

### 3.3 – Special Topic

#### **Countywide Assessment: An Evaluation of Possible Property Right Infringements based upon the allocation of Land Use Densities within the Coastal High Hazard Area over the Past Seven Years**

##### **A. Introduction and Background**

Since the adoption the last comprehensive plan, the Collier County Board of County Commissioners have not instituted any policies or programs that have resulted in a reduction of density within the Coastal High Hazard Area (CHHA). Therefore, the property rights of existing landowners and residents within the CHHA have not been impaired.

The County does have a “build-back” policy in the aftermath of coastal storms, erosion and hurricane events. However, there has never been a natural disaster serious enough to warrant the County Commission putting this policy into operation. Further, the County Building Review and Permitting Department operates a repetitive loss program. Periodically, structures meeting the County’s repetitive loss criteria are removed. However, due to the rapidly growing population of Collier County, and the high land values within the coastal area, the property rights of coastal residents, as a whole, have not been significantly impaired.

**B. Identification of Specific Objectives:**

Objective	Target	Conditions when Plan was adopted	Current Conditions	Comments
<p>Implementation Strategy - Density Rating System, Density Bonuses, Transfer of Development Rights, <i>Future Land Use Element</i>:</p> <p>In no case shall density be transferred into the Coastal High Hazard Area from outside the Coastal High Hazard Area. Lands lying seaward of the Coastal High Hazard Boundary, identified on the Future Land Use Map, are within the Coastal High Hazard Area.</p>	<p>Specifically limit density in the CHHA</p>	<p>Prior to the adoption of this implementation strategy, the County did not track the transfer of development rights relative to the CHHA; and prior to 1997 there were no clear priority criteria in the Comp. Plan.</p>	<p>No density shall be transferred into the CHHA from outside the area lying seaward of the CCHA Boundary</p>	<p>This is a good implementation strategy, which should remain in the revised Comp. Plan</p>

Objective	Target	Conditions when Plan was adopted	Current Conditions	Comments
<p>The Bayshore/Gateway Triangle Redevelopment Overlay, <i>Future Land Use Element</i>:</p> <p>For properties within the Coastal High Hazard Area (CHHA), only the affordable housing density bonus, as provided in the Density Rating System, is allowed in addition to the eligible density provided herein. For all properties, the maximum density allowed is that specified under Density Conditions in the Density Rating System.</p>	<p>Specifically limit all development within the CHHA to a base standard, except for legitimate affordable housing</p>	<p>Prior to the adoption of this implementation strategy, the County did not track the transfer of development rights relative to the CHHA; and prior to 1997 there were no clear priority criteria in the Comp. Plan.</p>	<ul style="list-style-type: none"> <li>• Prohibit all density bonuses within the CHHA, except for affordable housing.</li> <li>• Furthermore, all types of development, except for affordable housing, are only allotted a base density standard of 4 dwelling units/acre.</li> </ul>	<p>The density rating system proposed revisions will cap density at 4 DU per acre for all Bayshore/Gateway Triangle properties located in the CHHA. The Redevelopment Overlay and Redevelopment Plan will have to be amended accordingly.</p>
<p>OBJECTIVE 12.2, <i>Conservation and Coastal Management Element</i>: The County shall ensure that building and development activities are carried out in a manner, which minimizes the danger to life and property from hurricanes. The public shall limit its expenditures involving beach and dune restoration and renourishment, road repair, publicly owned seawalls, docking and parking area. All future unimproved requests for development in the coastal high hazard areas will be denied.</p>	<p>Discouraging development activities within the CHHA by denying all taxpayer subsidized, unimproved capital improvement projects within the CHHA.</p>	<p>Prior to the adoption of this objective, the County had no formal statement that minimizes or denies building activities within the CHHA</p>	<p>Collier County has contradicted this objective by approving land use amendments and rezonings within the CHHA over the past seven years?</p>	<p>This objective should remain in the updated Comprehensive Plan</p>

Objective	Target	Conditions when Plan was adopted	Current Conditions	Comments
<p>OBJECTIVE 12.3, Policy 12.3.6, <i>Conservation and Coastal Management Element</i>: Structures in the coastal high-hazard area which have suffered damage to pilings, foundations, or load-bearing walls on one or more occasion shall be required to rebuild landward of their current location or to modify the structure to mitigate any recurrence of repeated damage.</p>	<p>Relocate repeated loss structures landward of the CHHA</p>	<p>Prior to the adoption of this objective and policy, the County had no formal statement condemning and relocating real property landward of the CHHA</p>	<p>The County is currently enrolled in the voluntary National Flood Insurance Program and provides a quid pro quo approach to floodplain management, which makes federally backed flood insurance available to residents and business owners in communities that agree to adopt and adhere to sound flood mitigation measures guiding development in its floodplains.</p>	<p>This objective should remain in the updated Comprehensive Plan</p>

### C. Data Assessment

Despite the stringent set of objectives and enabling polices set forth in the CCGMP addressing issue of building activities within the CHHA, the County has been careful not to infringe on the private property rights of residents who are “vested” in the CHHA. This can be validated with a land use density comparison of the years 1995 and 2001 using the Florida Land Use Cover and Forms Classification System (FLUCS) consisting of both commercial and residential development (see Table 3.3-1, below and Maps 3.3-1 and 3.3-2. As seen in the table, over the past six years there has been an overall land use density increase of 36% within the CHHA.

**Table 3.3-1 Residential Development Within the Coastal High Hazard ARea**

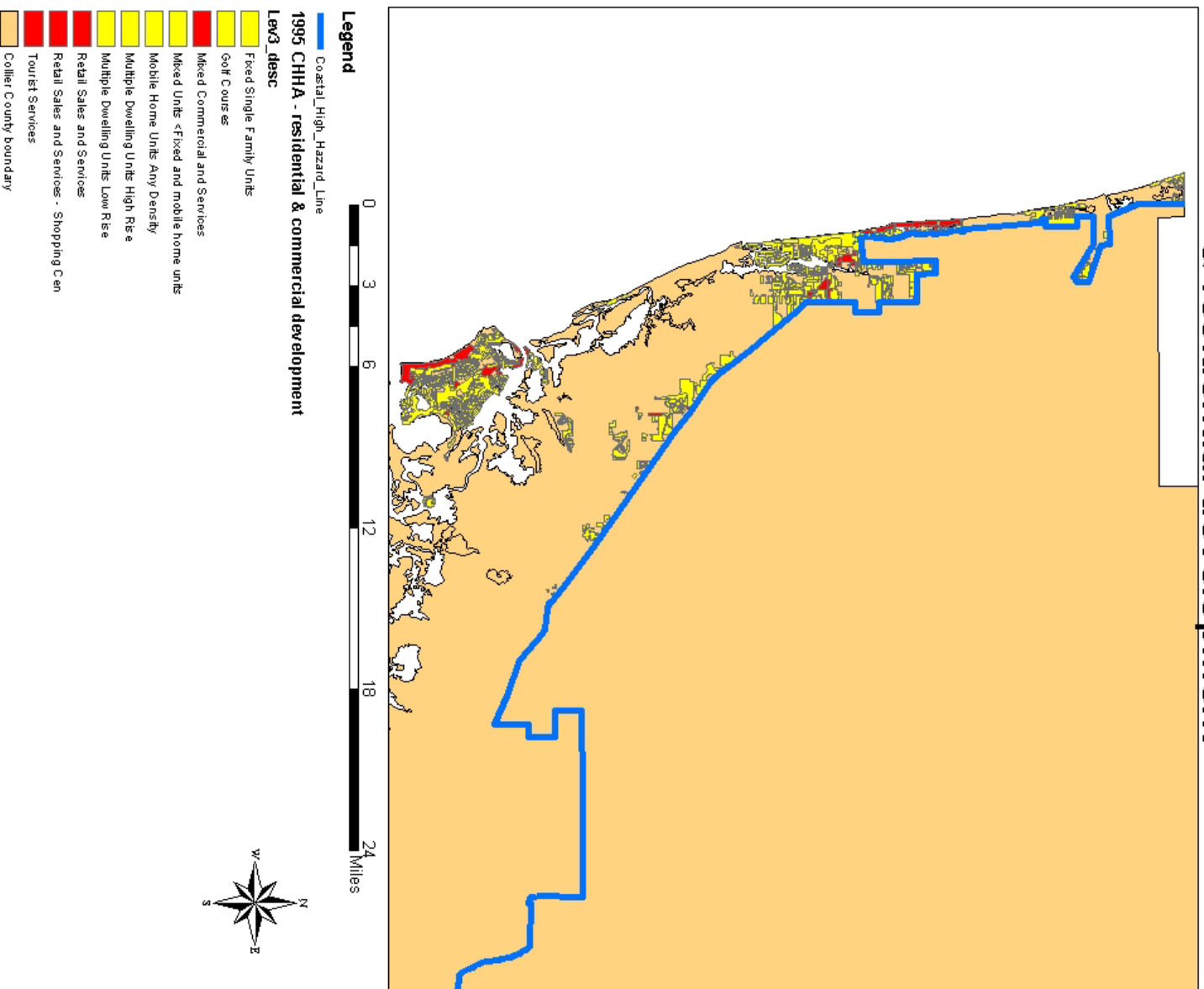
FLUCS_LEV1	FLUCS_LEV2	FLUCS_LEV3	Lev1_desc	Lev2_desc	Lev3_desc	1995 Acreage	2001 Acreage	Percent Difference
100	130	131	URBAN AND BUILT-UP	Residential High Density	Fixed Single Family Units	17.4	1,156.4	98.50
100	110	111	URBAN AND BUILT-UP	Residential Low Density	Fixed Single Family Units	160.6	517.3	68.95
100	120	121	URBAN AND BUILT-UP	Residential Medium Density	Fixed Single Family Units	7,584.4	11,957.0	36.57
100	180	182	URBAN AND BUILT-UP	Recreational	Golf Courses	1,431.4	2,533.1	43.49
100	140	147	URBAN AND BUILT-UP	Commercial and Services	Mixed Commercial and Services	642.6	785.8	18.22
100	130	135	URBAN AND BUILT-UP	Residential High Density	Mixed Units <Fixed and mobile home units	30.1	29.8	-1.08
100	100	1009	URBAN AND BUILT-UP	Mobile Home Community	Mobile Home Units Any Density	894.2	1,174.9	23.89
100	130	134	URBAN AND BUILT-UP	Residential High Density	Multiple Dwelling Units High Rise	827.9	695.8	-19.00
100	130	133	URBAN AND BUILT-UP	Residential High Density	Multiple Dwelling Units Low Rise	706.1	782.1	9.72
100	140	141	URBAN AND BUILT-UP	Commercial and Services	Retail Sales and Services	31.8	75.9	58.14
100	140	1411	URBAN AND BUILT-UP	Commercial and Services	Retail Sales and Services - Shopping Center	76.9	162.4	52.64
100	140	145	URBAN AND BUILT-UP	Commercial and Services	Tourist Services	1,076.4	1,085.6	0.84
<b>Total</b>						<b>13,480.0</b>	<b>20,956.0</b>	<b>35.67</b>

Source: Based upon the Florida Land Use Cover and Forms Classification System (Florida Department of Transportation Publication)

Maps 3.3-1 and 3.3-2 spatially display the differences in a graphic format:

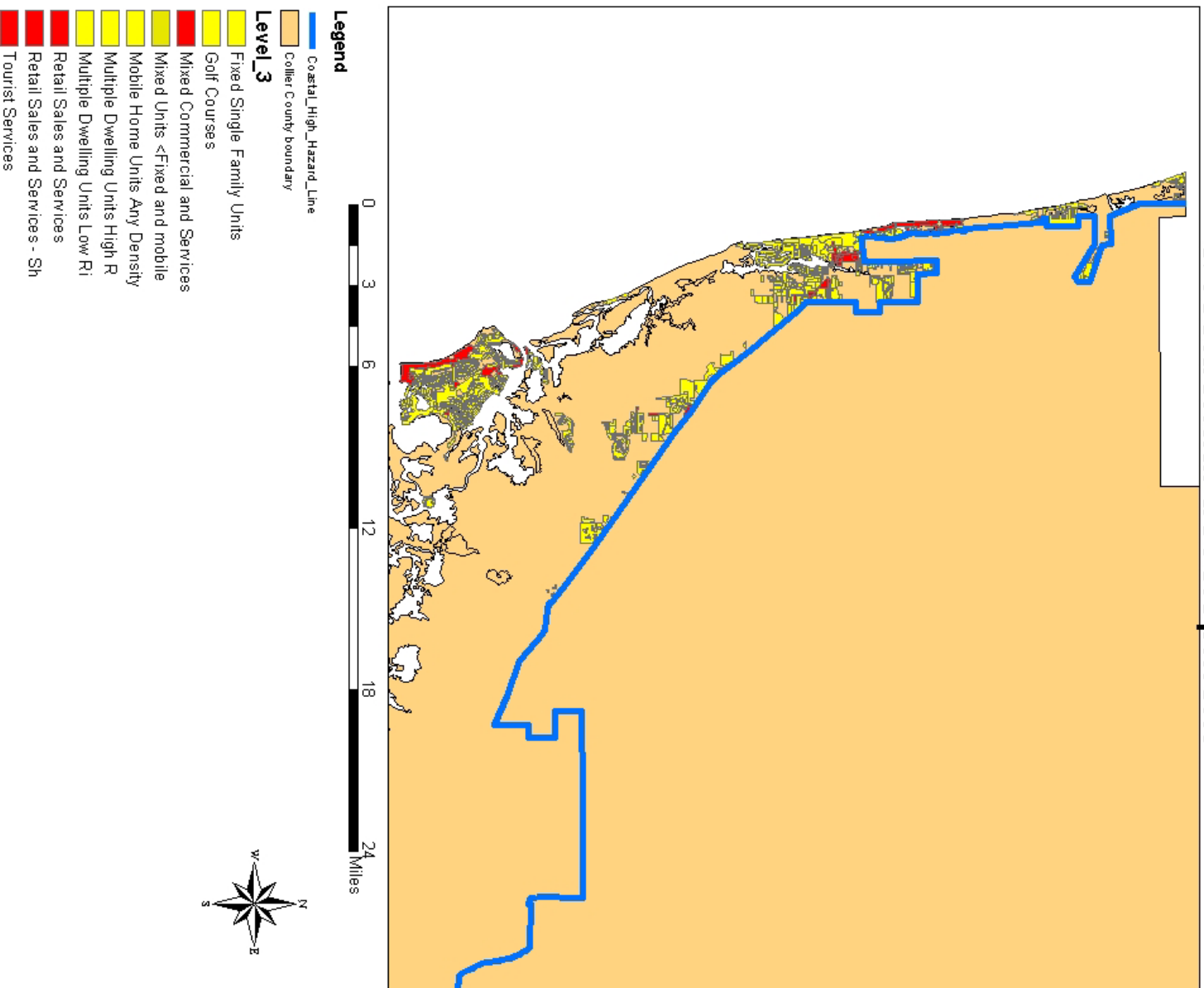
Map 3.3-1

## 1995 Land Uses: commercial & residential development



Map 3.3-2

## 2001 Land Uses: commercial & residential development



When staff examined the County's most recent Annual Planned Unit Development (PUD) Report, the number of approved PUDs from 1995 to 2002 demonstrated that the property rights of landowners within the CHHA was not being impaired. Table 3.3-2 shows all of the PUDs within the CHHA that were approved during this period.

**Table 3.3-2 Planned Unit Development Report From 1995-2003: Listing All Development Within the Coast High Hazard Area**

PETITION	ORD_NUM	DATE_APPD	STR	TOT_SIZE_ACRES	COM_DEV_SQ	IND_DEV_SQ	RES_SF_DEV	RES_MF_DEV	ACLF_HOS_DEV	GROSS_DENS	BUILTOUT
R-90-10	95-45	Aug-95	22,23-48-25	18.7	45,324.0	0.0	0.0	0.0	0.0	0.0	
R-88-14	95-53	Nov-95	12-51-26	56.1	0.0	0.0	0.0	0.0	0.0	6.8	
PUD-95-5	95-68	Nov-95	1-50-25	11.4	5,800.0	0.0	0.0	0.0	0.0	3.5	
PUD-83-2(2)	96-13	Mar-96	13-50-25	126.0	0.0	0.0	0.0	0.0	0.0	0.0	Y
PUD-96-2	96-12	Mar-96	32-48-25	9.0	0.0	0.0	0.0	210.0	0.0	23.4	
PUD-89-5(1)	96-81	Dec-96	26-48-25	18.5	67,348.0	0.0	0.0	0.0	0.0	0.0	
PUD-85-8(5)	96-79	Dec-96	3,4-51-26	298.0	0.0	0.0	131.0	283.0	0.0	1.6	
PUD-97-2	97-14	Mar-97	12-50-25	4.6	0.0	0.0	0.0	0.0	0.0	0.0	Y
PUD-97-7	97-28	Jun-97	36-49-25	9.3	30,000.0	58,480.0	0.0	0.0	0.0	0.0	
PUD-92-6(1)	97-70	Nov-97	15-51-26	101.3	0.0	0.0	0.0	0.0	0.0	4.0	
PUD-84-23(1)	98-4	Jan-98	24-50-25	41.0	0.0	0.0	0.0	0.0	0.0	0.0	Y
PUD-88-10(2)	98-67	Aug-98	26-48-25	12.8	35,000.0	0.0	0.0	0.0	96.0	0.0	
PUD-98-03	98-85	Oct-98	29,30,31,32-50-26&5-51-26	1,559.0	0.0	0.0	0.0	0.0	0.0	0.5	
PUD-98-9	99-3	Jan-99	8-48-25	40.9	0.0	0.0	30.0	0.0	0.0	2.3	
PUD 98-19	99-25	Apr-99	20-51-27	242.4	0.0	0.0	5.0	0.0	0.0	1.2	
R-84-11	99-37	May-99	32-50-26	30.7	0.0	0.0	0.0	0.0	0.0	1.0	
PUD-99-17	99-68	Sep-99	22,23,27-50-25	124.0	0.0	0.0	0.0	0.0	0.0	0.0	
R-73-24	99-74	Oct-99	22,27-49-25	218.6	0.0	0.0	2.0	300.0	0.0	1.5	
R-80-10	99-83	Nov-99	33-50-26	25.4	0.0	0.0	0.0	0.0	0.0	4.5	
R-89-26	99-97	Dec-99	21-48-25	267.4	0.0	0.0	0.0	0.0	0.0	3.0	
R-89-26	99-97	Dec-99	21-48-25	267.4	0.0	0.0	0.0	0.0	0.0	3.0	
R-89-26	99-97	Dec-99	21-48-25	267.4	0.0	0.0	0.0	0.0	0.0	3.0	
R-90-17	00-02	Jan-00	21-48-25	14.9	0.0	0.0	0.0	0.0	0.0	0.0	Y
PUD-99-4	00-05	Jan-00	4,9-52-28	50.0	0.0	0.0	0.0	0.0	0.0	5.0	
PUD-99-29	00-21	Apr-00	11,14,15-51-26	101.0	0.0	0.0	0.0	0.0	0.0	3.0	



**Table 3.3-2 Planned Unit Development Report From 1995-2003: Listing All Development Within the Coast High Hazard Area**

PETITION	ORD_NUM	DATE_APPD	STR	TOT_SIZE_ACRES	COM_DEV_SQ	IND_DEV_SQ	RES_SF_DEV	RES_MF_DEV	ACLF_HOS_DEV	GROSS_DENS	BUILTOUT
PUD-91-5(1)	00-35	May-00	12-51-26	20.2	0.0	0.0	0.0	0.0	0.0	5.0	
PUD-91-5(1)	00-35	May-00	12-51-26	20.2	0.0	0.0	0.0	0.0	0.0	5.0	
PUD-00-01	00-40	Jun-00	26-48-25	3.8	0.0	0.0	0.0	0.0	0.0	0.0	
PUD-89-6(4)	00-46	Jun-00	24,25-49-25	1,601.0	0.0	0.0	300.0	64.0	0.0	0.8	
PUD-97-18(1)	00-74	Nov-00	20-48-25	88.5	0.0	0.0	0.0	292.0	0.0	3.4	
PUD-99-28	00-88	Dec-00	8,16,17,20-48-25	532.0	0.0	0.0	0.0	0.0	0.0	1.1	
PUD-84-7(6)	00-84	Dec-00	51,52-26&51-27	4,439.3	14,000.0	0.0	349.0	619.0	0.0	2.1	
PUD-97-13(1)	01-22	May-01	26-48-25	6.9	0.0	0.0	0.0	0.0	0.0	0.0	
PUD-96-1(2)	00-23	May-01	26-48-25	5.0	14,000.0	0.0	0.0	0.0	0.0	0.0	
PUD-2001-	01-30	Jun-01	18,19-52-27	6.6	0.0	0.0	0.0	0.0	0.0	7.7	
R-77-19	01-35	Jun-01	5,8-48-25	333.0	0.0	0.0	200.0	390.0	0.0	2.3	
R-90-21	01-65	Nov-01	1-50-25	6.5	0.0	0.0	0.0	10.0	0.0	3.4	
PUD-00-19	02-02	Jan-02	11-50-25	13.0	0.0	0.0	0.0	0.0	0.0	12.0	
PUD-2001-	02-15	Mar-02	3-51-26	48.5	0.0	0.0	0.0	0.0	0.0	8.0	
PUD-2001-	02-47	Oct-02	10-51-26	40.9	0.0	0.0	0.0	0.0	0.0	0.0	
PUD-2002-	03-29	Jun-03	23-50-25	171.2	0.0	0.0	0.0	0.0	0.0	0.0	
PUD-2002-	03-29	Jun-03	23-50-25	171.2	0.0	0.0	0.0	0.0	0.0	0.0	
PUD-2003-	03-38	Jul-03	14-50-25	19.8	0.0	0.0	0.0	0.0	0.0	11.0	

In Figures 3.3-1 through Figure 3.3-4, the information from Table 3.3-2 has been further broken down into the following categories:

- Commercial Development (developed)
- Residential-Single Family (developed)
- Residential-Multi-Family (developed)
- Gross Acreage

Figure 3.3-1 Commercial Development

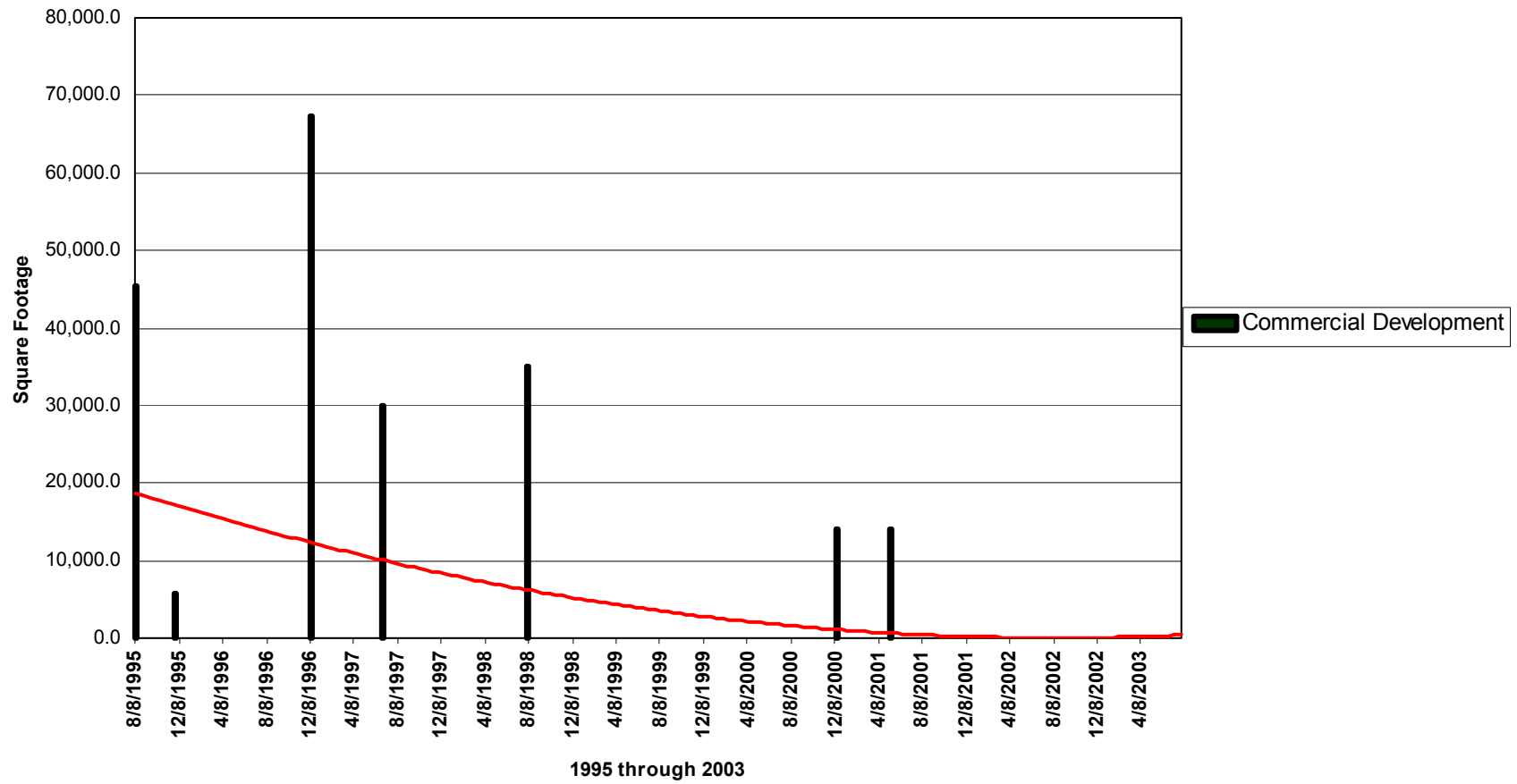


Figure 3.3-2 Residential - Single Family, developed

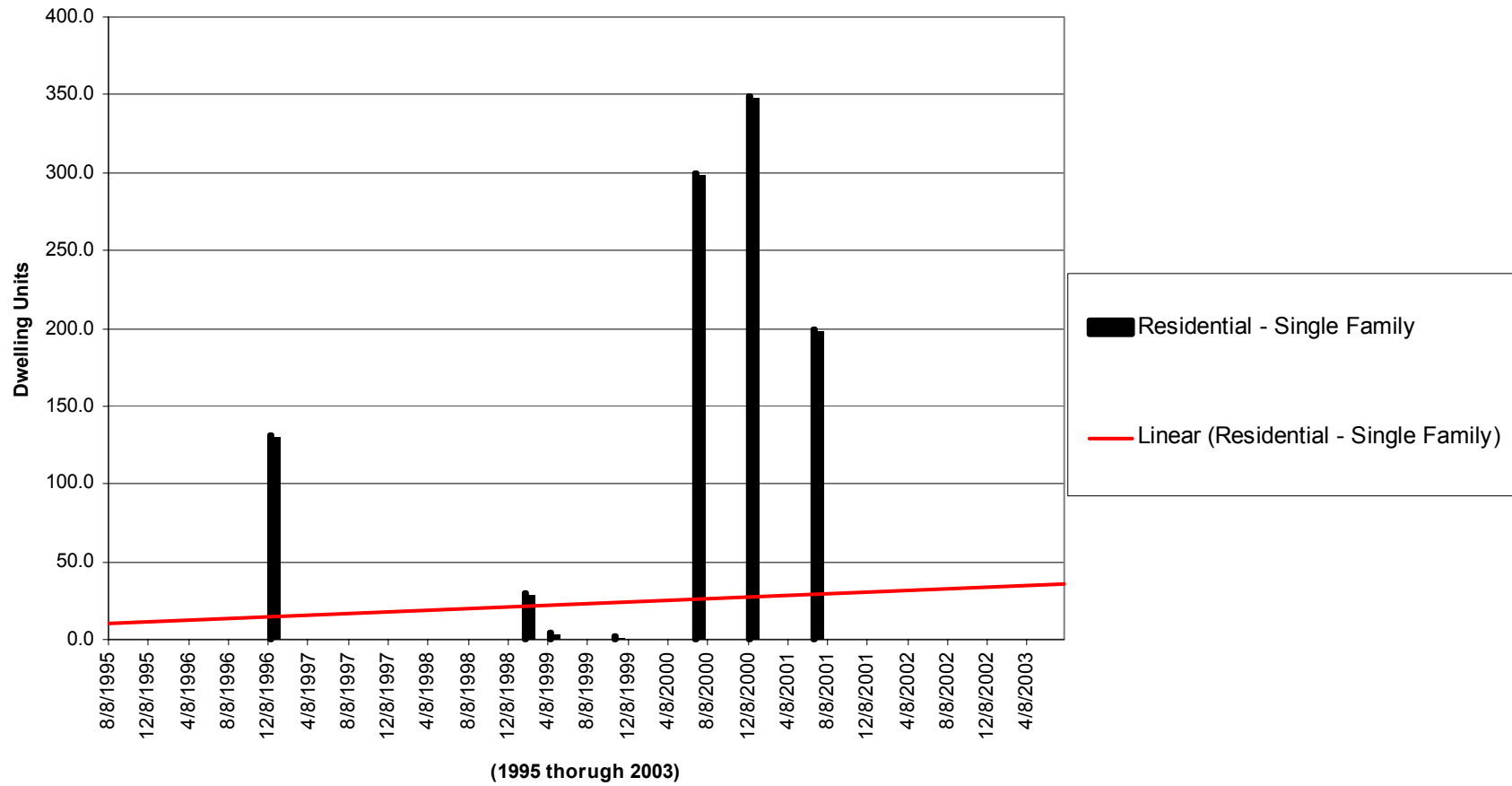
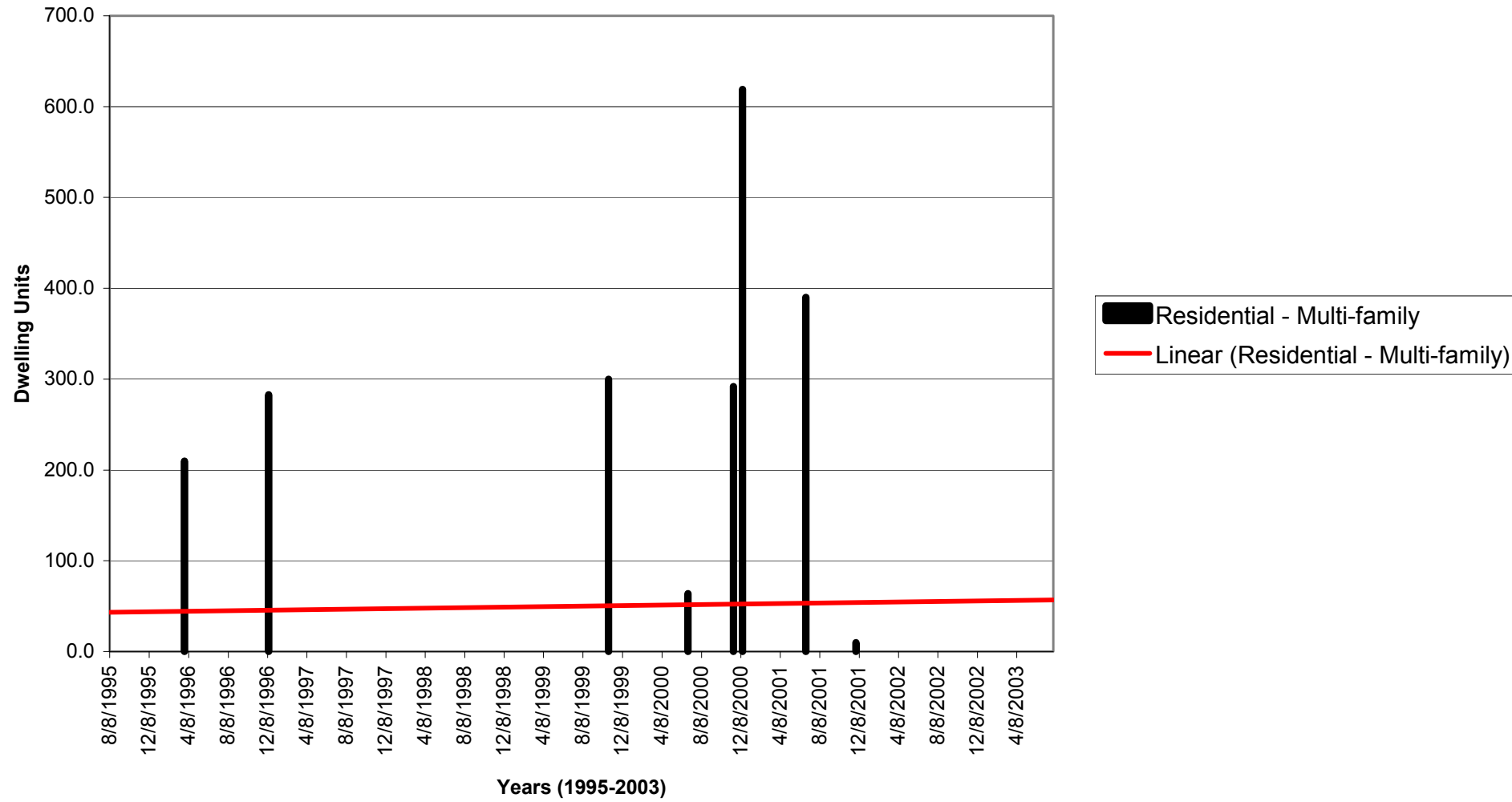


Figure 3.3-3 Residential - Multifamily





#### **D. Objective Achievement Analysis**

Because Collier County hasn't experienced a catastrophic countywide disaster since Hurricane Donna in 1960, Collier County cannot directly answer the Special Topic #3 as it relates to Section 163.3191(2), Florida Statute:

The EAR will evaluate whether any past reduction in land use density within the Coastal High-Hazard Area impairs the property rights of current residents when redevelopment occurs, including, but not limited to, redevelopment following a natural disaster.

However, it has been demonstrated that over the past seven years, the County has been able to balance public safety issues while respecting private property rights.

#### **E. Conclusion**

Collier County has evaluated the level of building activity within the CHHA over the past seven years and has determined that the property rights of existing landowners and residents within the CHHA have not been impaired.

#### **F. Recommendations:**

Overall, many of the enabling policies regarding the density rating system applicable in the CHHA and as set forth in the Future Land Use Element and Bayshore/Gateway Redevelopment Area Zoning Overlay will have to be revised to reflect a cap at 4 DU units per acre. A base density of 3 DU per acre that can be increased to 4 DU per acre as one unit is affordable housing. Also, the Conservation and Coastal Management Element will have to be revised to reflect the change in the density rating system applicable to the CHHA.

