

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: November 16, 2011  
Bulk Item: Yes  No

Division: Growth Management  
Department: Planning & Environmental Resources  
Staff Contact Person/Phone #: Christine Hurley – 289-2500  
Joseph Haberman - 289-2532

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**AGENDA ITEM WORDING:** Discussion of potential options to revise the protest procedure in LDR Section 102-158(d)(6) and direction on how to proceed to update the protest procedure, if deemed necessary.

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**ITEM BACKGROUND:** Currently, there is a protest procedure within the Monroe County Land Development Code; however, it is only applicable to Future Land Use Map (FLUM) amendments and Land Use District Map (LUDM) amendments. The protest procedure may be utilized by either a percentage of the property owners of the land in which the map is to be amended or by a percentage of the property owners of land within 300 feet of the affected land. This current procedure does not affect text amendments that are not related to a specific property.

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**PREVIOUS RELEVANT BOCC ACTION:** On the August 17, 2011, Board of County Commission (BOCC) meeting, the BOCC held a public hearing to consider an ordinance amending Sections 102-19, 102-20 and 102-158 of the Monroe County Land Development Code, to require a vote of at least four members of the BOCC for certain Comprehensive Plan, Future Land Use Map, Land Development Code and Land Use District (Zoning) Map amendments, and requiring the Planning Commission to take action on certain items by a vote of three members. Specifically, the ordinance addressed:

- Amendments to the Comprehensive Plan or a proposed amendment as modified (not including the Capital Improvement Element, Capital Improvement Plan or amendments reflecting changes in state requirements pursuant to F.S. 163.3191 required by the evaluation and appraisal of comprehensive plan);
- Amendments to the Future Land Use Map (FLUM), including those for sub-area policies or mapped sub-areas;
- Amendments to the Land Development Code that affect any permitted use, height requirement, land use intensity or residential density within a particular land use district; and
- Amendments to Land Use District (Zoning) map, including sub-area and overlay districts.

The proposed ordinance was not adopted by the BOCC. As an alternative, during the meeting, the BOCC discussed the option of amending the protest procedure.

In 2009, the Board of County Commissioners adopted Ordinance 008-2009 to amend the Section 102 158, concerning amendments to the Land Development Regulations, Land Use District Map and Future Land Use Map providing a method of protest for land use district map and future land use map changes.

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**CONTRACT/AGREEMENT CHANGES:** N/A

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**STAFF RECOMMENDATIONS:** Staff recommends maintaining the existing procedure for Future Land Use Map amendments and Land Use District Map amendments and increasing the period of time for property owners to obtain signatures in order to file a protest. If the BOCC would like to provide a protest procedure for amendments that are not specific to a certain geographic area, options have been provided in the attached documentation.

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**TOTAL COST:** \_\_\_\_\_ **INDIRECT COST:** \_\_\_\_\_ **BUDGETED:** Yes  No

**DIFFERENTIAL OF LOCAL PREFERENCE:** \_\_\_\_\_

**COST TO COUNTY:** \_\_\_\_\_ **SOURCE OF FUNDS:** \_\_\_\_\_

**REVENUE PRODUCING:** Yes  No  **AMOUNT PER MONTH** \_\_\_\_\_ **Year** \_\_\_\_\_

**APPROVED BY:** County Atty \_\_\_\_\_ OMB/Purchasing \_\_\_\_\_ Risk Management \_\_\_\_\_

**DOCUMENTATION:** Included  Not Required

**DISPOSITION:** \_\_\_\_\_ **AGENDA ITEM #** \_\_\_\_\_



## MEMORANDUM

### MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

*We strive to be caring, professional and fair*

To: Monroe County Board of County Commissioners

Through: Christine Hurley, AICP, Director of Growth Management

From: Joseph Haberman, AICP, Planning & Development Review Manager

Date: November 1, 2011

Subject: *Protest Procedure Options*

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**Meeting: November 16, 2011**

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1  
2 The purpose of this memorandum is to provide the Board of County Commissioners (BOCC)  
3 with options relating to how the County may proceed in updating the existing protest procedure,  
4 if determined necessary.

5  
6 *Existing protest procedure:*  
7

8 Currently, there is a protest procedure within the Monroe County Land Development Code;  
9 however, it is only applicable to Future Land Use Map (FLUM) amendments and Land Use  
10 District Map (LUDM) amendments. The protest procedure may be utilized by either a  
11 percentage of the property owners of the land in which the map is to be amended or by a  
12 percentage of the property owners of land within 300 feet of the affected land.

13  
14 Pursuant to MCC Sec. 102-158(d)(6):

15  
16 *Protest procedure.*  
17

- 18 a. A written protest concerning an application for an amendment to the Land Use District  
19 Map [LUDM] or a FLUM amendment at the transmittal stage may be filed before the  
20 BOCC hearing by the owners of no less than 20 percent of the area of the land to be  
21 affected. Protests concerning a FLUM amendment may be made only at the transmittal  
22 hearing. In the event of a written protest against such amendment by owners of 20  
23 percent of the property to be rezoned or proposed for a new future land use designation,  
24 where the signatures and protest are found to be true and accurate, the amendment shall  
25 not become effective except by the favorable vote of four members of the [BOCC].  
26 Rounding up of decimals and percentages shall not be permitted.  
27
- 28 b. A written protest concerning an application for an amendment to the [LUDM] or a  
29 FLUM amendment at the transmittal stage may be filed by 10 percent of the owners of  
30 land within 300 feet of the affected property. Protests concerning a FLUM amendment

1 may be made only at the transmittal hearing. In the event of a written protest of 10  
2 percent of the owners within 300 feet of the affected property for a [FLUM] transmittal  
3 or a [LUDM] designation, the amendment shall not become effective except by the  
4 favorable vote of four members of the [BOCC]. In calculating whether a sufficient  
5 number of protests have been received to trigger the requirement for a supermajority  
6 vote, the number of protests must meet or exceed the 10 percent threshold without  
7 resorting to rounding up.  
8

- 9 c. Such protests must be on a form approved by the planning director and made available by  
10 the county, with a statement from each individual owner, under penalties of perjury, with  
11 the name, address, parcel real estate number, home address and telephone number of the  
12 owner. In the event of ownership by multiple parties, only one owner is required to file a  
13 protest. Condominium, cooperatives, or statutory time share program owners may file  
14 protests through their associations and shall be counted as one owner and one property in  
15 the number of owners to calculate any percentage.  
16
- 17 d. The originals of the written protests must be filed with the clerk of the board no later than  
18 the fifth working day before the day of the first county commission meeting at which the  
19 public hearing on the FLUM transmittal or [LUDM] amendment will be heard. Upon  
20 receipt of the protest(s), the clerk shall furnish a copy to the county attorney, the county  
21 administrator, and to the applicant requesting the amendment. No further protests will be  
22 accepted by the clerk or the board.  
23
- 24 e. The board shall not vote until the signatures, ownership, and protests have been verified  
25 by the growth management division and county attorney using information from the  
26 property appraiser and the official records of Monroe County. Every reasonable means  
27 shall be used by county staff to resolve the validity of the protest by the time of the public  
28 hearing, but if this cannot be accomplished the board shall continue the item. If the time  
29 requirements of the Florida Statutes for transmittals cannot be met, the proposed FLUM  
30 amendment shall be held over until the next date for transmittal.  
31
- 32 f. The area used as right-of-way for U.S. 1 shall not be included in any calculations for  
33 number of owners or percentage of ownership, but shall be included in the distance  
34 calculation from the affected property.  
35
- 36 g. Protests shall not be considered unless received as prescribed above. Any owner may  
37 withdraw a protest up until the conclusion of the public hearing at which the item will be  
38 heard.  
39

40 Options to revise the existing protest procedure:  
41

42 Staff has researched protest procedures and determined that the following options may be  
43 appropriate to revise the existing protest procedure:  
44

- 45 1) Revise the existing protest procedure by:  
46  
47 a. Expanding the buffer around the subject property (currently 300 feet); and/or

- 1 b. Decrease the percentage of surrounding property owners which are required to  
2 sign onto the protest (currently 10 percent); and/or  
3 c. Any combination of expanding the buffer and/or decreasing the percentage of  
4 owners; and/or  
5 d. Expanding the types of applications that may be protested (i.e. subarea  
6 policy/land development regulations that are specific to a certain geographical  
7 area); and/or  
8 e. Give the affected property owners a longer period to obtain signatures (currently  
9 approximately 30 days); and/or  
10 f. Eliminate existing protest procedure for option 2 (described below).  
11

12 Attached are two maps (Exhibit 1 and 2) depicted the difference between a 300-foot  
13 buffer around the Murray E. Nelson property and a 500-foot buffer.  
14

15 Note: This current procedure and the aforementioned potential modifications are not and  
16 would not be an effective measure to protest text amendments that are not related to a  
17 specific property.  
18

- 19 2) Establish a petition process with a certain amount of signatures for applications requiring  
20 BOCC approval (amendments to the LUDM, FLUM, Comprehensive Plan or Land  
21 Development Code).  
22
- 23 a. The County would need to determine who is eligible for signing the petition:  
24 • Monroe County property owners (County-wide)  
25 • Monroe County residents/registered voters (County-wide)  
26 • Unincorporated Monroe County property owners in the same planning  
27 subarea (Upper Keys, Middle Keys or Lower Keys (including Big Pine/No  
28 Name Keys))  
29 • Unincorporated Monroe County residents/registered voters in the same  
30 planning subarea (Upper Keys, Middle Keys or Lower Keys (including Big  
31 Pine/No Name Keys))  
32

33 Planning Subareas utilized for the Monroe County 2010-2030 Technical  
34 Document could be utilized for this petition process.  
35

36 Subareas:

- 37 • *Lower Keys Planning Area:* West boundary of Stock Island to the eastern  
38 limit of the Seven Mile Bridge. The Marquesas Keys, located 30 miles west  
39 of Key West and the Dry Tortuga Keys, located 70 miles west of Key West  
40 are also included.  
41 • *Middle Keys Planning Area:* Eastern limit of the City of Marathon to the  
42 western limit of the Village of Islamorada, including Lignumvitae Key and  
43 Shell Key. It excludes the incorporated City of Layton, the City of  
44 Marathon, the City of Key Colony Beach and the Village of Islamorada.  
45 • *Upper Keys Planning Area:* Western limit of the Village of Islamorada to  
46 the northern County line.

1  
2 Attached are three maps (Exhibit 3) depicting the subareas.

3 The County would need to determine how to measure how many signatures are  
4 needed for the petition to take effect. Additionally, verification of signatures may  
5 be difficult.  
6

- 7 b. Under the petition process, another option would be to base eligibility to a  
8 majority of landowners owning 50 percent or more of the total assessed value of  
9 the land within the affected area.  
10

11 Existing statutory procedures:  
12

13 Additionally, staff is providing information regarding existing statutory provisions which  
14 provide affected persons to challenge land development regulations, comprehensive plan  
15 amendments, map amendments and development orders.  
16

17 *Comprehensive Plan text, FLUM and subarea policy amendments:*  
18

19 **Section 163.3184, F.S. Process for adoption of comprehensive plan or plan amendment.—**

20 (1) DEFINITIONS.—As used in this section, the term:

- 21 (a) “Affected person” includes the affected local government; persons owning property,  
22 residing, or owning or operating a business within the boundaries of the local government  
23 whose plan is the subject of the review; owners of real property abutting real property that  
24 is the subject of a proposed change to a future land use map; and adjoining local  
25 governments that can demonstrate that the plan or plan amendment will produce substantial  
26 impacts on the increased need for publicly funded infrastructure or substantial impacts on  
27 areas designated for protection or special treatment within their jurisdiction. Each person,  
28 other than an adjoining local government, in order to qualify under this definition, shall  
29 also have submitted oral or written comments, recommendations, or objections to the local  
30 government during the period of time beginning with the transmittal hearing for the plan or  
31 plan amendment and ending with the adoption of the plan or plan amendment.  
32

33 **Section 163.3184, F.S. Process for adoption of comprehensive plan or plan amendment.—**

34 (5) ADMINISTRATIVE CHALLENGES TO PLANS AND PLAN AMENDMENTS.—

- 35 (a) **Any affected person as defined in paragraph (1)(a) may file a petition with the**  
36 **Division of Administrative Hearings pursuant to ss. 120.569 and 120.57, with a copy**  
37 **served on the affected local government, to request a formal hearing to challenge**  
38 **whether the plan or plan amendments are in compliance as defined in paragraph**  
39 **(1)(b).** This petition must be filed with the division within 30 days after the local  
40 government adopts the amendment. The state land planning agency may not intervene in  
41 a proceeding initiated by an affected person.  
42

43 *Land Development Regulations:*  
44

45 **380.05 Areas of critical state concern.—**

1 (6) Once the state land planning agency determines whether the land development  
2 regulations or local comprehensive plan or amendment submitted by a local government is  
3 consistent with the principles for guiding the development of the area specified under the  
4 rule designating the area, the state land planning agency shall approve or reject the land  
5 development regulations or portions thereof by final order, and shall determine compliance  
6 of the plan or amendment, or portions thereof, pursuant to s. 163.3184. The state land  
7 planning agency shall publish its final order to approve or reject land development  
8 regulations, which shall constitute final agency action, in the Florida Administrative  
9 Weekly. **If the final order is challenged pursuant to s. 120.57, the state planning  
10 agency has the burden of proving the validity of the final order.** Such approval or  
11 rejection of the land development regulations shall be no later than 60 days after  
12 submission of the land development regulations by the local government. **No proposed  
13 land development regulation within an area of critical state concern becomes effective  
14 under this subsection until the state land planning agency issues its final order or, if  
15 the final order is challenged, until the challenge to the order is resolved pursuant to  
16 chapter 120.**

17  
18 *Development Orders, which include amendments to the LUDM (re-zonings):*

19  
20 **163.3215 Standing to enforce local comprehensive plans through development orders.—**

21 **(1) Subsections (3) and (4) provide the exclusive methods for an aggrieved or adversely**  
22 **affected party to appeal and challenge the consistency of a development order with a**  
23 **comprehensive plan adopted under this part.** The local government that issues the  
24 development order is to be named as a respondent in all proceedings under this section.  
25 Subsection (3) shall not apply to development orders for which a local government has  
26 established a process consistent with the requirements of subsection (4). A local  
27 government may decide which types of development orders will proceed under subsection  
28 (4). Subsection (3) shall apply to all other development orders that are not subject to  
29 subsection (4).

30 **(2) As used in this section, the term “aggrieved or adversely affected party” means any**  
31 **person or local government that will suffer an adverse effect to an interest protected or**  
32 **furthered by the local government comprehensive plan, including interests related to health**  
33 **and safety, police and fire protection service systems, densities or intensities of**  
34 **development, transportation facilities, health care facilities, equipment or services, and**  
35 **environmental or natural resources. The alleged adverse interest may be shared in common**  
36 **with other members of the community at large but must exceed in degree the general**  
37 **interest in community good shared by all persons. The term includes the owner, developer,**  
38 **or applicant for a development order.**

39 **(3) Any aggrieved or adversely affected party may maintain a de novo action for**  
40 **declaratory, injunctive, or other relief against any local government to challenge any**  
41 **decision of such local government granting or denying an application for, or to**  
42 **prevent such local government from taking any action on, a development order, as**  
43 **defined in s. 163.3164, which materially alters the use or density or intensity of use on**  
44 **a particular piece of property which is not consistent with the comprehensive plan**  
45 **adopted under this part. The de novo action must be filed no later than 30 days following**

1 rendition of a development order or other written decision, or when all local administrative  
2 appeals, if any, are exhausted, whichever occurs later.

3 **(4) If a local government elects to adopt or has adopted an ordinance establishing, at a**  
4 **minimum, the requirements listed in this subsection, the sole method by which an**  
5 **aggrieved and adversely affected party may challenge any decision of local**  
6 **government granting or denying an application for a development order, as defined in**  
7 **s. 163.3164, which materially alters the use or density or intensity of use on a**  
8 **particular piece of property, on the basis that it is not consistent with the**  
9 **comprehensive plan adopted under this part, is by an appeal filed by a petition for**  
10 **writ of certiorari filed in circuit court no later than 30 days following rendition of a**  
11 **development order or other written decision of the local government, or when all local**  
12 **administrative appeals, if any, are exhausted, whichever occurs later.** An action for  
13 injunctive or other relief may be joined with the petition for certiorari. Principles of judicial  
14 or administrative res judicata and collateral estoppel apply to these proceedings.  
15

16 **163.3164 Community Planning Act; definitions.—As used in this act:**

17 (15) “Development order” means any order granting, denying, or granting with conditions an  
18 application for a development permit.

19 (16) “Development permit” includes any building permit, zoning permit, subdivision  
20 approval, rezoning, certification, special exception, variance, or any other official action of  
21 local government having the effect of permitting the development of land.  
22

23 **120.57 Additional procedures for particular cases.—**

24 (1) **ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING**  
25 **DISPUTED ISSUES OF MATERIAL FACT.—**

26 (a) Except as provided in ss. 120.80 and 120.81, an administrative law judge assigned by  
27 the division shall conduct all hearings under this subsection, except for hearings before  
28 agency heads or a member thereof. If the administrative law judge assigned to a hearing  
29 becomes unavailable, the division shall assign another administrative law judge who shall  
30 use any existing record and receive any additional evidence or argument, if any, which  
31 the new administrative law judge finds necessary.

32 (b) All parties shall have an opportunity to respond, to present evidence and argument on  
33 all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit  
34 proposed findings of facts and orders, to file exceptions to the presiding officer’s  
35 recommended order, and to be represented by counsel or other qualified representative.  
36 When appropriate, the general public may be given an opportunity to present oral or  
37 written communications. If the agency proposes to consider such material, then all parties  
38 shall be given an opportunity to cross-examine or challenge or rebut the material.

39 (c) Hearsay evidence may be used for the purpose of supplementing or explaining other  
40 evidence, but it shall not be sufficient in itself to support a finding unless it would be  
41 admissible over objection in civil actions.  
42

43 **120.569 Decisions which affect substantial interests.—**

44 (1) The provisions of this section apply in all proceedings in which the substantial interests  
45 of a party are determined by an agency, unless the parties are proceeding under s. 120.573  
46 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding

1 involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in  
2 all other cases. If a disputed issue of material fact arises during a proceeding under s.  
3 120.57(2), then, unless waived by all parties, the proceeding under s. 120.57(2) shall be  
4 terminated and a proceeding under s. 120.57(1) shall be conducted. Parties shall be notified  
5 of any order, including a final order. Unless waived, a copy of the order shall be delivered  
6 or mailed to each party or the party's attorney of record at the address of record. Each  
7 notice shall inform the recipient of any administrative hearing or judicial review that is  
8 available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must  
9 be followed to obtain the hearing or judicial review; and shall state the time limits which  
10 apply.

11  
12  
13 Summary & Recommendation:

14  
15 There is a protest procedure within the Monroe County Land Development Code for Future Land  
16 Use Map (FLUM) amendments and Land Use District Map (LUDM) amendments. The protest  
17 procedure may be utilized by either a percentage of the property owners of the land in which the  
18 map is to be amended or by a percentage of the property owners of land within 300 feet of the  
19 affected land. This current procedure does not affect text amendments that are not related to a  
20 specific property.

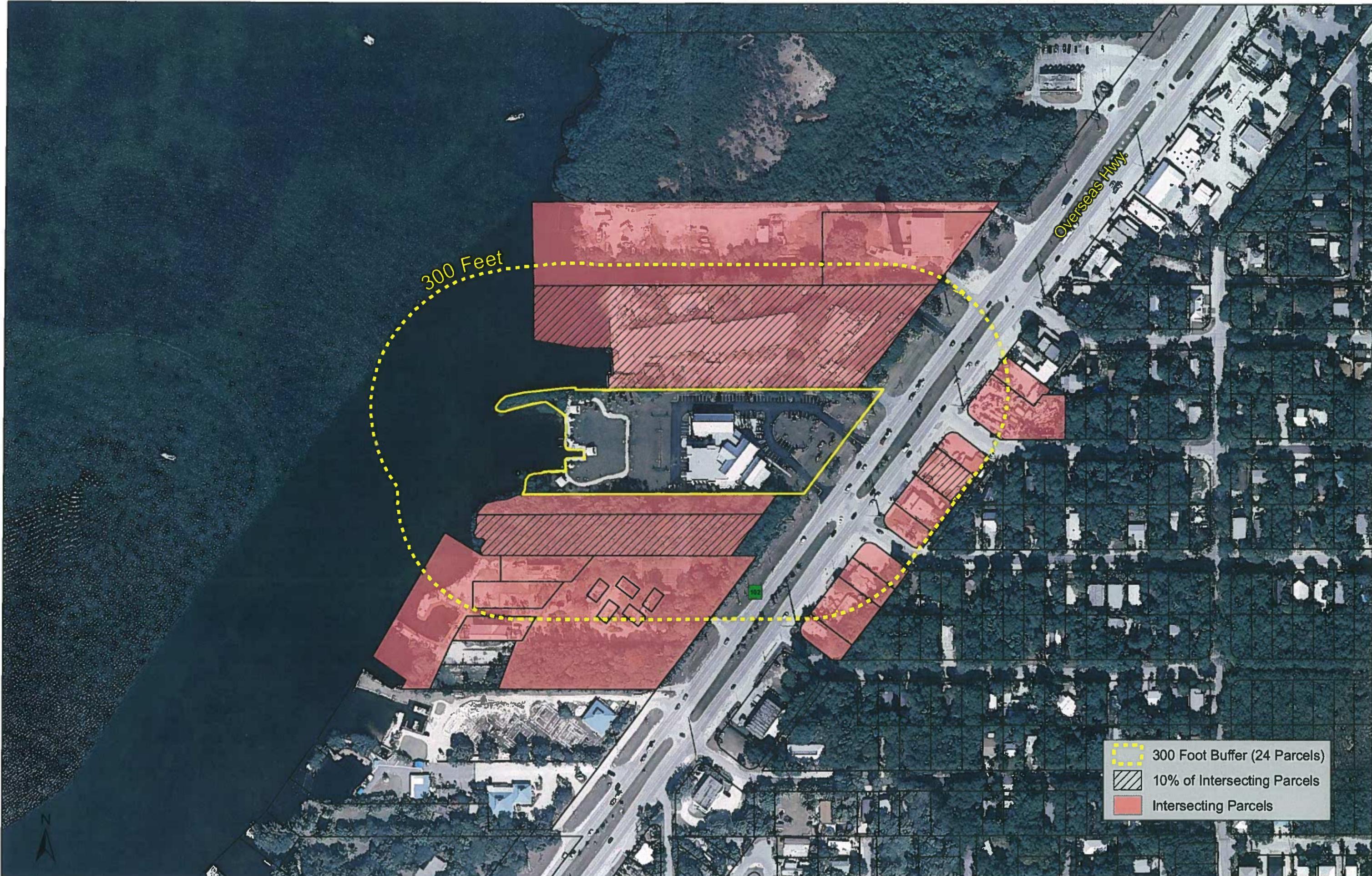
21  
22 The current protest procedure within the Monroe County Land Development Code was amended  
23 in 2009 by Ordinance 008-2009 (attached as Exhibit 4). To date, the procedure has not been  
24 utilized.

25  
26 Based upon citizen comment, staff recommends maintaining the existing procedure for Future  
27 Land Use Map amendments and Land Use District Map amendments and increasing the period  
28 of time for property owners to obtain signatures in order to file a protest.

29  
30 Please note, that Section 102-158 of the Monroe County Land Development Code specifies that  
31 that actions by the BOCC to amend the text of the Land Development Regulations, LUDM and  
32 the transmittal of FLUM amendments, in the absence of the current protest procedure, requires a  
33 vote of three members, not a simple majority of a quorum.

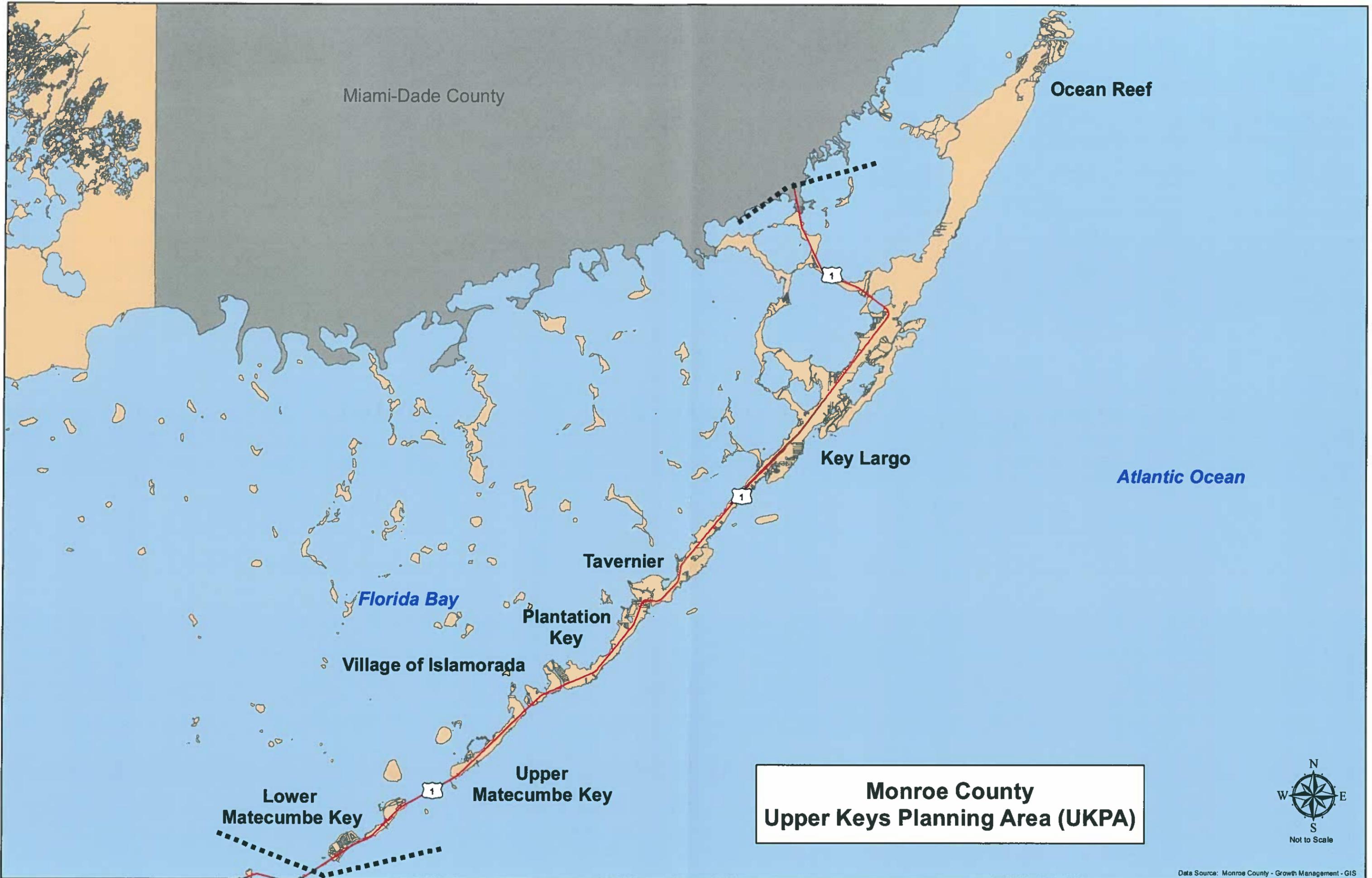
34  
35 ***Sec. 102-158(7)***

36 *Majority of board. Except as provided in paragraph (d)(6) above, the board of county*  
37 *commissioners may adopt the proposed amendment or the proposed amendment as modified*  
38 *by not less than a majority of its total membership.*





-  500 Foot Buffer (61 Parcels)
-  5% of Intersecting Parcels
-  Intersecting Parcels



Miami-Dade County

Ocean Reef

1

Key Largo

Atlantic Ocean

Tavernier

Florida Bay

Plantation Key

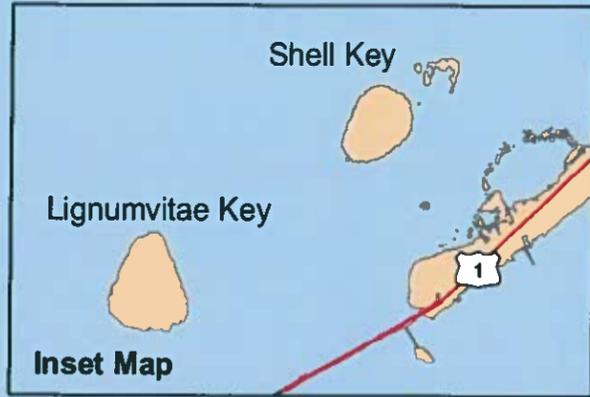
Village of Islamorada

Upper Matecumbe Key

Lower Matecumbe Key

**Monroe County  
Upper Keys Planning Area (UKPA)**





Florida Bay

Long Key

Conch Key

1

Grassy Key

Duck Key

Marathon

Straits of Florida

Boot Key

1

**Monroe County  
Middle Keys Planning Area (MKPA)**

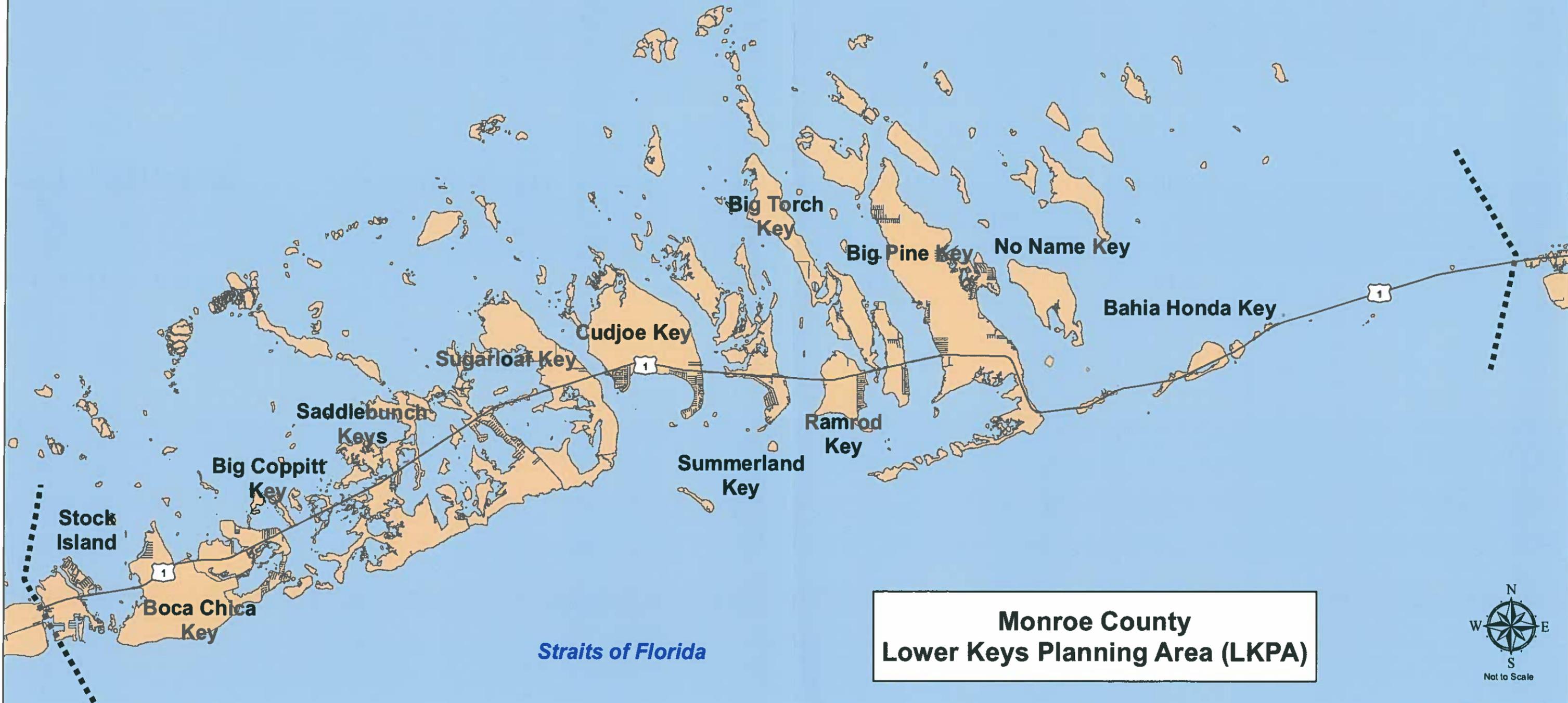


**Dry Tortuga Keys**

**Marquesas Keys**

Inset Map

*Gulf of Mexico*



*Straits of Florida*

**Monroe County  
Lower Keys Planning Area (LKPA)**



Data Source: Monroe County - Growth Management - GIS

ORDINANCE NO. 008 -2009

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING SECTION 102-158 OF THE CODE OF ORDINANCES CONCERNING AMENDMENTS TO THE LAND DEVELOPMENT REGULATIONS, LAND USE DISTRICT MAP AND FUTURE LAND USE MAP; PROVIDING A METHOD OF PROTEST FOR LAND USE DISTRICT MAP AND FUTURE LAND USE MAP CHANGES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS, PROVIDING FOR CODIFICATION AND FOR AN EFFECTIVE DATE.

WHEREAS, there has been a difference of opinion in the interpretation of the protest procedure of Section 102-158 of the Monroe County Code concerning redesignations of the land use district map; and

WHEREAS, this matter of interpretation has been the source of litigation which did not result in necessary clarification; and

WHEREAS, no formal process is established in the Monroe County Code for submitting a protest to the Board of County Commissioners; and

WHEREAS, changes to the Land Use District Map (zoning) occur after the changes to the Future Land Use Map (FLUM), and thus there should be a method to protest the FLUM amendment prior to a change being made to the Land Use District Map; and

WHEREAS, the Planning Commission held a public hearing on February 11, 2009 and approved this amendment:

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

Section 1. Section 102-158 of the Monroe County Code is amended as follows:

1       **Sec.102-158. Amendments to Land Development Code and to the Future Land Use**  
2       **Map.**

3       (a) *Purpose:* The purpose of this article is to provide a means for changing the text of this  
4       chapter, which also includes changes to the land use district map. It is also intended to add to  
5       the statutory procedures and requirements for changing the Future Land Use Map (FLUM) at  
6       the transmittal stage. It is not intended to relieve particular hardships, nor to confer special  
7       privileges or rights on any person, nor to permit an adverse change in community character,  
8       analyzed in volume I of the plan., but only to make necessary adjustments in light of  
9       changed conditions or incorrect assumptions or determinations as determined by the findings  
10      of the board of county commissioners. In determining whether to grant a requested  
11      amendment, the board of county commissioners shall consider, in addition to the factors set  
12      forth in this article, the consistency of the proposed amendment with the provisions and  
13      intent of the plan.

14      (b) *Authority:* The board of county commissioners may amend the text of this chapter upon  
15      the compliance with the provisions of this article. Amendments may be proposed by the  
16      board of county commissioners, the planning commission, the director of planning, or the  
17      owner or other person having a contractual interest in property to be affected by a proposed  
18      amendment or FLUM change at the transmittal stage. The director of planning shall have the  
19      responsibility to establish the format as approved by the board of county commissioners by  
20      which applications can be submitted and shall have the authority to screen those  
21      amendments, processing only those which are presented on a complete application.  
22      Those deemed insufficient shall be returned within 30 days to the applicant for correction

1 and re-submittal. FLUM changes shall be processed prior to any application being made to  
2 amend the land use district map.

3 (c) *Timing:* Applications for map and text amendments to this chapter shall be accepted at  
4 any time. The planning director shall review and process the map and text amendment  
5 applications as they are received and pass them on to the development review committee and  
6 the planning commission for recommendation and final approval by the board of county  
7 commissioners.

8 (d) *Procedures:*

9 (1) *Proposals by Board of County Commissioners, Planning Commission or*  
10 *Director of Planning:* Proposals for amendments by the board of county commissioners, the  
11 planning commission or the director of planning shall be transmitted to the planning  
12 department and the development review committee for review and comment. Staff shall  
13 make a recommendation to the planning commission.

14 (2) *Proposals by Affected Landowners:* Any landowner or other person having a  
15 contractual interest in property desiring to petition the board of county commissioners for an  
16 amendment to the land use district map or FLUM shall be required to file an application with  
17 the director of planning accompanied by a nonrefundable application fee as established from  
18 time to time by the board of county commissioners to defray the actual cost of processing the  
19 application. The director of planning shall transmit the proposed amendment to the planning  
20 department and the development review committee for review and comment. Staff shall  
21 make a recommendation to the planning commission.

1           (3) *Public Hearing(s)*: The planning commission and the board of county  
2 commissioners shall each hold at least one (1) public hearing on a proposed amendment to  
3 the text of this chapter or to the land use district map or FLUM at the transmittal stage.

4           a. *Advertised and Mailed Notice*: Advertised notice of the public hearings for a proposed  
5 amendment to the text of the land development code, the land use district map, and the  
6 transmittal of the FLUM change shall be provided as required by section 110-5 of this Code.

7           In addition, notice of changes to the land use district map and FLUM shall be mailed to  
8 owners within three hundred (300) feet of the affected property fifteen days prior to the  
9 required hearing before the planning commission and thirty days before the required hearing  
10 before the board of county commissioners for the land use district map amendment and the  
11 FLUM transmittal hearing.

12           b. *Posting of notice*: Posting of notice shall be made in accordance with the requirements  
13 of section 110-5.

14           c. *Other notice*: Notice of all public hearings shall be posted on the Monroe County  
15 Website as soon as is practical. Failure to post notice on the Monroe County Website shall  
16 not constitute grounds for the cancellation of any public hearing nor shall it constitute  
17 grounds for the cancellation of any action taken by a board at such a meeting.

18           (4) *Action by Planning Commission*: The planning commission shall review the  
19 application, the reports and recommendations of the department of planning, the comments  
20 of the development review committee, and the testimony given at the public hearing, and  
21 shall submit its recommendations and findings to the board of county commissioners.

22           (5) *Action by Board of County Commissioners Following Public Hearing(s)*:

1 a. The board of county commissioners shall consider the reports and recommendation of the  
2 Planning Commission, planning staff, and the testimony given at the public hearings.

3  
4 b. The board of county commissioners may consider the adoption of an ordinance enacting  
5 the proposed change based on one (1) or more of the following factors:

6 (i) Changed projections (e.g., regarding public service needs) from those on which the  
7 text or boundary was based;

8 (ii) Changed assumptions (e.g., regarding demographic trends);

9 (iii) Data errors, including errors in mapping, vegetative types and natural features  
10 described in volume 1 of the plan;

11 (iv) New issues;

12 (v) Recognition of a need for additional detail or comprehensiveness; or

13 (vi) Data updates;

14 (vii) For FLUM changes, the principles for guiding development as defined in the Florida  
15 statutes relating to changes to the comprehensive plan.

16 c. In no event shall an amendment be approved which will result in an adverse community  
17 change to the planning area in which the proposed development is located or to any area in  
18 accordance with a Livable Communities Master Plan pursuant to findings of the Board of  
19 County Commissioners.

20  
21 *(6) Protest Procedure*

22 a. A written protest concerning an application for an amendment to the land use district map  
23 or a FLUM amendment at the transmittal stage may be filed before the BOCC hearing by the

1 owners of no less than twenty (20) percent of the area of the land to be affected. Protests  
2 concerning a FLUM amendment may be made only at the transmittal hearing. In the event of  
3 a written protest against such amendment by owners of twenty (20) percent of the property  
4 to be rezoned or proposed for a new future land use designation, where the signatures and  
5 protest are found to be true and accurate, the amendment shall not become effective except  
6 by the favorable vote of four (4) members of the board of county commissioners. Rounding  
7 up of decimals and percentages shall not be permitted.

8 b. A written protest concerning an application for an amendment to the land used district  
9 map or a FLUM amendment at the transmittal stage may be filed by ten (10) percent of the  
10 owners of land within three hundred feet of the affected property. Protests concerning a  
11 FLUM amendment may be made only at the transmittal hearing. In the event of a written  
12 protest of ten (10) per cent of the owners within 300 feet of the affected property for a future  
13 land use map transmittal or a land use map designation, the amendment shall not become  
14 effective except by the favorable vote of four (4) members of the board of county  
15 commissioners. In calculating whether a sufficient number of protests have been received to  
16 trigger the requirement for a supermajority vote, the number of protests must meet or exceed  
17 the ten (10) percent threshold without resorting to rounding up.

18 c. Such protests must be on a form **approved by the planning director and made** available  
19 by the county, with a statement from each individual owner, under penalties of perjury, with  
20 the name, address, parcel real estate number, home address and telephone number of the  
21 owner. In the event of ownership by multiple parties, only one owner is required to file a  
22 protest. Condominium, cooperatives, or statutory time share program owners may file

1 protests through their associations and shall be counted as one owner and one property in the  
2 number of owners to calculate any percentage.

3 d. The originals of the written protests must be filed with the Clerk of the board no later than  
4 the fifth working day before the day of the first County Commission meeting at which the  
5 public hearing on the FLUM transmittal or map amendment will be heard. Upon receipt of  
6 the protest(s), the Clerk shall furnish a copy to the County Attorney, the County  
7 Administrator, and to the applicant requesting the amendment. No further protests will be  
8 accepted by the Clerk or the board.

9 e. The board shall not vote until the signatures, ownership, and protests have been verified  
10 by the Growth Management Division and County Attorney using information from the  
11 Property Appraiser and the official records of Monroe County. Every reasonable means  
12 shall be used by county staff to resolve the validity of the protest by the time of the public  
13 hearing, but if this cannot be accomplished the board shall continue the item. If the time  
14 requirements of the Florida Statutes for transmittals cannot be met, the proposed FLUM  
15 amendment shall be held over until the next date for transmittal.

16 f. The area used as right of way for U.S. 1 shall not be included in any calculations for  
17 number of owners or percentage of ownership, but shall be included in the distance  
18 calculation from the affected property.

19 g. Protests shall not be considered unless received as prescribed above. Any owner may  
20 withdraw a protest up until the conclusion of the public hearing at which the item will be  
21 heard.

1           (7) *Majority of Board.* Except as provided in paragraph (d)(6) above, the board of  
2 county commissioners may adopt the proposed amendment or the proposed amendment as  
3 modified by not less than a majority of its total membership.

4           (e) *Typographical or Drafting Errors:* Amendments to the text to correct typographical or  
5 drafting errors may be adopted by the board of county commissioners without posted notice  
6 or public hearing at any regular meeting. As long as the county is within an area of critical  
7 state concern, notice of such amendments shall be transmitted to the Florida Department of  
8 Community Affairs within thirty (30) days.

9  
10           **Section 2. Severability.**

11           If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall  
12 be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not  
13 affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof  
14 shall be confined to the section, paragraph, subdivision, clause, sentence, or provision  
15 immediately involved in the controversy in which such judgment or decree shall be rendered.

16  
17           **Section 3. Conflicting Provisions.**

18           In the case of direct conflict between any provision of this ordinance and a portion or  
19 provision of any appropriate federal, state, or County law, rule code or regulation, the more  
20 restrictive shall apply.

21  
22  
23           **Section 4. Transmittal.**

1 This ordinance shall be transmitted by the Planning and Environmental Resources  
 2 Department to the Florida Department of Community Affairs to determine the consistency of  
 3 this ordinance with the Florida Statutes and as required by F.S. 380.05(6) and (11).

4  
 5 **Section 5. Filing.**

6 This ordinance shall be filed in the Office of the Secretary of the State of Florida but shall  
 7 not become effective until a notice is issued by the Department of Community Affairs or  
 8 Administration Commission approving the ordinance.

9 **Section 6. Codification.** This ordinance shall be transmitted to Municipal Code Corporation  
 10 for inclusion in the Monroe County Code.

11 **Section 7. Effective Date.** This ordinance shall become effective as provided by law and  
 12 stated above.

13 PASSED AND ADOPTED by the Board of County Commissioners of Monroe County,  
 14 Florida at a regular meeting held on the 18th of March 2009.

15	Mayor George Neugent	<u>No</u>
16	Mayor Pro Tem Sylvia J. Murphy	<u>No</u>
17	Commissioner Kim Wigington	<u>Yes</u>
18	Commissioner Heather Carruthers	<u>Yes</u>
19	Commissioner Mario Di Gennaro	<u>Yes</u>

FILED FOR RECORD  
 2009 APR -2 PM 12:39  
 DANNY L. KOLHAGE  
 CLERK CIR. CT.  
 MONROE COUNTY, FL



20 Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS  
 OF MONROE COUNTY, FLORIDA

21 By [Signature]

22 By [Signature]

23 Deputy Clerk

Mayor George Neugent

MONROE COUNTY ATTORNEY  
 APPROVED AS TO FORM  
[Signature]  
 Date: MARCH 14, 2009

1  
2 **ORDINANCE NO. \_\_\_\_\_-2009**  
3

4 **AN ORDINANCE BY THE MONROE COUNTY BOARD OF**  
5 **COUNTY COMMISSIONERS AMENDING SECTION 102-158**  
6 **OF THE CODE OF ORDINANCES CONCERNING**  
7 **AMENDMENTS TO THE LAND DEVELOPMENT**  
8 **REGULATIONS, LAND USE DISTRICT MAP AND FUTURE**  
9 **LAND USE MAP; PROVIDING A METHOD OF PROTEST**  
10 **FOR LAND USE DISTRICT MAP AND FUTURE LAND USE**  
11 **MAP CHANGES; PROVIDING FOR SEVERABILITY;**  
12 **PROVIDING FOR REPEAL OF INCONSISTENT**  
13 **PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE**  
14 **DEPARTMENT OF COMMUNITY AFFAIRS, PROVIDING**  
15 **FOR CODIFICATION AND FOR AN EFFECTIVE DATE.**  
16

---

17 **WHEREAS**, there has been a difference of opinion in the interpretation of the protest  
18 procedure of Section 102-158 of the Monroe County Code concerning redesignations of the  
19 land use district map; and

20 **WHEREAS**, this matter of interpretation has been the source of litigation which did not  
21 result in necessary clarification; and

22 **WHEREAS**, no formal process is established in the Monroe County Code for submitting a  
23 protest to the Board of County Commissioners; and

24 **WHEREAS**, changes to the Land Use District Map (zoning) occur after the changes to the  
25 Future Land Use Map (FLUM), and thus there should be a method to protest the FLUM  
26 amendment prior to a change being made to the Land Use District Map; and

27 **WHEREAS**, the Planning Commission held a public hearing on February 11, 2009 and  
28 approved this amendment:

29 **NOW, THEREFORE, BE IT ORDAINED BY THE MONROE COUNTY BOARD OF**  
30 **COUNTY COMMISSIONERS:**

31 **Section 1.** Section 102-158 of the Monroe County Code is amended as follows:



1 and re-submittal. ~~within twenty one (21) days.~~ FLUM changes shall be processed prior to  
2 any application being made to amend the land use district map.

3 (c) *Timing:* Applications for map and text amendments to this chapter shall be accepted at  
4 any time. The planning director shall review and process the map and text amendment  
5 applications as they are received and pass them on to the development review committee and  
6 the planning commission for recommendation and final approval by the board of county  
7 commissioners.

8 (d) *Procedures:*

9 (1) *Proposals by Board of County Commissioners, Planning Commission or*  
10 *Director of Planning:* Proposals for amendments by the board of county commissioners, the  
11 planning commission or the director of planning shall be transmitted to the planning  
12 department and the development review committee for review and comment.~~—and~~  
13 ~~recommendation to the planning commission.~~ Staff shall make a recommendation to the  
14 planning commission.

15 (2) *Proposals by Affected Landowners:* Any landowner or other person having a  
16 contractual interest in property desiring to petition the board of county commissioners for an  
17 amendment to the land use district map or FLUM shall be required to file an application with  
18 the director of planning accompanied by a nonrefundable application fee as established from  
19 time to time by the board of county commissioners to defray the actual cost of processing the  
20 application. The director of planning shall transmit the proposed amendment to the planning  
21 department and the development review committee for review and comment. ~~preparation of~~  
22 ~~a recommendation to the planning commission.~~ Staff shall make a recommendation to the  
23 planning commission.

1 (3) *Public Hearing(s)*: The planning commission and the board of county  
2 commissioners shall each hold at least one (1) public hearing on a proposed amendment to  
3 the text of this chapter or to the land use district map or FLUM at the transmittal stage.

4 a. *Advertised and Mailed Notice*: **Advertised** notice of the public hearings for a proposed  
5 amendment to the text of the land development code, this chapter which also includes  
6 changes to the land use district map, and the transmittal of the FLUM change shall be  
7 provided as required by section 110-5 of this Code. In addition, notice of changes to the  
8 land use district map and FLUM shall be mailed to owners within three hundred (300) feet of  
9 the affected property ~~thirty~~ fifteen days prior to the required hearing before the planning  
10 commission and thirty days before the required hearing before the board of county  
11 commissioners for the land use district map amendment and the FLUM transmittal hearing.

12 b. *Posting of notice*: Posting of notice shall be made in accordance with the requirements  
13 of section 110-5.

14 c. *Other notice*: Notice of all public hearings shall be posted on the Monroe County  
15 Website as soon as is practical. Failure to post notice on the Monroe County Website shall  
16 not constitute grounds for the cancellation of any public hearing nor shall it constitute  
17 grounds for the cancellation of any action taken by a board at such a meeting.

18 (4) *Action by Planning Commission*: The planning commission shall review the  
19 application, the reports and recommendations of the department of planning, the comments  
20 of the development review committee, and the testimony given at the public hearing, and  
21 shall submit its recommendations and findings to the board of county commissioners.

22 (5) *Action by Board of County Commissioners Following Public Hearing(s)*:

1 a. The board of county commissioners shall consider the reports and recommendation of the  
2 Planning Commission, planning staff, and the testimony given at the public hearings.

3  
4 b. The board of county commissioners may consider the adoption of an ordinance enacting  
5 the proposed change based on one (1) or more of the following factors:

6 (i) Changed projections (e.g., regarding public service needs) from those on which the  
7 text or boundary was based;

8 (ii) Changed assumptions (e.g., regarding demographic trends);

9 (iii) Data errors, including errors in mapping, vegetative types and natural features  
10 described in volume 1 of the plan;

11 (iv) New issues;

12 (v) Recognition of a need for additional detail or comprehensiveness; or

13 (vi) Data updates;

14 (vii) For FLUM changes, the principles for guiding development as defined in the Florida  
15 statutes relating to changes to the comprehensive plan.

16 ~~c. however, in~~ In no event shall an amendment be approved which will result in an adverse  
17 community change to the planning area in which the proposed development is located or to  
18 any area in accordance with a Liveable Communikeys Master Plan pursuant to findings of  
19 the Board of County Commissioners.

20 ~~e. In the event of a written protest against such amendment signed by the owners of twenty~~  
21 ~~(20) percent or more either of the area of the lots or land included in the proposed~~  
22 ~~amendment or of the lots or land immediately adjoining the property to be affected and~~

1 ~~extending two hundred (200) feet therefrom, such amendment shall not become effective~~  
2 ~~except by the favorable vote of four (4) members of the board of county commissioners.~~

3  
4 (6)Protest Procedure

5 a. A written protest concerning an application for an amendment to the land use district map  
6 or a FLUM amendment at the transmittal stage may be filed before the BOCC hearing by the  
7 owners of no less than twenty (20) percent of the area of the land to be affected. Protests  
8 concerning a FLUM amendment may be made only at the transmittal hearing. In the event of  
9 a written protest against such amendment by owners of twenty (20) percent of the property  
10 to be rezoned or proposed for a new future land use designation, where the signatures and  
11 protest are found to be true and accurate, the amendment shall not become effective except  
12 by the favorable vote of four (4) members of the board of county commissioners. Rounding  
13 up of decimals and percentages shall not be permitted.

14 b. A written protest concerning an application for an amendment to the land used district  
15 map or a FLUM amendment at the transmittal stage may be filed by ten (10) percent of the  
16 owners of land within three hundred feet of the affected property. Protests concerning a  
17 FLUM amendment may be made only at the transmittal hearing. In the event of a written  
18 protest of ten (10) per cent of the owners within 300 feet of the affected property for a future  
19 land use map transmittal or a land use map designation , the amendment shall not become  
20 effective except by the favorable vote of four (4) members of the board of county  
21 commissioners. In calculating whether a sufficient number of protests have been received to  
22 trigger the requirement for a supermajority vote, the number of protests must meet or exceed  
23 the ten (10) percent threshold without resorting to rounding up.

1 c. Such protests must be on a form approved by the planning director and made available  
2 by the county, with a statement from each individual owner, under penalties of perjury, with  
3 the name, address, parcel real estate number, home address and telephone number of the  
4 owner. In the event of ownership by multiple parties, only one owner is required to file a  
5 protest. Condominium, cooperatives, or statutory time share program owners may file  
6 protests through their associations and shall be counted as one owner and one property in the  
7 number of owners to calculate any percentage.

8 d. The originals of the written protests must be filed with the Clerk of the board no later than  
9 the fifth working day before the day of the first County Commission meeting at which the  
10 public hearing on the FLUM transmittal or map amendment will be heard. Upon receipt of  
11 the protest(s), the Clerk shall furnish a copy to the County Attorney, the County  
12 Administrator, and to the applicant requesting the amendment. No further protests will be  
13 accepted by the Clerk or the board.

14 e. The board shall not vote until the signatures, ownership, and protests have been verified  
15 by the Growth Management Division and County Attorney using information from the  
16 Property Appraiser and the official records of Monroe County. Every reasonable means  
17 shall be used by county staff to resolve the validity of the protest by the time of the public  
18 hearing, but if this cannot be accomplished the board shall continue the item. If the time  
19 requirements of the Florida Statutes for transmittals cannot be met, the proposed FLUM  
20 amendment shall be held over until the next date for transmittal.

21 f. The area used as right of way for U.S. 1 shall not be included in any calculations for  
22 number of owners or percentage of ownership, but shall be included in the distance  
23 calculation from the affected property.

1 g. Protests shall not be considered unless received as prescribed above. Any owner may  
2 withdraw a protest up until the conclusion of the public hearing at which the item will be  
3 heard.

4 d.(7) Majority of Board. Except as provided in paragraph (d)(6) above, the board of  
5 county commissioners may adopt the proposed amendment or the proposed amendment as  
6 modified by not less than a majority of its total membership.

7 (e) *Typographical or Drafting Errors:* Amendments to the text to correct typographical or  
8 drafting errors may be adopted by the board of county commissioners without posted notice  
9 or public hearing at any regular meeting. As long as the county is within an area of critical  
10 state concern, notice of such amendments shall be transmitted to the Florida Department of  
11 Community Affairs within thirty (30) days.

12 **Section 2. Severability.**

13 If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall  
14 be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not  
15 affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof  
16 shall be confined to the section, paragraph, subdivision, clause, sentence, or provision  
17 immediately involved in the controversy in which such judgment or decree shall be rendered.

18 **Section 3. Conflicting Provisions.**

19 In the case of direct conflict between any provision of this ordinance and a portion or  
20 provision of any appropriate federal, state, or County law, rule code or regulation, the more  
21 restrictive shall apply.

22 **Section 4. Transmittal.**

1 This ordinance shall be transmitted by the Planning and Environmental Resources  
2 Department to the Florida Department of Community Affairs to determine the consistency of  
3 this ordinance with the Florida Statutes and as required by F.S. 380.05(6) and (11).

4  
5 **Section 5. Filing.**

6 This ordinance shall be filed in the Office of the Secretary of the State of Florida but shall  
7 not become effective until a notice is issued by the Department of Community Affairs or  
8 Administration Commission approving the ordinance.

9 **Section 6. Codification.** This ordinance shall be transmitted to Municipal Code Corporation  
10 for inclusion in the Monroe County Code.

11 **Section 7. Effective Date.** This ordinance shall become effective as provided by law and  
12 stated above.

13 PASSED AND ADOPTED by the Board of County Commissioners of Monroe County,  
14 Florida at a regular meeting held on the \_\_\_\_\_ of \_\_\_\_\_ 2009.

15 Mayor George Neugent \_\_\_\_\_

16 Mayor Pro Tem Sylvia J. Murphy \_\_\_\_\_

17 Commissioner Kim Wigington \_\_\_\_\_

18 Commissioner Heather Carruthers \_\_\_\_\_

19 Commissioner Mario Di Gennaro \_\_\_\_\_

20 (SEAL)

BOARD OF COUNTY COMMISSIONERS

21 Attest: DANNY L. KOLHAGE, CLERK

OF MONROE COUNTY, FLORIDA

22 By \_\_\_\_\_

By \_\_\_\_\_

23 Deputy Clerk

Mayor George Neugent

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

FILED FOR RECORD  
2009 APR 28 PM 1:49  
DANNY L. KOLLAGE  
CLERK CH. CT.  
MONROE COUNTY, FL

In re: MONROE COUNTY LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY MONROE COUNTY  
ORDINANCE NO. 008-2009

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2008), approving a land development regulation adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and Monroe County is a local government within the Florida Keys Area.
2. On April 9, 2009, the Department received for review Monroe County Ordinance No. 008-2009 ("Ord. 008-2009"), adopted by Monroe County on March 18, 2009. Ord. No. 008-2009 amends Section 102-158, Monroe County Code, concerning Amendments to the Land Development Regulations, Land Use District Map and Future Land Use Map.
3. The purpose of Ord. No. 008-2009 is to provide a procedure for the public to provide written protests to land use district map changes and future land use map (FLUM) amendments at the transmittal hearing. The opportunity to provide public testimony, the submittal of evidence, and the right to challenge the FLUM amendment remains unchanged through the adoption hearing.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are enacted, amended, or rescinded by any local government in the Florida Keys Area of Critical State Concern. § 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2008).

5. Monroe County is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2008) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code.*

6. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2008). The regulations adopted by Ord. 008-2009 are land development regulations.

7. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the “Principles”) as set forth in § 380.0552(7), *Fla. Stat.* See *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff’d*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

8. Ord. 008-2009 promotes and furthers the following Principles:

- (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- (l) To protect the public health, safety and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique resource.

9. Ord. 008-2009 is consistent with the Principles for Guiding Development as a whole.

10. Ord. 008-2009 furthers Monroe County Comprehensive Plan Policy 1302.1.2 requiring the Monroe County Growth Management Division to establish written standards operating procedures to expedite all proposed amendments to the Comprehensive Plan and Land Development Regulations; furthers Comprehensive Plan Goal 1303 to increase the involvement of the citizens of the County and government related entities that operate within the County in the comprehensive planning and growth management process; and Objective 1303.1 requiring that Monroe County shall provide for and facilitate public participation and awareness in the

prehensive planning process.

WHEREFORE, IT IS ORDERED that Ord. 008-2009 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.

  
CHARLES GAUTHIER, AICP  
Director, Division of Community Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

**NOTICE OF ADMINISTRATIVE RIGHTS**

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE

DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

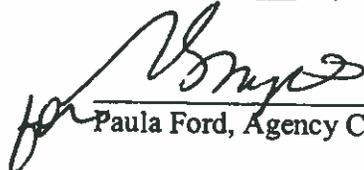
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

**YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.**

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 22<sup>nd</sup> day of April, 2009.

  
\_\_\_\_\_  
Paula Ford, Agency Clerk

**By U.S. Mail:**

**Honorable George Neugent  
Mayor of Monroe County  
25 Ships Way  
Big Pine Key, Florida 33043**

**Danny L. Kolhage  
Clerk to the Board of County Commissioners  
500 Whitehead Street  
Key West, Florida 33040**

**Andrew Trivette  
Growth Management Director  
2798 Overseas Highway, Suite 400  
Marathon, Florida 33050**

**By Hand Delivery or Interagency Mail:**

**Craig Diamond, Bureau of State Planning, DCA Tallahassee  
Rebecca Jetton, ACSC Administrator, DCA Tallahassee  
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