River Drive.

There have not been any zoning changes in the last 5 years within a half-mile radius of the subject property.

The Zoning Code defines a marina as a facility or structure which provides mooring, docking, anchorage, fueling, repairs or other services for watercraft. Docks accessory to single-family uses are exempt from this definition. A commercial/recreational marina is defined further as facilities having greater than 30 slips or any marina which has fueling, wastewater pump-out or repair facilities serving recreational interests. As the applicant also proposes to include sale of fish they also need to request Commercial/industrial marina use. A Commercial/industrial marina means facilities serving largely commercial interests. Fueling facilities, repair, wastewater pumpout facilities and commercial sale of fish, including loading and shipping activities, are permitted within this category.

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP (Conditional Use Permit) pursuant to Section 62-1151(c) and to Section 62-1901. Section 62-1901 provides that the approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. **The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved.** Applicant responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon

consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1937, Marinas.

This request should be evaluated in the context of **Section 62-1937** which governs marina uses which states in, specifically 62-1937 (1) through (4):

All applications for a marina must meet the following conditions:

- (1) The site for a marina must be at least one acre in size.

Staff analysis: This request combines an area equating to 7.08 acres.

- (2) When a site abuts a residential zone, it shall be screened by a masonry wall with a minimum height of six feet.

*Staff analysis: A wall was required for the western portion approved under **19PZ00080** under condition #6; Should this CUP be approved, per Code; a wall will need to be constructed along the south side of the eastern portion of the lot as it abuts residential zoning. The Board can review existing site conditions in determining if a wall is required. The applicant shall verify with the Natural Resources Management Department that the site meets all locational criteria outlined in Objective 5 of the Coastal Element of the Comprehensive Plan.*

- (3) The applicant shall verify with the Natural Resources Management Department that the site meets all locational criteria outlined in Objective 5 of the Coastal Element of the Comprehensive Plan.

Staff analysis: Analysis to be determined by the Natural Resources Management Department's review (attached at the end of this document).

- (4) The application shall include a conceptual layout of the marina indicating the maximum allowable number of slips. The layout shall include the applicant's statement of affirmation indicating that the final site design must comply with all applicable land development and natural resource regulations.

Staff analysis: Applicant is continuing to limit the size to a 104-birth marina. Seventeen (17) slips have been proposed to be shifted to that portion of the site lying east of S. Banana River Drive.

The Board may wish to consider whether any additional operational requirements should be imposed as a part of this request.

The staff comments for **19PZ00080** and **13PZ-00008** reported the following previously nonconforming conditions:

1. Given the single-family residential character of the area, the Board may wish to limit the subject property to a commercial marina use, and only the uses included in the request, with no additional BU-1 (General Retail Commercial) or BU-2 commercial development or uses not

associated with the primary marina use and to specifically exclude additional retail, hotel, bar and restaurant uses on the site.

2. In 1969 when the property was granted a SUP (Special Use Permit) for the marina, it was stipulated that a “fence is erected on the north line and on the west line south of Jaren Avenue”. Current land development regulations would require a commercial marina to construct a masonry wall where commercial uses abut residentially zoned property. The Board required and the applicant agreed to the stipulation that a masonry wall would be developed as noted in condition #6 of the approved Zoning Resolution **19PZ00080**.
3. The site (west side of S. Banana River Drive) is developed with wet and dry slips as well as a metal building that is approximately 1,478 square feet, an approximately 5,300 square-foot roof-covered boat slip, a boat ramp and a boat lift with associated asphalt parking and storage. The applicant has submitted a conceptual plan of the proposed improvements and associated parking. The applicant has provided 45 parking spaces (west-side), 36 are proposed to be paved. On the eastern portion of Banana River Drive, the concept plan depicts 24 standard parking spaces, however, 34-parking spaces are required. To meet the parking code, the applicant needs to provide 10 additional spaces of which, six (6) are to be standard parking spaces and four (4) are to be tandem vehicle/boat transient parking spaces. The Board may review any extenuating circumstances and limit the required parking.

General Standards of Review

Section 62-1901(c)(1)(a): The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.

Applicant Response: The proposed conditional use will not adversely impact neighboring properties.

Staff analysis: Any noise generated in conjunction with the operation of the business would need to comply with the performance standards of Section 62-2251 through 62-2272, including the noise regulations of Section 62-2271.

Section 62-1901(c)(1)(b): The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

Applicant Response: Continuing current marina operation and keeping the same number of boat slips will be compatible.

Staff analysis: The applicant is limiting the number of boat slips across the site; however, several new uses have been identified which may have off-site impacts. Those uses include temporary outside activities such as cleaning or servicing boats, fish sales and temporary boat parking.

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property.

Note: A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by a MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant Response: Improvements to current marina operations will only help the value of abutting properties.

Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.

Section 62-1901(c)(2)(a): Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any.

Note: Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the board of county commissioners.

Applicant Response: Will be adequate.

Staff analysis: As the intensity of the marina use has been limited to existing slip values, impacts based upon proposed added uses may be a concern such as temporary boat parking, driveway turn radius, capacity of proposed club and retail/warehouse sales uses.

Section 62-1901(c)(2)(b): The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.

Applicant Response: Will not interfere.

Staff analysis: Future development (added uses) must comply with Brevard County's Performance Standards contained within Sections 62-2251 through 62-2272.

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

Applicant Response: Will comply.

Staff analysis: The concept plan's "performance standards" will be reviewed as part of the site plan review process.

Section 62-1901(c)(2)(d) The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.

Applicant Response: Current dumpster will be sufficient and will not be exceeded.

Staff analysis: The adopted level of service for solid waste disposal will be reviewed as part of the site plan review process.

Section 62-1901(c)(2)(e): The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.

Applicant Response: Current water supply is sufficient. Existing septic system is sufficient.

Staff analysis: The adopted level of service for potable water or wastewater will be reviewed by Utilities as part of the site plan review process.

Section 62-1901(c)(2)(f): The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

Applicant Response: Additional landscaping will be installed and a landscape plan will be provided.

Staff analysis: The screening or buffering aspects have been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(g): Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to, traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

Applicant Response: Will not.

Staff analysis: No signage or exterior lighting has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(h): Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.

Applicant Response: Will not be open past 10:00 pm.

Staff analysis: Previous comments drafted in 19PZ00080 stated: The previously approved CUP limited marina office hours from 6 a.m. to 9 p.m. with no motor repairs after 9 p.m. The existing boatyard is proposed to remain in use from 8 a.m. to 5 p.m.

Section 62-1901(c)(2)(I): The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

Applicant Response: Will not exceed 35 feet.

Staff analysis: As this site is adjacent to single-family zoning, the height limit is capped at 35 feet.

Section 62-1901(c)(2)(J): Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Note: for existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Applicant Response: Parking shown on use exhibit.

Staff analysis: The proposed concept plan graphically depicts 45-parking spaces (west side) and 24-parking spaces (east side). Based upon the applicant's request to provide an additional 4-parking spaces for transient vehicle/boat parking spaces a total of 79-parking spaces is to be required. The concept plan depiction falls short of required parking (text statement identifies additional parking not depicted on the concept plan). Transient parking should be removed from the (east side) concept plan and additional parking needs to be depicted in those plans.

For Board Consideration

The applicant is seeking a modification to an approved Conditional Use Permit (CUP) for mitigating a nonconforming 104-berth marina and to legitimize the marina use located on the east side of S. Banana River Drive. The request will combine both locations (west side which contains a CUP for a mitigated marina and the east side of S. Banana River Drive which contains a nonconforming marina) as one unified marina facility.

This new CUP application proposes to retain all 21-existing noted conditions identified in Zoning Resolution **19PZ00080** adopted on September 5, 2019, except for condition #5 where the owner/applicant wishes to transfer/relocate 17-slips of the approved 104-slip (18-dry and 86-wet) marina to that portion of the site lying east of S. Banana River Drive (see application page # 23:40 for previous 104-slip count).

The requested uses for the portion lying east of S. Banana River Drive are: ship store, power boat: repair, washing, detailing and rentals; 17-wet power boat slips; 4-parking spaces for transient

(trailered) boats; fuel (gas and diesel) sales at designated fuel dock; live bait sales; wholesale and retail seafood sales; short-term rentals; and, a private club with tiki bar/grille with pool. Alcoholic beverage consumption is not allowed under this application and will require its own CUP; however, package sales may be allowed.

The Board may wish to consider the consistency and compatibility of the mitigation of the non conforming marina and surrounding area. Since this is a CUP, the Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1937.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Conditional Use Permit (CUP) Review & Summary**

Item # 20Z00009

Applicant: Peter Black

CUP Request: Revise CUP to include historical commercial and recreational uses for entire marina spanning east and west sides of Banana River Dr. Proposed uses include a maximum of 104 wet and dry slips; ship store; boat repair, wash, and detail; boat rentals; fueling; live bait sales; wholesale and retail food; short/long term rentals/resort; and other recreational amenities.

P&Z Hearing Date: 07/20/20

BCC Hearing Date: 08/06/20

Tax ID No: 3018251

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Surface Waters of the State
- Manatee Protection Plan
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Overlay
- Basin Dredging
- Floodplain
- Hydric soils
- Landscape Requirements
- Protected Species

The proposed CUP modification will combine commercial and recreational uses on the east and west portions of Marker 24 Marina (Marina), that spans the east and west sides of Banana River Dr. The Marina was originally developed in 1940s. Two previous CUPs approved on September 12, 2013 (Resolution 13PZ-00008) and August 19, 2019 (Resolution 19PZ00080), that addressed uses for the

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west portion of the marina only. NRM recommends that Condition 3 of Resolution 19PZ00080 be amended to incorporate all uses proposed in the application (e.g., ship store/retail; transient boat docking; boat repair, wash, and detail; boat rentals; fueling; live bait sales; wholesale and retail food; short/long term rentals/resort; and other recreational amenities).

If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan, or permit submittal. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Land Use Comments:

Surface Waters of the State

The dredged marina basin on the west side of Banana River Drive is classified as a Class III water body. The basin is connected to the Banana River via a canal that is also classified as Class III water body. The Class III water bodies require a 25-foot Surface Water Protection Buffer (Buffer). The canal connects to the Banana River, which is classified as an Aquatic Preserve and Outstanding Florida Waters, and requires a 50-foot Buffer setback. Development within the shoreline protection buffer is subject to criteria within Conservation Objective 3, its subsequent policies, and the Surface Water Protection Ordinance.

Per Comprehensive Plan, Objective 5, Policy 5.3, retrofitting or modification of existing marina facilities within the coastal zone shall be required to stormwater management.

Per Chapter 62, Article X, Division 3, entitled Surface Water Protection, Section 62-3666(13)b, redevelopment or expansion of existing residential/recreational, commercial/recreational and commercial/industrial marinas shall affirmatively demonstrate compliance with Policy 9.9 of the conservation element, and Objective 5 and subsequent policies of the coastal management element of the Brevard County Comprehensive Plan, as amended. The affirmation shall include, but not be limited to, siting, habitat, and water quality criteria.

Per Section 62-3666(17), impervious areas that existed prior to September 8, 1988, and exceed the allowable impervious area, redevelopment which does not increase the amount of impervious surfaces within or threaten the integrity of the surface water protection buffer will be allowed. Proposed redevelopment may occur in the existing vertical envelope or may be relocated within the surface water protection buffer to achieve a net impact reduction:

- a. The applicant shall not increase the amount of impervious surfaces within the surface water protection buffer, regardless of location within the buffer.
- b. New impervious areas shall be located parallel with, or landward of, the waterward-most pre-existing impervious areas.

- c. Stormwater management is required in accordance with subsection 62-3666(3).

Per Section 62-3666(3), any alteration as allowed under this division, including redevelopment, within the surface water protection buffer shall require stormwater management so as not to degrade the receiving water body water quality.

The submitted conceptual site plan depicts docks within the Indian River Lagoon. Dock structures are subject to state and federal approval.

Manatee Protection Plan (MPP)

Boat Slips: The Brevard County MPP allows a maximum of 104 boat slips for the facility. The CUP application requests 8 dry slips and 79 wet slips for the west side of the marina, and 17 wet slips; totaling 104 slips. The plans show the boat slip distribution count and locations for both sides of the Marina. However, the MPP establishes the maximum number of slips, without regard to slip type and location. The east-side plan labels 17 wet boat slips; however, 2 to 3 extra wet slips are shown that are not labeled. Compliance with the MPP boat slip counts will be reviewed at time of permit submittals. Dock structures are subject to state and federal approval. The plan also shows calculations indicating six boat parking spaces; however, the spaces are not shown on the plans.

Fuel: There was a 1000-gallon underground fuel storage tank (UST) registered for this facility in 1984; but was likely in place before that date. The UST registration was renewed in 1987. The UST was removed at some point, but records of its removal could not be located. NRM performed a site inspection on May 12, 2020, and found some evidence of the old system (electric box, maybe some piping). Fueling is an allowable conditional use in marinas. A new fueling system will require secondary containment and manatee zone information signs with maps. Comprehensive Plan, Objective 5, Policy 5.1, Criteria E, states that prior to operation of any new marina fueling facility, a fuel management/spill contingency plan will be developed and provided to NRM for review. The plan shall describe methods to be used in dispensing fuel and all the procedures, methods, and materials to be used in the event of a fuel spill and shall meet Brevard County Fire Prevention Codes and Rules of the State Fire Marshall's office.

Manatees: Comprehensive Plan, Objective 9, Policy 9.9, states:

- Criteria: A. All existing and new marinas shall erect manatee education and awareness signs, which will be posted and maintained in a prominent location. Each marina operator shall establish and maintain a permanent manatee educational display at a prominent location at their marina. Brevard County shall establish and maintain a display at public boat launch facilities and license tag agencies.
- Criteria: B. Those involved in the sale of boats and motors should provide manatee information to the buyer at the time of delivery of boats or motors.

Coastal High Hazard Area

Portions of the Marina property are located within the Coastal High Hazard Area (CHHA) as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1,

designates coastal high hazard areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.

Indian River Lagoon Nitrogen Reduction Overlay

The site is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV. Any new septic system will require the use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required, if applicable. Additionally, Section 62-3666(14) of the Surface Water Protection ordinance establishes onsite sewage treatment and disposal system setbacks.

Basin Dredging

Per Brevard County Comprehensive Plan, Conservation Element, Policy 3.7, maintenance dredging on existing navigational channels or within existing marinas may be allowed upon review by the County. Dredging activities are also subject to U.S. Army Corps of Engineers and state regulation. Agencies shall be contacted prior to any dredging or sedimentation/muck removal activities.

Floodplain

The Marina has areas mapped as being within a Special Flood Hazard Area as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. Floodplain areas are subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Impervious area increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Hydric Soils

The subject parcel has mapped hydric soils, Wabasso sand, as shown on the USDA Soil Conservation Service Soils Survey map; an indicator that wetlands may exist. However, wetlands have not been identified on the parcel.

Landscape Requirements

A formal landscaping review was not conducted for the purposes of this CUP application. Full compliance with Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection, will be completed at the time of application for development order or permit. Including Section 62-4342, which establishes vegetative buffer requirements where commercial use abuts residential uses. The buffer provides visual and physical screening between potentially incompatible uses to reduce the effects of glare, noise and incompatible activities. Per Section 62-3668(5), any mangrove alterations shall be in compliance with applicable federal and state regulations.

Protected Species

In addition to manatees, federally and/or state protected species may be present on properties with aquifer recharge soils. Should any protected species be present, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service prior to any plan, permit submittal, or development activity, including land clearing, as applicable.