

AGENDA

PLANNING COMMISSION  
MONROE COUNTY  
May 30, 2012  
10:00 A.M.

MARATHON GOV'T CENTER  
2798 OVERSEAS HIGHWAY  
MARATHON, FL 33050

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

COMMISSION:

Denise Werling, Chairman  
Randy Wall, Vice Chairman  
Jeb Hale  
Elizabeth Lustberg  
William Wiatt

STAFF:

Townsley Schwab, Senior Director of Planning and Environmental Resources  
Susan Grimsley, Ass't County Attorney  
John Wolfe, Planning Commission Counsel  
Mayte Santamaria, Assistant Director of Planning and Environmental Resources  
Joe Haberman, Planning & Development Review Manager  
Mitch Harvey, Comp Plan Manager  
Steven Biel, Sr. Planner  
Rey Ortiz, Planner  
Kathy Grasser, Planner  
Barbara Bauman, Planner  
Timothy Finn, Planner  
Gail Creech, Planning Commission Coordinator

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

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SWEARING OF COUNTY STAFF

CHANGES TO THE AGENDA

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APPROVAL OF MINUTES  
MEETING

New Items:

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 130-82, INDUSTRIAL DISTRICT, 130-164, MAXIMUM NONRESIDENTIAL LAND USE INTENSITIES AND DISTRICT OPEN SPACE, AND 138-50, TYPE OF DEVELOPMENT NOT AFFECTED, TO ALLOW COMMERCIAL RETAIL/SERVICE FACILITY AND INSTITUTIONAL USES IN THE INDUSTRIAL LAND USE (ZONING) DISTRICT; TO ESTABLISH MAXIMUM FLOOR AREA RATIOS FOR COMMERCIAL RETAIL/SERVICE FACILITY AND INSTITUTIONAL USES IN THE INDUSTRIAL LAND USE (ZONING) DISTRICT; TO EXEMPT COMMERCIAL RETAIL/SERVICE FACILITY AND INSTITUTIONAL USES IN THE INDUSTRIAL LAND USE (ZONING) DISTRICT FROM THE NONRESIDENTIAL RATE OF GROWTH ORDINANCE (NROGO) PERMIT ALLOCATION SYSTEM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2011-094)

[2011-094 SR PC 05.30.12.PDF](#)

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 130-160, TRANSFERABLE DEVELOPMENT RIGHTS, TO REVISE THE LAND DEVELOPMENT REGULATIONS TO BE CONSISTENT WITH POLICY 101.13.4 OF THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2012-035)

[2012-035 SR PC 05.30.12.PDF](#)

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY CODE TO ADD SECTION 110-144, UNLAWFUL USES; ESTABLISHING PROCEDURES TO REVIEW AND ACT UPON BUILDING PERMIT APPLICATIONS FOR A SITE WITH A KNOWN UNLAWFUL USE THAT MAY BE PROSECUTED BY CODE COMPLIANCE, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2012-038)

[2012-038 SR PC 05.30.12.PDF](#)

4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTIONS 138-28, EVALUATION CRITERIA, AND 138-55, EVALUATION CRITERIA (NROGO); TO ADJUST THE ROGO AND NROGO POINT VALUES TO BE CONSISTENT WITH THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2012-033)

[2012-033 SR PC 05.30.12.PDF](#)

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTIONS 138-19, RATE OF GROWTH ORDINANCE (ROGO), 138-25, APPLICATION PROCEDURES FOR RESIDENTIAL ROGO, 138-47, NONRESIDENTIAL RATE OF GROWTH ORDINANCE, 138-52, APPLICATION PROCEDURES FOR NROGO; TO ESTABLISH A REQUIREMENT THAT A BUILDING PERMIT APPLICATION THAT IS SUBMITTED TO THE BUILDING DEPARTMENT BE REVISED FOLLOWING RECEIPT OF ITS REQUIRED ROGO/NROGO ALLOCATION(S) AND PRIOR TO BUILDING PERMIT ISSUANCE TO MEET ALL BUILDING CODES IN EFFECT AT THE TIME OF BUILDING PERMIT ISSUANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2012-037)

[2012-037 SR PC 05.30.12.PDF](#)

Pursuant to Section 286.0105 Florida Statutes and Monroe County Resolution 131-1992, if a person decides to appeal any decision of the Planning Commission, he or she shall provide a transcript of the hearing before the Planning Commission, prepared by a certified court reporter at the appellant's expense. For such purpose, he or she may need to ensure that a verbatim record of the

proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

ADA ASSISTANCE: If you are a person with a disability who needs special accommodations in order to participate in this proceeding, please contact the County Administrator's Office, by phoning (305) 292-4441, between the hours of 8:30 a.m. - 5:00 p.m., no later than five (5) calendar days prior to the scheduled meeting; if you are hearing or voice impaired, call "711".

BOARD DISCUSSION

-  
GROWTH MANAGEMENT COMMENTS

- Update from Mayte Santamaria on Keith & Schnars progress

-  
RESOLUTIONS FOR SIGNATURE

ADJOURNMENT





## MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

*We strive to be caring, professional and fair*

To: Monroe County Planning Commission  
Through: Townsley Schwab, Senior Director of Planning & Environmental Resources  
From: Joseph Haberman, AICP, Planning & Development Review Manager  
Date: May 18, 2012  
Subject: *AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 130-82, INDUSTRIAL DISTRICT, 130-164, MAXIMUM NONRESIDENTIAL LAND USE INTENSITIES AND DISTRICT OPEN SPACE, AND 138-50, TYPE OF DEVELOPMENT NOT AFFECTED, TO ALLOW COMMERCIAL RETAIL/SERVICE FACILITY AND INSTITUTIONAL USES IN THE INDUSTRIAL LAND USE (ZONING) DISTRICT; TO ESTABLISH MAXIMUM FLOOR AREA RATIOS FOR COMMERCIAL RETAIL/SERVICE FACILITY AND INSTITUTIONAL USES IN THE INDUSTRIAL LAND USE (ZONING) DISTRICT; TO EXEMPT COMMERCIAL RETAIL/SERVICE FACILITY AND INSTITUTIONAL USES IN THE INDUSTRIAL LAND USE (ZONING) DISTRICT FROM THE NONRESIDENTIAL RATE OF GROWTH ORDINANCE (NROGO) PERMIT ALLOCATION SYSTEM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.*

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**Meeting: May 30, 2012**

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1  
2 I REQUEST  
3

4 A private applicant, represented by Trepanier & Associates, Inc., is proposing amendments to the  
5 text of §130-82, §130-164 and §138-50 of the Monroe County Code (MCC).  
6

7 II RELEVANT PRIOR COUNTY ACTIONS:  
8

9 The regulations related to the permitted uses of the Industrial (I) district were initially codified  
10 into the Monroe County Code in 1986 (Ordinance #033-1986, with a revision by Ordinance  
11 #021-1989). The MCC section - §130-82 (formerly §9.5-249) - has been amended several times  
12 since 1986. In 1999, the regulations were amended to permit certain types of wireless  
13 communications facilities (Ordinance #028-1999). In 2000, the regulations were amended to  
14 permit certain types of parking areas, wastewater treatment facilities and wastewater treatment  
15 collection systems (Ordinance #047-2000). In 2001, the regulations were amended to permit

1 Land Use Overlays A, E and PF (Ordinance #027-2001). In 2001, the regulations were amended  
2 to permit certain types of wireless communications facilities (Ordinance #033-2001). In 2002,  
3 the regulations were amended to address commercial apartments (Ordinance #003-2002). In  
4 2006, the regulations were amended to address bufferyard requirements for marinas (Ordinance  
5 #037-2006).

6  
7 The regulations related to the permitted land use intensities of the Industrial (I) district were  
8 initially codified into the Monroe County Code in 1986 (Ordinance #033-1986). The MCC  
9 section - §130-164 (formerly §9.5-262) - has been amended since 1986. In 1995, the regulations  
10 were amended to provide a requirement for a commercial fishing special district (Ordinance  
11 #026-1995). In 2003, the regulations were amended to remove inconsistencies with the  
12 Comprehensive Plan and to include density bonuses for affordable housing and employee  
13 housing (Ordinance #041-2003).

14  
15 The regulations related to the Nonresidential Rate of Growth Ordinance (NROGO) were initially  
16 codified into the Monroe County Code in 2001 in accordance with Monroe County  
17 Comprehensive Plan Policy 101.3.1. The adoption is memorialized by Ordinance #032-2001.

### 18 19 III PROPOSAL

20  
21 The *applicant* is recommending the following changes (Deletions are ~~stricken-through~~ and  
22 additions are underlined. Text in blue represents staff's interpretation of changes requested by  
23 the applicant in a May 7, 2012 letter. Deletions are ~~double-stricken-through~~ and additions are  
24 double underlined. Text to remain the same is in black):

#### 25 26 **Sec. 130-82. Industrial district (I).**

27  
28 (a) The following uses are permitted as of right in the industrial district:

- 29 (1) Restaurants of less than 5,000 square feet of floor area;
- 30 (2) Office uses of less than 5,000 square feet of floor area;
- 31 (3) Manufacturing, assembly and storage of goods and materials;
- 32 (4) Commercial apartments involving less than six dwelling units;
- 33 (5) Commercial fishing;
- 34 (6) Institutional uses;
- 35 (7) Light industrial uses;
- 36 (8) Public buildings and uses;
- 37 (9) Accessory uses;
- 38 (10) Replacement of an existing antenna-supporting structure pursuant to section 146-5(2);
- 39 (11) Collocations on existing antenna-supporting structures, pursuant to section 146-5(3);
- 40 (12) Attached wireless communications facilities, as accessory uses, pursuant to section  
41 146-5(4);
- 42 (13) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-  
43 5(5);
- 44 (14) Satellite earth stations, as accessory uses, pursuant to section 146-5(6); and

1 (15) Required parking set forth in chapter 114, article III, serving a principal use or  
2 structure that is located in another land use district and is located on parcels of land that  
3 are contiguous to the principal use.  
4

5 (b) The following uses are permitted as minor conditional uses in the industrial district, subject  
6 to the standards and procedures set forth in chapter 110, article III:

7 (1) Office uses of 5,000 to 20,000 square feet in floor area, provided that access to U.S. 1 is  
8 by way of:

- 9 a. An existing curb cut;  
10 b. A signalized intersection; or  
11 c. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at  
12 least 400 feet;

13 ~~(2) Commercial retail /service facilities (including animal shelters and kennels) greater than~~  
14 ~~10,000 sq. ft. located on Tier 3 land that is designated and zoned Industrial within the~~  
15 ~~Lower Keys Planning Area excluding Big Pine Key Lower Keys ROGO Subarea as~~  
16 ~~defined in section 138-20, provided that access to U.S. 1 is by way of:~~

- 17 ~~a. An existing curb cut;~~  
18 ~~b. A signalized intersection; or~~  
19 ~~c. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at~~  
20 ~~least 400 feet;~~

21 ~~(3) Institutional Uses;~~

22 ~~(2)~~ ~~(4)~~ (3) Commercial apartments involving more than six dwelling units, provided that:

- 23 a. The hours of operation of the commercial uses proposed in conjunction with the  
24 apartments are compatible with residential uses; and  
25 b. Access to U.S. 1 is by way of:  
26 1. An existing curb cut;  
27 2. A signalized intersection; or  
28 3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by  
29 at least 400 feet;

30 ~~(3)~~ ~~(5)~~ (4) New antenna-supporting structures, pursuant to section 146-5(1); and

31 ~~(4)~~ ~~(6)~~ (5) Wastewater treatment facilities and wastewater treatment collection systems  
32 serving uses located in another land use district land, provided that:

- 33 a. The wastewater treatment facility and wastewater treatment collection systems are in  
34 compliance with all federal, state, and local requirements;  
35 b. The wastewater treatment facility, wastewater treatment collection systems, and  
36 accessory uses shall be screened by structures designed to:  
37 1. Be architecturally consistent with the character of the surrounding community;  
38 2. Minimize the impact of any outdoor storage, temporary or permanent; and  
39 3. A solid fence may be required upon determination by the planning director;  
40 c. Where a district boundary buffer is not required as set forth in chapter 114, article IV,  
41 a planting bed, eight feet in width, shall be established to buffer the facility, providing  
42 the following:  
43 1. One native canopy tree for every 25 linear feet of fence;  
44 2. One understory tree for every ten linear feet of fence;  
45 3. The required trees shall be evenly distributed throughout the planting bed; and

1 4. The planting bed shall be installed as set forth in chapter 114, article IV and  
 2 maintained in perpetuity.  
 3

4 (c) The following uses are permitted as major conditional uses in the industrial district, subject  
 5 to the standards and procedures set forth in chapter 110, article III:

6 (1) Marinas, provided that:

- 7 a. The parcel proposed for development has access to water at least four feet below  
 8 mean sea level at mean low tide;
- 9 b. The sale of goods and services is limited to fuel, food, boating, diving and sport  
 10 fishing products;
- 11 c. All outside storage areas are screened from adjacent uses by a solid fence, wall or  
 12 hedge at least six feet in height; and
- 13 d. Each nonwaterside perimeter setback of the parcel proposed for development must  
 14 have a class C bufferyard within a side yard setback of ten feet;

15 (2) Resource extraction, provided that:

- 16 a. The parcel proposed for excavation is a part of a lawfully operated, active quarry on  
 17 the effective date of the ordinance from which this chapter is derived;
- 18 b. Excavation equipment is screened from view by any established residential use; and
- 19 c. A reclamation plan is prepared and implemented in accordance with the requirements  
 20 of the plan;

21 (3) Heavy industrial uses, provided that:

- 22 a. All outside storage areas are screened from adjacent uses by a solid fence, wall or  
 23 hedge at least six feet in height; and
- 24 b. The parcel proposed for development is separated from any established residential  
 25 use by a class F bufferyard;

26 (4) Land use overlays A, E, PF, subject to the provisions of article IV of this chapter.  
 27

28 \* \* \* \* \*

29  
 30 **Sec. 130-164. Maximum nonresidential land use intensities and district open space.**

31 Maximum nonresidential land use intensities and district open space shall be in accordance with  
 32 the following table.  
 33

<i>Land Use District</i>	<i>Maximum Floor Area Ratio</i>	<i>O.S.R. *</i>
Urban commercial:		
Commercial retail:		
	Low intensity	0.45
	Medium intensity	0.40
	High intensity	0.35
	Offices	0.45
	Commercial recreation	0.15
	Institutional	0.40
	Outdoor recreational	0.15
	Public buildings	0.35

Urban residential:				
	Institutional		0.30	0.20
	Public buildings and uses		0.30	0.20
Urban residential mobile home:				
	Commercial retail			
		Low intensity	**	0.20
		Medium intensity	**	0.20
	Offices		**	0.20
Suburban commercial:				
	Commercial retail:			
		Low intensity	0.35	0.20
		Medium intensity	0.25	0.20
		High intensity	0.15	0.20
	Offices		0.40	0.20
	Commercial recreational		0.10	0.20
	Institutional		0.30	0.20
	Outdoor recreational		0.10	0.20
	Public buildings and uses		0.30	0.20
	Light industry		0.30	0.20
Suburban residential:				
	Commercial retail:			
		Low intensity	**	0.50
		Medium intensity	**	0.50
	Offices		**	0.50
	Public buildings and uses		0.25	0.50
	Institutional		0.25	0.50
Sparsely settled:				
	Public buildings and uses		0.20	0.20
Native area:				
	Public buildings and uses		0.20	0.20
Mainland native area:				
	Educational/research centers		0.30	0.20
Improved subdivision:				
	Commercial retail:			
		Low intensity	0.25**	0.20
		Medium intensity	0.20**	0.20
	Offices		0.25**	0.20
Destination resort:				
	Commercial retail		**	0.20
	Institutional		**	0.20
Recreational vehicle:				

	Commercial retail	**	0.20
Commercial fishing area:			
	Commercial fishing	0.40	0.20
	Light industry	0.40	0.20
Commercial retail:			
	Low intensity	0.40	0.20
	Medium intensity	0.40	0.20
Commercial fishing village:			
	Commercial fishing	0.40	0.20
Commercial fishing special districts (all):			
Commercial retail:			
	Low intensity	0.35	0.20
	Medium intensity	0.25	0.20
	Commercial fishing	0.40	0.20
	Light industry	0.30	0.20
Mixed use:			
Commercial retail:			
	Low intensity	0.35	0.20
	Medium intensity	0.25	0.20
	High intensity	0.15	0.20
	Offices	0.40	0.20
	Commercial recreational	0.10	0.20
	Institutional	0.30	0.20
	Outdoor recreational	0.10	0.20
	Public buildings and uses	0.30	0.20
	Commercial fishing	0.40	0.20
	Light industry	0.30	0.20
Industrial:			
	Light industry	0.40	0.20
	Heavy industry	0.25	0.20
	<u>Institutional uses</u>	<u>0.40</u>	<u>0.20</u>
	Public buildings and uses	0.40	0.20
	Restaurants	0.30	0.20
	Offices	0.40	0.20
	<u>Commercial retail</u>	<u>0.40</u>	<u>0.20</u>
	Commercial fishing	0.40	0.20
Maritime industrial:			
Commercial retail:			
	Low intensity	0.30	0.20
	Medium intensity	0.30	0.20
	High intensity	0.40	0.20

	Offices	0.50	0.20
	Public buildings and uses	0.60	0.20
	Commercial fishing	0.45	0.20
	Light industry	0.35	0.20
	Heavy industry		
<b>Military facilities:</b>			
	Military uses	0.50	0.20
	<b>Commercial retail:</b>		
	Low intensity	0.30	0.20
	Medium intensity	0.30	0.20
	Offices	0.40	0.20
	Public buildings and uses	0.30	0.20
<b>Airport:</b>			
	Airport uses	0.10	0.20
<b>Parks and refuge:</b>			
	Public buildings and uses	0.20	0.90
*See additional open space ratio in this article: in accordance with section 118-12, the most restrictive of these ratios applies.			
**Where commercial uses are allowed as permitted uses, and no FAR is given, the maximum per lot stated in article III of this chapter shall prevail.			

\* \* \* \* \*

**Sec. 138-50. Type of development not affected.**

The NROGO shall not apply to the development described below:

\* \* \* \* \*

(7) *Industrial uses.* Industrial uses in the maritime industrial (MI) and the industrial (I) land use districts, provided that the floor area is restricted to manufacturing, assembly, wholesaling, and distribution uses, and commercial retail/service facilities (including animal shelters and kennels) and Institutional Uses greater than 10,000 sq. ft. located on Tier 3 land that is designated and zoned Industrial within the Lower Keys Planning Area excluding Big Pine Key-Lower Keys ROGO Subarea as defined in section 138-20. All other uses which may be permitted in the land use district are subject to the requirements of this article and will require an NROGO allocation.

\* \* \* \* \*

**IV REVIEW**

Notes: Per a letter from the applicant dated May 7, 2012 (find attached), the applicant provided several revisions to their proposed text amendment following the Development Review Committee meeting. The preceding text reflects the most recent proposal as of the date of this

1 staff report. In addition, in the letter, the applicant contends that several of the staff's findings in  
 2 the Development Review Committee staff report, some of which may also be found in this  
 3 Planning Commission staff report, are misleading or incorrect. Staff considered the applicant's  
 4 concerns and made requested revisions or added clarifications to the staff report where  
 5 appropriate. However, staff does not agree with all of the assertions made in the May 7, 2012  
 6 letter and consequently did not make all of the changes requested.

7  
 8 *Criteria:*

9  
 10 In order to be approved, a text amendment must be consistent with the provisions of §102-  
 11 158(d)(5)(b): 1. Changed projections (e.g., regarding public service needs) from those on which  
 12 the text or boundary was based; 2. Changed assumptions (e.g., regarding demographic trends); 3.  
 13 Data errors, including errors in mapping, vegetative types and natural features described in  
 14 volume I of the plan; 4. New issues; 5. Recognition of a need for additional detail or  
 15 comprehensiveness; or 6. Data updates.

16  
 17 In the application, the applicant asserts that the proposed amendments would meet 1. Changed  
 18 projections, 2. Changed assumptions and 4. New issues.

19  
 20 *Analysis:*

21  
 22 There are eight Industrial (I) districts in the unincorporated county (each district consists of a  
 23 number of contiguous parcels). Staff has completed the following analysis utilizing the County's  
 24 GIS database. All acreage figures are approximations.

25  
 26 **Upper Keys ROGO Subarea:**

27  
 28 1) Anchor Drive, Ocean Reef:

			Total Area
FLUM	0.00 (I)	13.23 (PF)	13.23 total acres
Tier	0.00 tier 3	13.23 (Ocean Reef)	
Upland	12.11 upland	1.12 (submerged)	

29  
 30 2) Overseas Highway, Long Key:

			Total Area
FLUM	0.00 (I)	20.86 (PF)	20.86 total acres
Tier	0.00 tier 3	20.86 (tier 1)	
Upland	19.26 upland	1.60 (submerged)	

31  
 32 **Big Pine Key/No Name Key ROGO Subarea:**

33  
 34 3) Industrial Road, Big Pine Key:

			Total Area
FLUM	31.70 (I)	2.46 (PF)	34.16 total acres
Tier	20.55 tier 3	13.61 (tier 1 and ROW)	
Upland	33.67 upland	0.49 (submerged)	

1  
2 **Lower Keys ROGO Subarea:**  
3

4 4) Center Road, Summerland Key:

			Total Area
FLUM	2.03 (I)	22.19 (RL)	<b>24.22 total acres</b>
Tier	0.00 tier 3	24.22 (tier 1)	
Upland	8.89 upland	15.33 (submerged)	

5  
6  
7 5) West of Blimp Road, Cudjoe Key:

			Total Area
FLUM	0.00 (I)	10.13 (PB)	<b>10.13 total acres</b>
Tier	0.00 tier 3	10.13 (tier 1)	
Upland	9.98 upland	0.15 (submerged)	

8  
9 6) Blimp Road, Cudjoe Key:

			Total Area
FLUM	16.43 (I)	--	<b>16.43 total acres</b>
Tier	0.00 tier 3	16.43 (tier 1)	
Upland	3.44 upland	12.99 (wetland/submerged)	

10  
11 7) Riviera Drive, Big Coppitt Key:

			Total Area
FLUM	87.93 (I)	--	<b>87.93 total acres</b>
Tier	87.93 tier 3	--	
Upland	24.71 upland	63.22 (submerged)	

12  
13 8) Overseas Highway, Rockland Key:

			Total Area
FLUM	205.74 (I)	--	<b>205.74 total acres</b>
Tier	155.88 tier 3	49.86 (tier 1 and ROW)	
Upland	131.95 upland	73.79 (submerged)	

14  
15 **Totals:**  
16

ROGO Subarea	Acreage	Upland	Tier 3 Acreage	(I) FLUM Acreage	Approximate Total Tier 3 (I) Upland Acreage*
Upper Keys	34.09	31.37	0.00	0.00	0 acres
Big Pine/No Name	34.16	33.67	20.55	31.70	18 acres
Lower Keys	344.45	178.97	243.81	312.13	153 acres
<b>County-Wide</b>	<b>412.70</b>	<b>244.01</b>	<b>264.36</b>	<b>343.83</b>	<b>171 acres</b>

17 \* These figures are estimated totals following a GIS analysis using best available data. The figures  
18 should not be considered exact.  
19

1 Most of the Industrial (I) districts include large, submerged areas in the interiors of the districts.  
 2 As these submerged areas are in the interior of privately-owned parcels, they are assigned a land  
 3 use district designation and a tier designation in the event the shorelines naturally change or any  
 4 parts thereof are filled. Staff carried out an analysis to determine approximations of the total  
 5 amount of existing upland in each district due the unlikelihood that the given property owners  
 6 would seek approvals to fill such large submerged areas in the future. Staff also determined the  
 7 amount of tier 3 designated acreage in existence and the amount of existing acreage that is  
 8 designated as Industrial (I) on the Future Land Use Map (FLUM). (Note: Not all land designated  
 9 as Industrial (I) is designated Tier 3.)

10  
 11 As currently drafted, the proposed text amendment would affect only tier 3 properties within the  
 12 Lower Keys ROGO Subarea. In addition, at the DRC meeting, the applicant has stated that the  
 13 text amendment would only affect properties with a FLUM designation of Industrial (I), which  
 14 the existing wording suggests but does not directly state such. The aforementioned tables show  
 15 related data on a county-wide basis and per each ROGO Subarea in case there is consideration to  
 16 broaden or lessen the applicable criteria.

17  
 18 For the following analysis, staff shall only consider the areas affected by the proposal, which  
 19 after the narrowing criteria is the Industrial (I) district on Big Coppitt Key and most of the  
 20 Industrial (I) district on Rockland Key.

21  
 22 Below are the total amounts of floor area that can be approved where commercial retail uses  
 23 would be permitted. In reality, some of these totals should be less because of site caps per the  
 24 permitted use section of the code (i.e. restaurants are limited to 5,000 SF per site and offices are  
 25 limited to 20,000 SF per site, so unless each site is perfectly platted at the amount of square  
 26 footage to allow a 5,000 SF restaurant/20,000 SF office per density and no more, then there will  
 27 be less than the restaurant/office total below):

28  
 29 Existing Allowances (Existing Total Area in the Lower Keys ROGO Subarea):

Use	FAR / Max net Density	Size ±	Maximum Allowed ±
Commercial Apartment	2 units / buildable acre	312 acres (249 buildable)	499 units
Light Industry	0.40	13,590,720 SF	5,436,288 SF
Heavy Industry	0.25	13,590,720 SF	3,397,680 SF
Public	0.40	13,590,720 SF	5,436,288 SF
Restaurant	0.30	13,590,720 SF	4,077,216 SF
Office	0.40	13,590,720 SF	5,436,288 SF
Commercial Fishing	0.40	13,590,720 SF	5,436,288 SF

Existing Allowances (Existing Total Upland in the Lower Keys ROGO Subarea):

Use	FAR / Max net Density	Size ±	Maximum Allowed ±
Commercial Apartment	2 units / buildable acre	179 acres (143 buildable)	286 units
Light Industry	0.40	7,797,240 SF	3,118,896 SF
Heavy Industry	0.25	7,797,240 SF	1,949,310 SF
Public	0.40	7,797,240 SF	3,118,896 SF
Restaurant	0.30	7,797,240 SF	2,339,172 SF
Office	0.40	7,797,240 SF	3,118,896 SF
Commercial Fishing	0.40	7,797,240 SF	3,118,896 SF

Existing Allowances (Existing Total Upland Designated Both Tier 3 and (I) FLUM in the Lower Keys ROGO Subarea):

Use	FAR / Max net Density	Size ±	Maximum Allowed ±
Commercial Apartment	2 units / buildable acre	153 acres (122 buildable)	244 units
Light Industry	0.40	6,664,680 SF	2,665,872 SF
Heavy Industry	0.25	6,664,680 SF	1,666,170 SF
Public	0.40	6,664,680 SF	2,665,872 SF
Restaurant	0.30	6,664,680 SF	1,999,404 SF
Office	0.40	6,664,680 SF	2,665,872 SF
Commercial Fishing	0.40	6,664,680 SF	2,665,872 SF

It is important to note that land use intensity is cumulative with the exception of certain types of affordable housing that may be calculated separately per MCC §130-161. Therefore, an applicant could not build the total all of the individual totals for development on the preceding tables. For example, an applicant may build 50% of the total light industrial square footage allowed and 50% of the total commercial retail square footage allowed, as the cumulative total would be equal to or less than 100%. However, an applicant could not build 50% of the total light industrial square footage allowed, 50% of the total commercial retail square footage allowed and 25% of the total public square footage allowed as the cumulative total would equal 125%, a total over 100%.

The applicant is proposing the additional floor area ratios:

Proposed Additional Allowances (Existing Total Area in the Lower Keys ROGO Subarea):

Use	FAR / Max net Density	Size ±	Maximum Allowed ±
Commercial Retail	0.40	13,590,720 SF	5,436,288 SF
Institutional	0.40	13,590,720 SF	5,436,288 SF

Proposed Additional Allowances (Existing Total Upland in the Lower Keys ROGO Subarea):

Use	FAR / Max net Density	Size ±	Maximum Allowed ±
Commercial Retail	0.40	7,797,240 SF	3,118,896 SF
Institutional	0.40	7,797,240 SF	3,118,896 SF

1 Proposed Additional Allowances (Existing Total Upland Designated Both Tier 3 and (I) FLUM  
 2 in the Lower Keys ROGO Subarea):

Use	FAR / Max net Density	Size ±	Maximum Allowed ±
Commercial Retail	0.40	6,664,680 SF	2,665,872 SF
Institutional	0.40	6,664,680 SF	2,665,872 SF

3  
 4 *Review:*

5  
 6 Specifically, staff has determined the following issues with the proposed amendments to the text  
 7 of MCC §130-82:  
 8

- 9
- 10 • The application proposes a new type of use, *service facilities*. If data and analysis can be  
 11 provided to support the inclusion of service facility uses in the Industrial (I) district, a  
 12 definition is required. All permitted uses are defined in MCC §101-1. In order to remain  
 13 consistent and avoid interpretation of what constitutes a service facility use in the future, the  
 14 application should be expanded to include a definition of service facilities in MCC §101-1.  
 15 This definition should precisely capture the types of activities that would be considered part  
 16 of a service facility as well as the businesses, organizations and institutions that would  
 17 normally perform those activities.

18 *Per the letter from the applicant dated May 7, 2012, the applicant opted to remove the term*  
 19 *service facilities from the proposed text. Therefore unless reinserted, this is no longer an*  
 20 *issue.*

- 21
- 22 • This text amendment relates to the Industrial (I) district, which is consistent with the  
 23 Industrial (I) future land use category. As set forth in Comprehensive Plan Policy 101.4.7,  
 24 the principal purpose of the Industrial (I) future land use category is to provide for the  
 25 development of industrial, manufacturing, and warehouse and distribution uses. Other  
 26 commercial, public, residential, and commercial fishing-related uses are also allowed. The  
 27 proposed inclusion of commercial retail use would be consistent with this policy; however  
 28 the addition of service facility use would require additional review following the creation of a  
 29 definition.

30  
 31 *Per the letter from the applicant dated May 7, 2012, the applicant opted to remove the term*  
 32 *service facilities from the proposed text. Therefore unless reinserted, this is no longer an*  
 33 *issue.*

- 34
- 35 • The new uses are not consistent with the purpose of the Industrial (I) district, as set forth in  
 36 MCC 130-33:

37  
 38 The purpose of the I district is to establish areas that are suitable for the development  
 39 of industrial and manufacturing uses, warehousing and distribution uses. If data and  
 40 analysis can be provided to support the inclusion of commercial retail/service facility  
 41 uses in the Industrial (I) district, then the application should be expanded to revise the  
 42 purpose of the Industrial (I) district.

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- The applicant limits the amendment to commercial retail/service facilities greater than 10,000 SF. There are no provisions for commercial retail/service facilities of less than 10,000 SF. This language would discourage smaller commercial retail/service facility uses and could lead property owners to construct larger facilities than needed. If data and analysis can be provided to support the inclusion of commercial retail/service facility uses in the Industrial (I) district, then a) the application should be expanded to either allow commercial retail/service facilities of less than 10,000 SF as of right or b) the application should be amended to allow commercial retail/service facilities with a minor conditional use permit without the requirement to be at least 10,000 SF. (Note: in the application, it is asserted that commercial retail of less than 5,000 SF is permitted as of right. This is not correct. Commercial retail - limited to restaurants - is permitted as of right. Other types of commercial retail are not listed as a permitted use.)

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*Per the letter from the applicant dated May 7, 2012, the applicant states that they have no objection to "the County" including commercial retail of less than 10,000 SF as an as of right use. This text amendment is not proposed by the County. Therefore, it is the decision of the applicant as to whether or not to include at this time, not the decision of staff. In any event, staff finds that it would be inconsistent with other provisions of the Comprehensive Plan and Monroe County Code to only allow large developments in any land use district and recommends that such a provision is included by the applicant.*

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- The terminology "is designated and zoned Industrial" is redundant as this permitted use is within the Industrial (I) district permitted use section and would not pertain to other land use districts. At the DRC meeting, the applicant indicated that it is their intent not to be redundant, but to require that the parcel also has an Industrial (I) FLUM designation. Upon an evaluation of the existing Industrial (I) districts, staff has found that not all of Industrial (I) districts have Industrial (I) FLUM designations. Therefore, staff recommends that the wording is modified to clearly state that the proposed development shall be within an area of the parcel that is assigned an Industrial (I) FLUM designation.

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- Once a definition related to service facilities is created, an analysis is necessary to determine whether the permitted uses in other land use districts need to be amended to allow for the newly defined use. For example, animal shelters have been interpreted to be a light industrial use. Light industrial uses are permitted in several other land use districts in addition to Industrial (I). If the Land Development Code is amended to include this type of activity specifically within a newly defined service facility use, and the service facility use is only listed in the Industrial (I) district, property owners within the other land use districts would have their opportunity to establish an animal shelter on their properties not designated Industrial (I) taken away.

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*Per the letter from the applicant dated May 7, 2012, the applicant opted to remove the term service facilities from the proposed text. Therefore unless reinserted, this is no longer an issue.*

- 1 • The inclusion of institutional use as a minor conditional use would create an inconsistency.  
2 Institutional uses are already permitted as of right.  
3

4 *Per the letter from the applicant dated May 7, 2012, the applicant opted to remove*  
5 *institutional uses as requiring a minor conditional use permit from the proposed text.*  
6 *Therefore unless reinserted, this is no longer an issue.*  
7

- 8 • Lower Keys Planning Area must be explained. Currently, the subareas have different  
9 boundaries in the Comprehensive Plan and in the Land Development Code (in the context of  
10 ROGO/NROGO). Planning areas are divisions of the subareas. There is no Lower Keys  
11 “Planning Area”. The applicant needs to identify which of the subareas to be used, however  
12 if the applicant utilizes the Lower Keys ROGO subarea, it would not be necessary to  
13 exclusively exclude Big Pine Key as Big Pine Key and No Name Key have their own ROGO  
14 subarea.  
15

16 *Per the letter from the applicant dated May 7, 2012, the applicant opted to replace the term*  
17 *Lower Keys Planning Area with Lower Keys ROGO subarea. Therefore unless reinserted,*  
18 *this is no longer an issue.*  
19

20 Specifically, staff has determined the following issues with the proposed amendments to the text  
21 of MCC §130-164:  
22

- 23 • The application proposes a new type of use, *service facilities*. A maximum floor area ratio  
24 for this new use is not proposed.  
25

26 *Per the letter from the applicant dated May 7, 2012, the applicant opted to remove the term*  
27 *service facilities from the proposed text. Therefore unless reinserted, this is no longer an*  
28 *issue.*  
29

- 30 • A maximum floor area ratio of 0.40 is proposed for commercial retail uses, including those  
31 of high intensity. This FAR standard for high intensity commercial retail uses is higher than  
32 that allowed in any other land use district, including the Urban Commercial (UC) district  
33 [0.35], the Suburban Commercial (SC) district [0.15] and Mixed Use (MU) district [0.15]. It  
34 is unclear as to why the County should allow more high intensity commercial retail floor area  
35 in the Industrial (I) district as opposed to in the Urban Commercial (UC) district, with a  
36 purpose to designate appropriate areas for high-intensity commercial uses intended to serve  
37 retail sales and service, professional services and resort activities needs at a regional or  
38 multiple planning area scale (per MCC §130-47).  
39

- 40 • A proposed floor area ratio of 0.40 is proposed for institutional uses. Based on descriptions  
41 from the applicant, the proposed institutional uses includes rooms. If so, the applicant should  
42 note that floor area ratios would not be used to measure the cumulative density related to  
43 institutional residential uses. The application would have to be expanded to amend MCC  
44 §130-162 to establish a maximum institutional residential density in the Industrial (I) district.  
45 However, adding density for rooms would be inconsistent with Comprehensive Plan Policy

1 101.4.21, which indicates the Industrial (I) future land use category has a density of 0 rooms  
2 per acre.  
3

4 Specifically, staff has determined the following issues with the proposed amendments to the text  
5 of MCC §138-50:  
6

- 7 • The application proposes new exemptions to the NROGO permit allocation system.  
8 However, those exemptions are in conflict with Comprehensive Plan Policy 101.3.1:  
9

10 Policy 101.3.1: Monroe County shall maintain a balance between residential and non-  
11 residential growth by limiting the square footage of non-residential development to  
12 maintain a ratio of approximately 239 square feet of new non-residential development  
13 for each new residential unit permitted through the Residential Permit Allocation  
14 System. This ratio may be modified from time to time through amendments to the  
15 land development regulations based upon market and other relevant studies as  
16 required by policy 101.3.5. The commercial allocation allowed by this policy shall be  
17 uniformly distributed on an annual basis, consistent with the Residential Permit  
18 Allocation System as set forth in Policy 101.2.1.  
19

20 The purpose of the NROGO permit allocation system was to maintain a ratio of 239 square  
21 feet of commercial/nonresidential square footage per each dwelling unit. Not taking into  
22 account the county's inability to award all NROGO allocations in the past, an exemption that  
23 could accommodate such a large amount of development absent of the controls of NROGO  
24 could jeopardize the 1:239 ratio required in the policy.  
25

26 *Per the letter from the applicant dated May 7, 2012, the applicant states the NROGO ratio*  
27 *may be amended from time to time based upon market and other relevant studies. However,*  
28 *the applicant provided no such studies or analysis.*  
29

- 30 • The application proposes new exemptions to the NROGO permit allocation system.  
31 However, those exemptions are in direct conflict with Comprehensive Plan Policy 101.3.4:  
32

33 Policy 101.3.4: Public facilities shall be exempted from the requirements of the  
34 Permit Allocation System for new non-residential development. Except within Tier I  
35 designated areas pursuant to Goal 105 or within a designated Tier III Special  
36 Protection Area pursuant to Policy 205.1.1, certain development activity by federally  
37 tax-exempt not-for-profit educational, scientific, health, religious, social, cultural, and  
38 recreational organizations may be exempted from the Permit Allocation System by  
39 the Board of County Commissioners after review by the Planning Commission upon a  
40 finding that such activity will predominately serve the County's non-transient  
41 population. All public and institutional uses that predominately serve the County's  
42 non-transient population and which house temporary residents shall be included in the  
43 Permit Allocation System for residential development, except upon factual  
44 demonstration that such transient occupancy is of such a nature so as not to adversely  
45 impact the hurricane evacuation clearance time of Monroe County.  
46

1 There is no language in Policy 101.3.4 that would allow the County to exempt such uses.  
2

3 *Per the letter from the applicant dated May 7, 2012, the applicant states that such*  
4 *exemptions have been granted in the past. However, none of the exemptions were for*  
5 *“commercial retail” floor area. Further, the fact that the County opted to grant exemptions*  
6 *for other types of development in the past does not require the County to grant additional*  
7 *exemptions, particularly if it is determined at that the time that they are not consistent with a*  
8 *comprehensive plan policy.*  
9

- 10 • The application proposes new exemptions to the NROGO permit allocation system.  
11 However, those exemptions are in inconsistent with MCC §138-47(b):  
12

13 (b) Purpose and intent. The purposes and intent of the nonresidential rate of growth  
14 ordinance are:

- 15 (1) To facilitate implementation of goals, objectives and policies set forth in the  
16 comprehensive plan relating to maintaining a balance between residential and  
17 nonresidential growth.  
18 (2) To maintain a ratio of approximately 239 square feet of nonresidential floor  
19 area for each new residential permit issued through the residential rate of  
20 growth ordinance (ROGO).  
21 (3) To promote the upgrading and expansion of existing small-size businesses and  
22 to retain the predominately small scale character of nonresidential  
23 development in the Florida Keys.  
24 (4) To regulate the rate and location of nonresidential development in order to  
25 eliminate potential land use conflicts.  
26 (5) To allocate the nonresidential floor area annually hereunder, based on the  
27 goals, objectives and policies of the comprehensive plan and the Livable  
28 CommuniKeys master plans.  
29

30 *Per the letter from the applicant dated May 7, 2012, the applicant states that the proposal*  
31 *would be consistent with the NROGO. However, as stated before, staff has found that the*  
32 *applicant has not provided a market and other relevant studies to support altering the*  
33 *existing regulations.*  
34

- 35 • The application proposes new exemptions to the NROGO permit allocation system within the  
36 existing “Industrial Uses” subsection (MCC §138-50(7)). However, the exemption requested  
37 is for commercial retail and institutional uses. This is out of place within the section as titled.  
38 Although the proposed exemptions are only for commercial retail and institutional uses  
39 within an industrial district and such criteria is clearly stated, their exemption are not  
40 consistent with the subsection’s title that states “industrial uses” not industrial districts.  
41

42 Further, institutional uses are already exempted from the NROGO provided they meet the  
43 standards (MCC §138-50(4) (i.e. not-for-profit). This modification may create a conflict  
44 with the other subsection.  
45

- 1 • The application proposes new exemptions to the NROGO permit allocation system within the  
2 existing “Industrial Uses” subsection. However, in addition to the issue in the previous bullet  
3 point, this subsection provides exemptions to industrial uses in both the Industrial (I) district  
4 and Maritime Industries (MI) district. Therefore, this amendment would impact more areas  
5 than that set forth in the application.  
6
- 7 • The application proposes new exemptions to the NROGO permit allocation system within the  
8 existing “Industrial Uses” subsection. However, in addition to the issue in the previous bullet  
9 points, the proposed amendment provides exemptions only to uses greater than 10,000 SF.  
10 As provided, it would not allow an exemption to any use of less than 10,000 SF. The  
11 applicant needs to provide staff with clarification as to whether or not this is their intent.  
12

13 In addition, staff has determined that following issues with the proposed amendments to the text  
14 of the MCC in general:  
15

- 16 • The data and analysis submitted with the application is not acceptable to describe and  
17 forecast the impact of the amendment.
  - 18 ○ The traffic impact analysis is inadequate.
  - 19 ○ The utility impact analysis is inadequate.
  - 20 ○ The analyses are for the Lower Keys; however the application includes allowing an  
21 increased FAR for institutional uses in all Industrial (I) districts.  
22

23 *Per the letter from the applicant dated May 7, 2012, the applicant states that such a*  
24 *concurrency analysis is not required.*  
25

26 Staff concurs that a concurrency analysis is not required as part of an application; however,  
27 in relation to the proposal by the applicant, it is required as data and analysis for the County  
28 to make a sound decision on the application and comply with Statutory requirements.  
29

30 While MCC §102-158(d)(5)(b) provides criteria for text amendments, the County must also  
31 ensure that proposed amendments further the objectives, policies, land uses,  
32 densities/intensities and level of service standards in the comprehensive plan. Specifically,  
33 the “Community Planning Act” requires the adoption or amendment of land development  
34 regulations that are consistent with and implement the adopted comprehensive plan (See  
35 Sections 163.3167, F.S., 163.3194, F.S., and 163.3202, F.S.). As a designated Area of  
36 Critical State Concern (ACSC), pursuant to Sections 380.05 and 380.0552, F.S., the County’s  
37 land development regulations must be consistent with Principles for Guiding Development  
38 (PGD). Additionally, the State Land Planning Agency must review the land development  
39 regulations for consistency with the PGD and approve or reject the land development  
40 regulations or portions thereof by final order.  
41

42 **The Principles for Guiding Development (PGD) for the Florida Keys Area, Section**  
43 **380.0552(7), F.S., are as follows:**  
44

45 For the purposes of reviewing consistency of the adopted plan or any amendments to that  
46 plan with the principles for guiding development and any amendments to the principles, the

1 principles shall be construed as a whole and no specific provision shall be construed or  
2 applied in isolation from the other provisions.  
3

- 4 (a) Strengthening local government capabilities for managing land use and development so  
5 that local government is able to achieve these objectives without continuing the area of  
6 critical state concern designation.
- 7 (b) Protecting shoreline and marine resources, including mangroves, coral reef formations,  
8 seagrass beds, wetlands, fish and wildlife, and their habitat.
- 9 (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native  
10 tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and  
11 beaches, wildlife, and their habitat.
- 12 (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound  
13 economic development.
- 14 (e) Limiting the adverse impacts of development on the quality of water throughout the  
15 Florida Keys.
- 16 (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural  
17 environment, and ensuring that development is compatible with the unique historic  
18 character of the Florida Keys.
- 19 (g) Protecting the historical heritage of the Florida Keys.
- 20 (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and  
21 proposed major public investments, including:
- 22 1. The Florida Keys Aqueduct and water supply facilities;
  - 23 2. Sewage collection, treatment, and disposal facilities;
  - 24 3. Solid waste treatment, collection, and disposal facilities;
  - 25 4. Key West Naval Air Station and other military facilities;
  - 26 5. Transportation facilities;
  - 27 6. Federal parks, wildlife refuges, and marine sanctuaries;
  - 28 7. State parks, recreation facilities, aquatic preserves, and other publicly owned  
29 properties;
  - 30 8. City electric service and the Florida Keys Electric Co-op; and
  - 31 9. Other utilities, as appropriate.
- 32 (i) Protecting and improving water quality by providing for the construction, operation,  
33 maintenance, and replacement of stormwater management facilities; central sewage  
34 collection; treatment and disposal facilities; and the installation and proper operation and  
35 maintenance of onsite sewage treatment and disposal systems.
- 36 (j) Ensuring the improvement of nearshore water quality by requiring the construction and  
37 operation of wastewater management facilities that meet the requirements of ss.  
38 381.0065(4)(l) and 403.086(10), as applicable, and by directing growth to areas served by  
39 central wastewater treatment facilities through permit allocation systems.
- 40 (k) Limiting the adverse impacts of public investments on the environmental resources of the  
41 Florida Keys.
- 42 (l) Making available adequate affordable housing for all sectors of the population of the  
43 Florida Keys.
- 44 (m) Providing adequate alternatives for the protection of public safety and welfare in the  
45 event of a natural or manmade disaster and for a post disaster reconstruction plan.

1 (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and  
2 maintaining the Florida Keys as a unique Florida resource.  
3

4 The County must balance all the PGDs and ensure that land development regulations that are  
5 consistent with and implement the comprehensive plan. It is important to note that Principle  
6 (h) guides the protection of the value, efficiency, cost-effectiveness, and amortized life of  
7 existing and proposed major public investments, such as water supply facilities; sewage  
8 collection, treatment, and disposal facilities; solid waste treatment, collection, and disposal  
9 facilities; transportation facilities; and other utilities and services. Without data, it is unclear  
10 whether or not the amendment would be consistent with these Principles. In order to  
11 recommend approval, staff must determine that these Principles will be met - by considering  
12 not only the impact to the properties directly affected by the amendment, but those indirectly  
13 affected by it as well.  
14

15 V RECOMMENDATION  
16

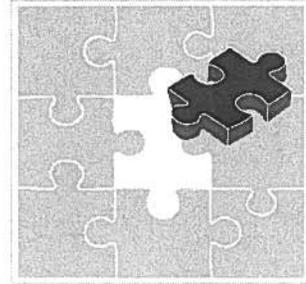
17 Staff recommends that the Board of County Commissioners not amend the Monroe County Code  
18 as requested by the applicant.  
19  
20

05/07/12

Mr. Townsley Schwab  
2798 Overseas Hwy., Suite 400  
Marathon, FL 33050

**Re: 05/30/12 Planning Board Agenda, Item 1  
LDR Text Amendment**

TREPANIER



**& ASSOCIATES INC**  
LAND USE PLANNING  
DEVELOPMENT CONSULTANTS

Dear Mr. Schwab:

Thank you for the opportunity to meet with the Development Review Committee on 3/27/12. At the DRC meeting staff laid out their understanding and perspective with regard to several issues related to the proposed text amendment. We discussed our relative positions and I've identified those in the matrix below. I am compelled, as well, to discuss a couple of the issues in particular.

The staff report asserts two potential conflicts between the proposed amendment and the Comprehensive Plan. The first is with regards to the NROGO ratio of commercial floor area to residential dwellings. The staff report asserts a conflict exists; allowing larger-scale (>10,000 sq. ft.) commercial-retail facilities to be constructed in the Industrial district exempt from NROGO would alter the current ratio. We believe this assertion is misleading. The Comprehensive Plan and the Land Development Regulations both contemplate modifications to the NROGO ratio from time to time. The process to modify the ratio, as prescribed in the Comprehensive Plan, is to amend the land development regulations. Amending the LDRs is exactly what we are proposing to do. We are following the Comp Plan's prescribed process, and we are not seeking to alter the codified ratio.

The staff report goes on to state that exempting a use from NROGO conflicts with the Plan's existing exemptions. The proposed amendment does not attempt to alter the exempted uses itemized in the comprehensive plan. In addition to the exemptions in the Plan there are also exemptions itemized in the LDRs<sup>1</sup>. The proposed amendment does not alter or conflict with any of the existing exemptions in the LDRs.

Finally, the report states that the data and analysis "is not acceptable." This statement should be eliminated in its entirety from the report since Florida Statute, the Monroe County Comprehensive Plan and the Monroe County Land Development Regulations require concurrency analysis only in association with Comprehensive Plan amendments and development applications, of which LDR text amendments are neither.

We respectfully request these few, but serious, inaccuracies itemized above be corrected either in the Planning Commission report or at the Planning Commission hearing.

<sup>1</sup> Boat Barns; Public/governmental uses, including capital improvements and public buildings; public institutional uses on Big Pine Key and No Name Key; federally tax exempt not-for-profit educational, scientific, religious, social, cultural and recreational organizations; Industrial uses in the maritime industrial (MI) and the industrial (I) land use districts; agricultural and aquacultural uses; boat racks or boat barns

We look forward to receiving the Planning Commission Staff Report at your earliest convenience.

Thank you for your kind consideration. We appreciate your assistance.

Best regards,



Owen Trepanier

Summary of DRC issues		
Location	Staff Report ("S.R.") Issue	Applicant Response
p. 7 of 12 line 27	S.R. lists eight industrial districts affected by the proposed amendment. The list makes up the basis for the areas used in the staff impact analysis.	Unfortunately the list is incorrect with regard to districts and areas.  The amendment only affects lands zoned and FLUM'd Industrial within areas designated TIER III. The applicant provides an analysis of lands affected (attached hereto).
p. 8 of 12 line 26	S.R. states the application proposes a new use "Service Facility".	The application included the phrase "Service Facility" because it intends to allow an animal shelter facility of over 10,000 sq. ft. As long as the change contemplates and permits such a use, there is no objection to the deleting of the phrase "Service Facility" from the application.
p. 9 of 12 line 4	S.R. points out that inclusion of "Service Facility" will require an amendment to Policy 101.4.7.	As mentioned above as long as the final amendment contemplates and permits such a use, there is no objection to the deleting of the phrase "Service Facility" from the application.
p. 9 of 12 line 22	S.R. points out that the proposed amendment does not accommodate commercial retail facilities less than 10,000 sq. ft. The report suggests such uses be permitted as of right.	The applicant has no objection to the County including commercial retail facilities of less 10,000 sq. ft. as of right.
p. 10 of 12 line 4	S.R. points out that the inclusion of institutional uses as a minor conditional use would create an inconsistency as institutional uses are already permitted.	The applicant has no objection to deleting the proposed changes with regard to institutional uses.
p. 10 of 12 line 7	S. R. requests clarification of "Lower Keys Planning Area"	At the DRC, we discussed the intent and staff suggested using the term "Lower Keys ROGO Subarea". Applicant has no objection to the change in terminology.
p. 10 of 12 line 20	S.R. states no district currently allows a commercial FAR greater than 0.35.	The intent of the LDR amendment is to permit larger-scale commercial retail facilities in very specific areas suited for such uses and their related impacts. As such higher FAR is appropriate in these very specific areas. The amendment will have no impact on the permitted uses, densities or intensities of any other districts.
p. 10 of 12 line 30	S.R. raises concerns regarding Institutional Uses	As mentioned above, applicant has no objection to eliminating any changes affecting institutional uses.
p. 10 of 12	S.R. asserts the amendment conflicts with	The proposed amendment is not in conflict with Policy

line 39	Policy 101.3.1. The S.R. states that permitting changes to the prescribed ratio creates a conflict.	101.3.1 <sup>2</sup> as the S.R. states because the policy specifically contemplates amendments on its face. <i>“This ratio may be modified... through amendments to the land development regulations based upon market and other relevant studies”</i> .
p. 11 of 12 line 15	S.R. asserts the amendment conflicts with Policy 101.3.4 <sup>3</sup> .	This policy specifically pertains to <i>“federally tax-exempt not-for-profit educational, scientific, health, religious, social, cultural, and recreational organizations”</i> the proposed amendment does not attempt to alter this exempted class of uses in any manner.  Allowing exemptions to NROGO have been previously found compliant by the Growth Management Division, the Planning Commission, the BOCC, and the DCA.
p. 11 of 12 line 34	S.R. states new exemptions to NROGO are inconsistent with the LDR Sec. 138-47(b).	The proposed amendment does not conflict with any provision of this section. This amendment will not alter the purpose or intent of NROGO in any manner. This amendment modifies NROGO, as contemplated under Comp Plan Policy 101.3.
p. 12 of 12 line 10	S.R. states that the concurrency analysis is not acceptable.	A Concurrency Analysis is not required as part of an LDR amendment. Concurrency requirements of the Monroe County Code, the Monroe County Comprehensive Plan and the Florida Statutes only require concurrency analysis as part of a development approval or comprehensive plan amendment. The proposed LDR text amendments are not development approvals nor comp plan amendments. Such an analysis will be required when any development approval is sought.

<sup>2</sup> **Policy 101.3.1**

Monroe County shall maintain a balance between residential and non-residential growth by limiting the square footage of non-residential development to maintain a ratio of approximately 239 square feet of new non-residential development for each new residential unit permitted through the Residential Permit Allocation System. This ratio may be modified from time to time through amendments to the land development regulations based upon market and other relevant studies as required by policy 101.3.5. The commercial allocation allowed by this policy shall be uniformly distributed on an annual basis, consistent with the Residential Permit Allocation System as set forth in Policy 101.2.1.

<sup>3</sup> **Policy 101.3.4**

Public facilities shall be exempted from the requirements of the Permit Allocation System for new non-residential development. Except within Tier I designated areas pursuant to Goal 105 or within a designated Tier III Special Protection Area pursuant to Policy 205.1.1, certain development activity by federally tax-exempt not-for-profit educational, scientific, health, religious, social, cultural, and recreational organizations may be exempted from the Permit Allocation System by the Board of County Commissioners after review by the Planning Commission upon a finding that such activity will predominately serve the County's non-transient population. All public and institutional uses that predominately serve the County's non-transient population and which house temporary residents shall be included in the Permit Allocation System for residential development, except upon factual demonstration that such transient occupancy is of such a nature so as not to adversely impact the hurricane evacuation clearance time of Monroe County.



## **MEMORANDUM**

**MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT**  
*We strive to be caring, professional and fair*

To: Monroe County Planning Commission

Through: Townsley Schwab, Sr. Director of Planning & Environmental Resources

From: Steven Biel, Senior Planner  
Joseph Haberman, AICP, Planning & Development Review Manager

Date: May 18, 2012

Subject: *AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 130-160, TRANSFERABLE DEVELOPMENT RIGHTS, TO REVISE THE LAND DEVELOPMENT REGULATIONS TO BE CONSISTENT WITH THE MONROE COUNTY COMPREHENSIVE PLAN; TO CLARIFY THE APPLICATION AND APPROVAL PROCESS FOR THE TRANSFER OF A TRANSFERABLE DEVELOPMENT RIGHT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.*

---

**Meeting: May 30, 2012**

---

1  
2 **I REQUEST**

3  
4 The Planning & Environmental Resources Department is proposing an amendment to the text  
5 of §130-160 of the Monroe County Code, which concerns the County's regulations relating  
6 to transferable development rights (TDRs).  
7

8 **II RELEVANT PRIOR COUNTY ACTIONS:**

9  
10 Language concerning transferable development rights exists in both the Monroe County  
11 Comprehensive Plan and the Monroe County Code.

12  
13 The following is an excerpt for the Monroe County Year 2010 Comprehensive Plan  
14 Technical Document (page 2-105) that explains the purpose and history of the TDR program:

15  
16 In order to better protect certain environmentally sensitive sites, the 1986 Monroe County  
17 Comprehensive Plan, prepared in accordance with Chapter 380, Florida Statutes (Areas of  
18 Critical State Concern), greatly altered permitted residential development densities and  
19 intensities. In the process, some parcels were rendered unbuildable. In some cases parcels were  
20 too small to permit development of a single family unit at the new lower permitted densities. To  
21 address this problem and to avoid property "takings," as well as to preserve undisturbed and



1 environmentally sensitive resources, a Monroe County Transferable Development Rights (TDR)  
2 program was adopted (see Section 9.5-265 of the Monroe County LDRs (Monroe County BOCC,  
3 1990). The purpose of this program is to mitigate the impact of new development regulations on  
4 development expectations and property rights by allowing rights to develop to be transferred (or  
5 sold) from properties which are precluded from development.  
6

7 Under the County's current TDR regulations, any development using TDRs must be approved as  
8 a conditional use, which requires at least Development Review Committee and Planning Director  
9 review and approval. Additional development density is allowed for TDR receiver sites, up to the  
10 maximum net density of the receiver site's Land Use District. Before a building permit is issued  
11 for development using TDRs, a deed of transfer must be recorded with a covenant prohibiting  
12 further use of the sender site, except for use as open space. Under these current provisions, TDRs  
13 may be transferred from any parcel in the County to any other, as long as the allocated density of  
14 the receiver site is greater or equal to the allocated density of the sender site, and the habitat type  
15 of the receiver site is not more sensitive than the habitat type of the sender site. TDRs may be used  
16 for the development of hotel units, but not for any other commercial development.  
17

18 Note: MCC §9.5-265 was renumbered to MCC §130-160. No changes to the provisions were  
19 made at the time of the organizational renumbering.  
20

21 During a regularly scheduled meeting held on April 24, 2012, the Development Review  
22 Committee reviewed the subject request and recommended approval to the Board of County  
23 Commissioners.  
24

### 25 III REVIEW

26

27 A modification is necessary to address a direct inconsistency with Policy 101.13.4 of the  
28 Comprehensive Plan. Policy 101.13.4 provides criteria for sender sites. Per Policy 101.13.4,  
29 a sender site is eligible to transfer a TDR if a) it is zoned Offshore Island (OS), Mainland  
30 Native (MN), Native Area (NA), Sparsely Settled (SS), Parks and Refuge (PR) or  
31 Conservation (C) or b) one of the specified environmentally sensitive habitat types exists on  
32 the sender site. Policy 101.13.4 does not provide any direct criteria for a receiver site.  
33 Therefore, any site that has a maximum net density that can be achieved is eligible to receive  
34 a TDR.  
35

36 In addition, modification is necessary to address inconsistencies with Policies 101.13.2 and  
37 101.13.3 of the Comprehensive Plan where additional restrictions/requirements are not  
38 reflected in the Monroe County Code.  
39

40 The following comprehensive plan policies relate to the criteria of the county's TDR  
41 program.  
42

43 **Policy 101.13.2:** By January 4, 1998, Monroe County shall evaluate the existing TDR program  
44 and adopt Land Development Regulations which address identified deficiencies in the program.  
45 The following issues shall be considered in evaluating the program:

- 46 1. revision to the current tax policy whereby owners of sites which have transferred  
47 development rights continue to pay taxes on such rights until development orders have been  
48 issued for the transferred rights at the receiver sites;

2. establishment of criteria for designation of sender and receiver sites based upon factors such as the environmental characteristics of the land;
3. establishment of mechanisms to enhance the value and marketability of TDRs such as assigning density bonuses to receiver sites;
4. clarification of the status of sites which have transferred development rights, including the possible requirements that sender sites be dedicated as public or private open space through conservation easement or other mechanism. At a minimum, the LDRs shall be revised to require that a restrictive covenant be recorded on the sender site deed at the time of the Allocation Award for the Permit Allocation System; and
5. establishment of a management and accounting system to tract TDRs.

**Policy 101.13.3:** The Maximum Net Density is the maximum density allowable with the use of TDRs, and shall not exceed the maximum densities established in this plan. The assignment of TDRs to Big Pine Key, No Name Key, and North Key Largo from other areas of the County shall be prohibited.

**Policy 101.13.4:** In conjunction with the evaluation of the existing TDR program pursuant to Policy 101.13.2, parcels within the following habitats and land use districts shall be designated as sender sites for Transferable Development Rights (TDRs):

Any parcel within these zoning categories:

Offshore Island (OS)	Sparsely Settled (SS)
Main land Native (MN)	Parks and Refuge (PR)
Native (NA)	Conservation (C)

Habitat of the following types which lie within any zoning category:

- Freshwater wetlands
- Saltmarsh/Butonwood wetlands
- High quality high hammock
- High quality low hammock
- Moderate quality high hammock
- Moderate quality low hammock
- High quality pinelands
- Low quality pinelands
- Beach/berm
- Palm Hammock
- Cactus Hammock
- Disturbed Wetlands

The criteria set forth in Policy 101.13.4 are not consistent with those set forth in the Monroe County Code. Per MCC §130-160, there is not any direct criteria for a sender site. However, one of the criterion for a receiver site states that the allocated density of the receiver site shall be greater than or equal to the allocated density of the parcel from which the TDR is severed and the sensitivity of the receiver site, as shown in MCC §118-7(1), is less than or equal to the sensitivity of the parcel from which the TDR is severed. This criterion does not limit the sender site to be in any of the land use districts specified in Policy 101.13.1 or does not limit the sender site to contain any of the specified habitat types. Therefore, the land development regulation is more liberal than the superseding comprehensive plan policy. The Monroe County Code should be amended to provide consistency.



1  
2 MCC §130-160 does not expressly state that a restrictive covenant be recorded on the sender  
3 site deed at the time of the Allocation Award for the Permit Allocation System as required by  
4 Policy 101.13.2. The Monroe County Code should be amended to also state this requirement  
5 rather than rely on an applicant to understand that the comprehensive plan contains additional  
6 requirements.

7  
8 MCC §130-160 does not expressly state that TDRs cannot be transferred to Big Pine Key, No  
9 Name Key and North Key Largo, as stated in Policy 101.13.3. The Monroe County Code  
10 should be amended to also state this requirement rather than rely on an applicant to  
11 understand that the comprehensive plan contains additional requirements.

12  
13 Staff is also proposing revisions to MCC §130-160(a) to remove references to an Improved  
14 Subdivision (IS) lot being a valid receiver site. It is unclear why this language exists as the  
15 Improved Subdivision (IS) district does not have a maximum net density.

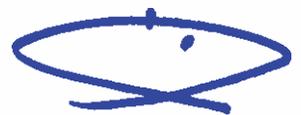
16  
17 In addition, staff is proposing revisions to the procedure for obtaining approval. The  
18 revisions are necessary in order to clarify the existing process. Staff is not adding or  
19 removing any of the procedural steps. A minor conditional use permit is currently required  
20 and shall continue to be required. As a note, the Monroe County Comprehensive Plan does  
21 not contain any policy providing direction as how to approve the transfer of a TDR.

22  
23 Therefore, staff recommends the following changes (deletions are ~~stricken through~~ and  
24 additions are underlined):

25  
26 **Sec. 130-160. Transferable development rights.**

27  
28 (a) *General.* All residential development rights allocated or established in sections 130-157,  
29 ~~130-158, and 130-159~~ and 130-162 shall be transferable in whole or in part from one  
30 parcel of land to any other, ~~including the transfer of residential rights to hotel rooms,~~  
31 provided that:

- 32 ~~(1) The development of the receiver site is approved as part of a conditional use permit;~~  
33 ~~(2) The development of the receiver site does not exceed the maximum net densities set~~  
34 ~~out in sections 130-157 and 130-162;~~  
35 ~~(3) If the receiver site is located in an IS or IS-M district, no more than one dwelling unit~~  
36 ~~shall be developed on a platted lot;~~  
37 ~~(4) If the receiver site is located in an IS-D district, no more than two dwelling units shall~~  
38 ~~be developed on a platted lot;~~  
39 ~~(5) (1) The development of the receiver site complies with each and every requirement of~~  
40 ~~this ~~chapter~~ Land Development Code;~~  
41 ~~(2) The development of the receiver site shall not exceed the maximum net densities set~~  
42 ~~out in sections 130-157 and 130-162;~~  
43 ~~(3) A sender site shall be from one of the following Land Use (Zoning) Districts and/or~~  
44 ~~contain one of the following habitat types:~~  
45 ~~(a) Land Use (Zoning) Districts: Conservation (C), Mainland Native (MN), Native~~  
46 ~~Area (NA), Offshore Island (OS), Parks and Refuge (PR) or Sparsely Settled (SS)~~



1 (b) Habitat Types: Freshwater wetlands, Saltmarsh/Buttonwood wetlands, High  
2 quality high hammock, High quality low hammock, Moderate quality high  
3 hammock, Moderate quality low hammock, High quality pinelands, Low quality  
4 pinelands, Beach/berm, Palm Hammock, Cactus Hammock, and/or Disturbed  
5 wetlands;

6 (4) Tier I receiver sites shall be discouraged; and

7 (5) The assignment of transferable development rights to Big Pine Key, No Name Key,  
8 and North Key Largo from other areas of the County shall be prohibited.

9 ~~(6) Prior to issuance of a building permit authorizing the development of a dwelling unit,~~  
10 ~~all or a part of which is derived from a transferred development right, a deed of~~  
11 ~~transfer shall be recorded in the chain of title of the transferor parcel containing a~~  
12 ~~covenant prohibiting the further use of the transferor parcel for residential purposes~~  
13 ~~other than as excess open space or yard appurtenant to a residential use that is located~~  
14 ~~on a parcel of land that meets the density requirements of the comprehensive plan and~~  
15 ~~this chapter; and~~

16 ~~(7) The allocated density of the receiver site is greater than or equal to the allocated~~  
17 ~~density of the parcel from which the TDR is severed and the sensitivity of the~~  
18 ~~receiver site, as shown in section 118-7(1), is less than or equal to the sensitivity of~~  
19 ~~the parcel from which the TDR is severed.~~

20  
21 (b) *Procedure.* The transfer of development rights shall be carried out as follows:

22 ~~(1) The owner of a parcel of land who transfers density allocated to his property shall~~  
23 ~~prepare an affidavit of ownership and an affidavit of intent to transfer in conformance~~  
24 ~~with a form provided by the director of planning. The affidavits shall be filed with the~~  
25 ~~director of planning at least 30 days prior to the submission of an application for~~  
26 ~~development approval that involves the use of a transferred development right.~~

27 ~~(2) The transfer of development rights shall be substantially in the form and substance as~~  
28 ~~a sample deed provided by the director of planning.~~

29 ~~(3) The owner of any parcel of land may transfer any development rights allocated to his~~  
30 ~~parcel of land at any time to any person; however, the use rights and the value thereof~~  
31 ~~shall be deemed for taxation and all other purposes to be appurtenant to the land from~~  
32 ~~which the rights are transferred until a development order is issued authorizing use of~~  
33 ~~the transferred density.~~

34 (1) A minor conditional use permit shall be required to identify, determine the eligibility  
35 of and document the approval of the sender and receiver site, pursuant to the process  
36 set forth in section 110-69. If a single receiver site is proposed to receive transferable  
37 development rights from multiple sender sites, only a single minor conditional use  
38 permit shall be required. All sender and receiver sites associated with a proposed  
39 transfer of a transferable development right shall be identified at the time of  
40 application;

41 (2) The minor conditional use permit application required in subsection (b)(1) shall be  
42 submitted in a form provided by the planning and environmental resources  
43 department and include the following a) the names and addresses of the property  
44 owners of record for the sender site(s) and receiver site(s), b) the property record  
45 cards from the Monroe County Property Appraiser, c) written legal descriptions of the



1 sender site(s) and receiver site(s), d) a copy of the affidavit of intent to transfer, e)  
2 boundary surveys of the sender site(s) and receiver site(s), prepared by a surveyor  
3 registered in the State of Florida, showing the boundaries of the sites, elevations,  
4 bodies of water and wetlands, total acreage, total upland acreage and total acreage by  
5 habitat, and f) vegetative studies of the sender site(s) and receiver site(s).

6 (3) A development order shall memorialize approval of the minor conditional use permit  
7 required in subsection (b)(1). After successfully passing all applicable appeal periods, the  
8 development order shall be recorded in the official records of the Monroe County Clerk of the  
9 Circuit Court. Such recording shall be carried out so that the document is associated with all  
10 applicable sender and receiver sites; and

11 (3) Prior to issuance of a building permit authorizing the development of a residential  
12 dwelling unit, all or a part of which is derived from a transferred development right, a  
13 deed of transfer shall be recorded in the chain of title of the sender site (transferor  
14 parcel) containing a restrictive covenant prohibiting any development that would  
15 require use of any of the allocated density that was transferred from the parcel.

16  
17 ~~(e) *Bonuses.* Subject to the standards in subsection (a) of this section, residential~~  
18 ~~development rights transferred from the native area district to lands located within a~~  
19 ~~destination resort district, recreational vehicle district or to a mixed-use district for~~  
20 ~~institutional uses shall be entitled to a bonus as follows: hotel rooms two rooms per~~  
21 ~~transferred unit.~~

#### 22 23 IV RECOMMENDATION

24  
25 Staff has found that the proposed text amendment would be consistent with the provisions of  
26 §102-158(d)(5)(b): 1. Changed projections (e.g., regarding public service needs) from those  
27 on which the text or boundary was based; 2. Changed assumptions (e.g., regarding  
28 demographic trends); 3. Data errors, including errors in mapping, vegetative types and  
29 natural features described in volume I of the plan; 4. New issues; 5. Recognition of a need for  
30 additional detail or comprehensiveness; or 6. Data updates. Specifically, staff has found that  
31 the proposed text amendments are necessary due to a recognition of a need for additional  
32 detail or comprehensiveness.

33  
34 Staff recommends that the Board of County Commissioners amend the Monroe County Code  
35 as stated in the text of this staff report.





**Item #3 Unlawful Uses Text Amendment  
Staff Report**

**MEMORANDUM**

**MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT**  
*We strive to be caring, professional and fair*

To: Monroe County Planning Commission  
Through: Townsley Schwab, Senior Director of Planning & Environmental Resources  
From: Joseph Haberman, AICP, Planning & Development Review Manager  
Date: May 7, 2012  
Subject: *AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY CODE TO ADD SECTION 110-144, UNLAWFUL USES; ESTABLISHING PROCEDURES TO REVIEW AND ACT UPON BUILDING PERMIT APPLICATIONS FOR A SITE WITH A KNOWN UNLAWFUL USE THAT MAY BE PROSECUTED BY CODE COMPLIANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.*

A handwritten signature in black ink, appearing to be "Joseph Haberman", written over the "From:" line.

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**Meeting: May 30, 2012**

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1  
2 **I REQUEST**  
3

4 The Planning & Environmental Resources Department is proposing an amendment to the text  
5 of the Monroe County Code (MCC) to establish a new section, §110-144, in order to create a  
6 regulation directing Growth Management Division staff on how to review and act upon  
7 building permit applications for a site with a known unlawful use that is capable of code  
8 enforcement prosecution.  
9

10 **II RELEVANT PRIOR COUNTY ACTIONS:**  
11

12 On April 17, 2002, the BOCC adopted Ordinance #010-2002, which among other changes,  
13 amended the requirements related to processing building permits on sites with unlawful uses  
14 and improvements in MCC §6-26. The section was later renumbered as MCC §6-107.  
15

16 As of the date of this staff report, Growth Management Division staff was in the process of  
17 removing MCC §6-107 from MCC Chapter 6, Buildings and Construction. Its pending  
18 abolishment is memorialized by Ordinance #2012-008.  
19  
20  
21

1  
2 **III REVIEW**  
3

4 If Ordinance #2012-008 passes all appeal/review periods, MCC §6-107 will be removed  
5 from the Monroe County Code effective July 1, 2012. The rationale for abolishing the section  
6 and its provisions relates to floodplain management issues, not land use issues. Monroe  
7 County has floodplain compliance programs to assure illegal post-FIRM structures below  
8 base flood elevation and the violations associated with such structures are remedied. Further,  
9 a new Certificate of Compliance Program has been proposed to the Federal Emergency  
10 Management Agency (FEMA). If the program is approved and implemented, MCC §6-107  
11 would be unusable for floodplain management regulation enforcement.  
12

13 **Sec. 6-107. Unlawful uses and improvements.**  
14

15 The term "unlawful use or improvement," as used in this section, means any use or  
16 improvement existing on the effective date of the ordinance from which this section  
17 is derived, that is capable of code enforcement prosecution under chapter 8. Except  
18 for building permits that are limited exclusively to addressing imminent risks to  
19 property and public health and safety, no building permit shall be issued for any use  
20 or improvement involving all or any portion of a parcel of land as defined in part II of  
21 this Code that contains an unlawful use or improvement until the parcel is brought  
22 into compliance with the provisions of part II of this Code. By way of illustration and  
23 not limitation, permits may be issued for repairs and replacement of roof and other  
24 building structural components to the extent necessary to address imminent risks of  
25 property damage and to public safety and health, such as for, but not limited to, the  
26 repair of leaking roofs and damaged roofs, walls, foundation; and, violations of  
27 building, mechanical, and electrical codes. Any such permit shall contain a provision  
28 requiring compliance with part II of this Code by the date specified in the permit.  
29

30 Although normally used as a mechanism to rectify floodplain management related violations  
31 on a site by withholding building permit application approvals, the provisions set forth in  
32 MCC §6-107 have also been utilized as a mechanism to rectify land use related violations.  
33 There is not a regulation with similar language in the Land Development Code. If MCC §6-  
34 107 is abolished, the Land Development Code should be amended to continue providing a  
35 building permit plan reviewer, such as planner or biologist, with an option to not approve a  
36 permit application if there is a known unlawful use on the site. Doing such would not be  
37 inconsistent with the rationale for abolishing MCC §6-107, as that amendment was carried  
38 out for legalities specifically associated with floodplain management, not land use. Further,  
39 as land use is controlled by regulations in the Land Development Code, not in MCC Chapter  
40 6, such a regulation would be more appropriately located in the Land Development Code.  
41

42 As a note, this proposed amendment is not contingent on the abolishment of MCC §6-107. If  
43 the amendment to abolish MCC §6-107 is appealed and it is decided that the provisions  
44 should remain in MCC Chapter 6, Buildings and Construction, the provisions of this  
45 proposed section would be consistent with those set forth in MCC §6-107 and would not  
46 necessarily be redundant in that they would not be located in the same chapter of the Monroe  
47 County Code.  
48

1 Planners and Biologists who review applications for land use issues need a specifically  
2 worded regulation to cite in order to withhold the issuance of a building permit (however not  
3 those related to life and safety) on a site that has a known violation related to land use. It is  
4 inappropriate and contradictory for the County to allow improvements on a site that would  
5 facilitate and/or improve an unlawful use. Such could be viewed as a tacit approval of the  
6 unlawful use or recognition that it is lawful. Further, the County needs mechanisms to  
7 eliminate non-approved unlawful uses that are beyond the time limitations of code  
8 enforcement prosecution. This proposed amendment uses the language of MCC §6-107 as a  
9 base. The only notable differences are a) the proposed amendment applies to any unlawful  
10 use, not only those existing on the effective date of the ordinance establishing the section and  
11 b) the proposed amendment applies only to unlawful uses and not “improvements” which is  
12 an undefined term in the Land Development Code.

13  
14 Therefore, staff recommends the following changes (Deletions are ~~stricken through~~ and  
15 additions are underlined. Text to remain the same is in black):

16  
17 **Sec. 110-144. Unlawful uses.**

18  
19 A lawfully established use means a use that has received a permit or other official approval  
20 from the division of growth management. The term unlawful use, as used in this section,  
21 means any use that has not received a permit or other official approval from the division of  
22 growth management and is not in compliance with the Land Development Code or  
23 Comprehensive Plan. Except for building permits that are limited exclusively to addressing  
24 imminent risks to public health and safety, the planning and environmental resources  
25 department shall not approve any building permit application for an improvement involving  
26 all or any portion of a parcel of land that contains an unlawful use at the time of application  
27 until the unlawful use is terminated or is permitted in accordance with the Land Development  
28 Code. By way of illustration and not limitation, building permit applications may be  
29 approved for repairs and/or replacement of roof, other building structural components,  
30 plumbing and/or electric – however only to the extent necessary to address imminent risks to  
31 public safety and health. Any such permit shall contain a provision requiring compliance  
32 with the Land Development Code by a date specified in the permit, as determined by the  
33 planning director.

34  
35 **IV RECOMMENDATION**

36  
37 Staff has found that the proposed text amendment would be consistent with the provisions of  
38 §102-158(d)(5)(b): 1. Changed projections (e.g., regarding public service needs) from those  
39 on which the text or boundary was based; 2. Changed assumptions (e.g., regarding  
40 demographic trends); 3. Data errors, including errors in mapping, vegetative types and  
41 natural features described in volume I of the plan; 4. New issues; 5. Recognition of a need for  
42 additional detail or comprehensiveness; or 6. Data updates. Specifically, staff has found that  
43 the proposed text amendments are necessary due to new issues.

44  
45 Staff recommends that the Board of County Commissioners amend the Monroe County Code  
46 as stated in the text of this staff report.



## **MEMORANDUM**

**MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT**  
*We strive to be caring, professional and fair*

To: Monroe County Planning Commission  
Through: Townsley Schwab, Senior Director of Planning & Environmental Resources  
From: Reynaldo Ortiz, Assoc. AIA, AICP, Planner  
Date: May 18, 2012  
Subject: *AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTIONS 138-28, EVALUATION CRITERIA, AND 138-55, EVALUATION CRITERIA (NROGO); TO ADJUST THE ROGO AND NROGO POINT VALUES TO BE CONSISTENT WITH THE MONROE COUNTY COMPREHENSIVE PLAN, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.*

---

**Meeting: May 30, 2012**

---

1  
2 **I REQUEST**  
3

4 The Planning & Environmental Resources Department is proposing amendments to the text  
5 of §138-28 and §138-55 of the Monroe County Code. The proposed amendments revise the  
6 Residential Rate of Growth Ordinance (ROGO) and Nonresidential Rate of Growth  
7 Ordinance (NROGO) permit allocation scoring systems to be consistent with recently  
8 proposed amendments to the Comprehensive Plan.  
9

10 **II RELEVANT PRIOR COUNTY ACTIONS:**  
11

12 At their February 13, 2012 meeting, the BOCC passed Resolution #022-2012, a resolution  
13 transmitting to the Florida Department of Economic Opportunity (DEO) a proposed text  
14 amendment to revise Comprehensive Plan Policies 101.5.4 and 101.5.5. If approved, the  
15 amendments revise the existing ROGO and NROGO permit allocation scoring systems by  
16 assigning points to applications for new development that include the dedication of parcels  
17 that contain undisturbed wetlands and/or the dedication of vacant, legally platted Tier III-A  
18 lots. The Planning Commission on December 1, 2011 reviewed this proposed  
19 comprehensive plan amendment and unanimously recommended approval, as memorialized  
20 by Planning Commission Resolution #P40-11.  
21

22 At their February 13, 2012 meeting, the BOCC passed Resolution #024-2012, a resolution  
23 transmitting to the DEO a proposed text amendment to revise Comprehensive Plan Policies



1 101.5.4 and 101.5.5. If approved, the amendments revise the existing ROGO and NROGO  
2 permit allocation scoring systems by assigning negative points to applications for new  
3 development on Tier III parcels that contain wetlands which require 100% open space and  
4 that or are adjacent or contiguous to Tier I properties. The Planning Commission reviewed  
5 this proposed comprehensive plan amendment on December 1, 2011 and unanimously  
6 recommended approval, as memorialized by Planning Commission Resolution #P44-11.  
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8 During a regularly scheduled meeting held on April 24, 2012, the Development Review  
9 Committee reviewed the subject request and recommended approval to the BOCC.  
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### 11 III REVIEW

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13 If the text amendments to the Comprehensive Plan provided in Resolutions #022-2012 and  
14 #024-2012 are ultimately approved, the Land Development Code must be updated to be  
15 consistent with the superseding Comprehensive Plan.  
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17 Although the amendments set forth in Resolutions #022-2012 and #024-2012 have only been  
18 transmitted to DEO and are yet to be adopted, staff has opted to begin the process of amend  
19 the Land Development code so that the Land Development Code amendments may be  
20 adopted at the same BOCC meeting as the Comprehensive Plan amendments.  
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22 Therefore, staff recommends the following changes (deletions are ~~stricken-through~~ and  
23 additions are underlined):  
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#### 25 **Sec. 138-28. - Evaluation criteria.**

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27 The point values established on the following pages are to be applied cumulatively:  
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- 29 (1) *Tier designation.* The following points are intended to discourage development in  
30 environmentally sensitive areas and to direct and encourage development in  
31 appropriate infill areas, while recognizing that any development has an impact on the  
32 carrying capacity of the Florida Keys:  
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<i>Point Assignment</i>	<i>Criteria</i>
+0	An application which proposes a dwelling unit within an area designated tier I on Big Pine Key or No Name Key.
+10	An application which proposes a dwelling unit within an area designated tier I (natural area).
+10	An application which proposes development within an area designated tier II (transition and sprawl reduction area) on Big Pine Key or No Name Key.
+20	An application which proposes development within an area designated tier III (infill area) on Big Pine Key or No Name Key.
+20	An application which proposes the clearing of any upland native habitat

	vegetation that is part of a one acre or larger upland native habitat within an area designated tier III-A (special protection area).
+30	An application which proposes development within an area designated tier III (infill area) outside of Big Pine Key or No Name Key.

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(2) *Big Pine Key and No Name Key only.* The following additional negative points shall be cumulatively assigned to allocation applications and are intended to implement the Habitat Conservation Plan and the Livable CommuniKeys Community Master Plan for Big Pine Key and No Name Key.

<i>Point Assignment</i>	<i>Criteria</i>
- 10	An application which proposes a dwelling unit on No Name Key.
- 10	An application which proposes development in designated Lower Keys Marsh Rabbit habitat or buffer areas as designated in the community master plan.
- 10	An application which proposes development in Key Deer Corridor as designated in the community master plan.

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(3) Wetlands. The following points shall be assigned to allocation applications on Tier III parcels that contain wetlands which require 100% open space pursuant to the Monroe County Comprehensive Plan and that are located adjacent or contiguous to Tier I properties.

<u><i>Point Assignment</i></u>	<u><i>Criteria</i></u>
<u>- 3</u>	<u>Tier III parcels adjacent or contiguous to Tier I properties and containing 50% or less of the following:</u> <u>1. submerged lands</u> <u>2. mangroves (excluding tidally inundated mangrove shoreline fringes)</u> <u>3. salt ponds</u> <u>4. fresh water wetlands</u> <u>5. fresh water ponds</u> <u>6. undisturbed salt marsh and buttonwood wetlands</u>
<u>-5</u>	<u>Tier III parcels adjacent or contiguous to Tier I properties and containing more than 50% of the following:</u> <u>1. submerged lands</u> <u>2. mangroves (excluding tidally inundated mangrove shoreline fringes)</u> <u>3. salt ponds</u> <u>4. fresh water wetlands</u> <u>5. fresh water ponds</u>

6. undisturbed salt marsh and buttonwood wetlands

Notes:

Adjacent means land sharing a boundary with another parcel of land. An intervening road, right-of-way, easement or canal shall not destroy the adjacency of the two parcels, except for U.S. 1.

Contiguous means a sharing of a common border at more than a single point of intersection. Contiguity is not interrupted by utility easements.

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(+) (4) *Lot aggregation.* The following points are intended to encourage the voluntary reduction of density through aggregation of vacant, legally platted, buildable lots with density allocation by lot.

<i>Point Assignment*</i>	<i>Criteria*</i>
+4	An application which aggregates a contiguous vacant, legally platted, vacant, buildable lot, zoned IS, IS-D, URM, URM-L, or CFV, located within a tier III designated area together with the parcel proposed for development. Each additional vacant, legally platted, buildable lot which is aggregated that meets the above requirements will earn the application the additional points as specified.*
+3	On Big Pine Key and No Name Key. An application which aggregates a contiguous vacant, legally platted, vacant, buildable lot, zoned IS, IS-D, URM, URM-L, or CFV, located within a tier II or tier III designated area together with the parcel proposed for development. Each additional vacant, legally platted, buildable lot which is aggregated that meets the above requirements will earn the application the additional points as specified.
<i>Additional requirements</i>	
	1. The proposed development shall not involve the clearing of upland native vegetation of more than 5,000 square feet of upland native vegetation or the open space requirements of section 118-9, whichever is less.
	2. The application shall include, but not be limited to, the following:
	(a) An affidavit of ownership of all affected parcels, acreage or land; and
	(b) A legally binding, restrictive covenant limiting the number of dwelling units on the aggregated lot, running in favor of the county and enforceable by the county, subject to the approval of the growth management director and county attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award.
<i>*Exception:</i>	
No points for aggregation shall be awarded for any application that proposes the clearing of any native upland habitat in a tier III-A (Special Protection Area) area. No	

aggregation of lots will be permitted in tier I.

(4) (5) *Land dedication.* ~~The following points are intended to encourage the voluntary dedication of vacant, buildable land within tier I and tier II (Big Pine Key and No Name Key) areas for the purposes of conservation, resource protection, restoration or density reduction, and, if located within tier III, for the purpose of providing land for affordable housing, where appropriate.~~ The following points shall be assigned to allocation applications to encourage, the voluntary dedication of vacant, buildable land within Tier I designated areas, Tier III-A Special Protection Areas (SPA), and parcels which contain undisturbed wetlands for the purposes of conservation, resource protection, restoration or density reduction and, if located in Tier III outside of Special Protection Areas, for the purpose of providing land for affordable housing where appropriate:

<i>Point Assignment</i>	<i>Criteria</i>
+4	<del>An application which includes the dedication to the county of one vacant, legally-platted buildable lot, zoned SC, IS, IS-D, URM, URM-L, or CFV, or a legally-platted, buildable lot within any CFSD that authorizes dwelling units. Each additional vacant, legally-platted, buildable lot which is dedicated that meets the above requirements will earn the application the additional points as specified.</del> <u>An application which includes the dedication to Monroe County of one vacant, legally-platted lot of sufficient minimum lot size and upland area to be buildable. Each additional vacant, legally-platted lot that meets the aforementioned requirements will earn points as specified.</u>
+2	On Big Pine Key and No Name Key, An application which includes the dedication to the county of one vacant, legally-platted buildable lot, zoned SC, IS, IS-D, URM, URM-L, or CFV, or a legally-platted, buildable lot within any CFSD that authorizes dwelling units. Each additional vacant, legally-platted, buildable lot which is dedicated that meets the above requirements will earn the <del>application</del> application the additional points as specified.
+1 for each 5,000 square feet of lot area	<del>An application which includes the dedication to the county of a vacant, legally-platted, buildable lot of 5,000 square feet or more within a suburban residential district (SR) or suburban residential-limited district (SR-L) within a designated tier I area. Each additional vacant, legally-platted, buildable lot of 5,000 square feet or more that meets the above requirements will earn points as specified.</del> <u>An application which includes the dedication to Monroe County of a vacant, legally-platted lot of 5,000 square feet or more in size, designated as Residential Low on the future land use map with a maximum net density within a Tier I area and containing sufficient upland area to be buildable. Each additional vacant, legally-platted lot that meets the aforementioned requirements will earn points as</u>

	<u>specified.</u>
+0.5	<del>An application which includes the dedication to the county of one vacant, legally platted, buildable lot of 5,000 square feet or more within a native area district (NA) or sparsely settled district (SS) in a designated tier I area. Each additional vacant, legally platted, buildable lot that meets the above requirements will earn the half-point as specified.</del> <u>An application which includes the dedication to Monroe County of one (1) vacant, legally platted lot of at least 5,000 square feet in size within a Tier I area, designated as Residential Conservation or Residential Low on the future land use map, with no maximum net density, containing sufficient upland to be buildable. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.</u>
+4	<del>An application which includes the dedication to the county of at least one acre of vacant, unplatted, buildable land located within a designated tier I area. Each additional one acre of vacant, unplatted, buildable land that meets the above requirements will earn the points as specified.</del> <u>An application which includes the dedication to Monroe County of at least one (1) acre of vacant, unplatted land located within a Tier I area containing sufficient upland to be buildable. Each additional one (1) acre of vacant, unplatted land that meets the aforementioned requirements will earn points as specified.</u>
+2	On Big Pine Key and No Name Key, an application which includes the dedication to the county of at least one acre of vacant, unplatted, buildable land located within a designated tier I area. Each additional one acre of vacant, unplatted, buildable land that meets the above requirements will earn the points as specified.
+2	<u>Proposes dedication to Monroe County of one (1) vacant, legally platted lot which contains undisturbed wetlands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.</u>
+2	<u>Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier III-A (Special Protection Area-SPA) of sufficient minimum lot size and containing sufficient upland area to be buildable. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.</u>
<i>Additional requirements:</i>	
	1. The application shall include, but not be limited to, the following:
	(a) An affidavit of ownership of all affected lots, parcels, acreage or land; and
	(b) A statutory warranty deed that conveys the dedicated property to the county shall be approved by the growth management director and county attorney and recorded in the office of the clerk of the county

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	prior to the issuance of any building permit pursuant to an allocation award.
	2. Lots or parcels dedicated for positive points under this paragraph shall not be eligible for meeting the mitigation requirements of the Big Pine Key and No Name Key Overlay Zone.
	3. Lots or parcels donated for points in Big Pine Key or No Name Key must be located within tier I or tier II lands in Big Pine Key or No Name Key.

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~~(5)~~ **(6)** *Market rate housing in employee or affordable housing project.* The following points are intended to provide further incentives for provision of market rate housing within employee housing projects:

<i>Point Assignment</i>	<i>Criteria</i>
+6	An application for market rate housing unit which is part of employee or affordable housing project.
<i>Additional Requirements:</i>	
	The market rate dwelling unit must be part of an approved employee or affordable housing project and meet all the requirements and conditions pursuant to section 130-161(a) and (f) and this ordinance.

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~~(6)~~ **(7)** *Special flood hazard area.* The following points are intended to discourage development within high risk special flood hazard zones:

<i>Point Assignment</i>	<i>Criteria</i>
- 4	An application which proposes development within a "V" zone on the FEMA flood insurance rate map.

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~~(7)~~ **(8)** *Central wastewater treatment system availability.* The following points shall be assigned to encourage development in areas served by central wastewater treatment systems:

<i>Point Assignment</i>	<i>Criteria</i>
+4	An application for which development is required to be connected to a central wastewater treatment system that meets BAT/AWT standards established by the state legislature.

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~~(8)~~ **(9)** *Perseverance points.* The following points are intended to reward an application based upon the number of years spent in the residential ROGO system without receiving an allocation award:

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<i>Point Assignment</i>	<i>Criteria</i>
+1	A point shall be awarded on the anniversary controlling date for each year that the application remains in the ROGO system up to a maximum of four years.

~~(9)~~ (10) *Payment to land acquisition fund.* Up to two points shall be awarded for a monetary payment to the county's land acquisition fund for the purchase by the county of lands for conservation and retirement of development rights. Points for payment to this fund shall be assigned as follows:

<i>Point Assignment</i>	<i>Criteria</i>
+ 1 to + 2	Proposes payment to the county's land acquisition fund in an amount equal to the monetary value of a ROGO dedication point times the number of points to be purchased, up to a maximum of two points.
<i>Additional Requirements:</i>	
	1. The monetary value of each point shall be established annually by resolution of the board of county commissioners.
	2. The monetary value of each point shall be based upon the average fair market value of privately-owned, buildable, vacant, IS/URM, platted lots in tier I divided by four.
	3. Payment to the county's land acquisition fund shall be prior to the issuance of any building permit pursuant to the allocation award.

~~(10)~~ (11) *Rescoring of applications not receiving allocations.* All applications in the ROGO system on the effective date of the ordinance from which this article is derived that do not receive an allocation award in quarter 4, ROGO year 14, ending July 13, 2006, shall be rescored in quarter 1, ROGO year 15, pursuant to the above provisions as modified by the vesting provisions of ~~subsubsection (11)~~ subsection (12) of this section.

~~(11)~~ (12) *Retroactive vesting provisions.* Notwithstanding the provisions of this article, upon the effective date of the ordinance from which this article is derived, the following vesting provisions shall apply to the scoring of applications in the ROGO system prior to the effective date of the ordinance from which this article is derived:

1. All applications shall be eligible to continue to receive perseverance points beyond the first four years in the system, at an annual rate of +2 points for each year that the application remains in the ROGO system.
2. If any application, prior to the effective date of the ordinance from which this article is derived, had been withdrawn and reentered the ROGO system and the

1 application had been revised solely to increase its point total through lot  
 2 aggregation or land dedication without revising the approved building permit  
 3 application, the controlling date of the application shall be restored to the  
 4 controlling date of the application prior to the application's withdrawal. The  
 5 application shall also be entitled to any perseverance points lost due to the  
 6 withdrawal.

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- 8 3. If any application received points for aggregation, which would not be authorized  
 9 under the new aggregation provisions of subsection (3) of this section, the  
 10 applicant shall receive +4 points for each aggregated lot, except that all  
 11 applications received after September 27, 2005 that are on file with the county  
 12 must be rescored prior to receiving an allocation pursuant to the mandate by the  
 13 Florida Administrative Commission by Rule Nos. 28-20.110 and 28-20.120,  
 14 effective September 27, 2005.
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- 16 4. All applicants in the ROGO system upon the effective date of the ordinance from  
 17 which this article is derived shall be notified by regular mail within 30 days from  
 18 the effective date of the ordinance from which this article is derived by the county  
 19 planning and environmental resources department of the new ROGO scoring  
 20 system. In this notification, applicants shall be informed that they have 30 days  
 21 from the date of the notification, if they so chose, to submit a revision to their  
 22 ROGO application to receive positive points through aggregation, land  
 23 dedication, or payment of fees to the land acquisition fund. Within this one-time,  
 24 30-day time period, applicants shall be able to revise their applications without  
 25 payment of fees or a change in their controlling date upon condition that their  
 26 approved building permit application is not revised.

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 30 **Sec. 138-55. - Evaluation criteria (NROGO).**

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 32 (a) *Evaluation point values.* The following point values established are to be applied  
 33 cumulatively except where otherwise specified:

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 35 (1) *Tier designation.* The following points are intended to discourage nonresidential  
 36 development in environmentally sensitive areas and areas without sufficient infrastructure  
 37 and to direct and encourage nonresidential development in appropriate infill areas, while  
 38 recognizing that any development has affects on the carrying capacity of the Florida Keys:  
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<i>Point Assignment</i>	<i>Criteria</i>
0	An application which proposes nonresidential development within an area designated tier I (natural area), except for the expansion of existing, lawfully established nonresidential floor area provided under the exception below.
+10	An application which proposes nonresidential development within an area

	designated tier II (transition and sprawl reduction area) on Big Pine and No Name Key.
+10	application which proposes nonresidential development within an area designated tier III-A (special protection area) that proposes to clear any portion of an upland native habitat patch of one acre or greater in size.
+20	An application which proposes nonresidential development within an area designated tier III (infill area).
<i>Exception:</i>	
Any application for the expansion of existing, lawfully established nonresidential floor area shall be assigned +20 points contingent upon no further clearing of upland native habitat and no addition to and/or expansion of the existing lot or parcel upon which the existing use is located.	

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(2) Wetlands. The following points shall be assigned to allocation applications on Tier III parcels that contain wetlands which require 100% open space pursuant to the Monroe County Comprehensive Plan and that are located adjacent or contiguous to Tier I properties.

<u>Point Assignment</u>	<u>Criteria</u>
-3	<u>Tier III parcels adjacent or contiguous to Tier I properties and containing 50% or less of the following:</u> <ol style="list-style-type: none"> <li><u>1. submerged lands</u></li> <li><u>2. mangroves (excluding tidally inundated mangrove shoreline fringes)</u></li> <li><u>3. salt ponds</u></li> <li><u>4. fresh water wetlands</u></li> <li><u>5. fresh water ponds</u></li> <li><u>6. undisturbed salt marsh and buttonwood wetlands</u></li> </ol>
-5	<u>Tier III parcels adjacent or contiguous to Tier I properties and containing more than 50% of the following:</u> <ol style="list-style-type: none"> <li><u>1. submerged lands</u></li> <li><u>2. mangroves (excluding tidally inundated mangrove shoreline fringes)</u></li> <li><u>3. salt ponds</u></li> <li><u>4. fresh water wetlands</u></li> <li><u>5. fresh water ponds</u></li> <li><u>6. undisturbed salt marsh and buttonwood wetlands</u></li> </ol>
<u>Notes:</u> <u>Adjacent means land sharing a boundary with another parcel of land. An intervening road, right-of-way, easement or canal shall not destroy the adjacency of the two parcels, except for U.S. 1.</u> <u>Contiguous means a sharing of a common border at more than a single point of intersection. Contiguity is not interrupted by utility easements.</u>	

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(2) (3) *Intensity reduction.* The following points are intended to encourage the voluntary reduction of intensity:

<i>Point assignment</i>	<i>Criteria</i>
+ 4	application proposes development that reduces the permitted floor area ratio (FAR) to 23 percent or less.
<i>Additional requirements:</i>	
A legally binding restrictive covenant running in favor of the county that restricts the floor area ratio of the property to a maximum of 23 percent for a period of ten years shall be approved by the growth management director and county attorney and recorded in the office of the county clerk prior to the issuance of any building permit pursuant to an allocation award.	

(3) (4) *Land dedication.* ~~The following points are intended to encourage the voluntary dedication of vacant, buildable land within tier I and tier II (Big Pine Key and No Name Key) areas for the purposes of conservation, resource protection, restoration or density reduction, and, if located within tier III, for the purpose of providing land for affordable housing where appropriate:~~ The following points shall be assigned to allocation applications to encourage the voluntary dedication of vacant, buildable land within Tier I, Tier II (Big Pine Key and No Name Key), and Tier III-A (Special Protection Areas (SPA)) designated areas and parcels which contain undisturbed wetlands for the purposes of conservation, resource protection, restoration or density reduction and, if located in Tier III outside of Special Protection Areas, for the purpose of providing land for affordable housing where appropriate:

<i>Point assignment</i>	<i>Criteria</i>
+4	<del>An application which includes the dedication to the county of one vacant, legally-platted, buildable lot, zoned SC, IS, IS-D, IS-M, URM, URM-L, or CFV or a legally-platted, buildable lot within any CFSD that authorizes dwelling units. Each additional vacant, legally-platted, buildable lot which is dedicated that meets the above requirements will earn the application the additional points as specified.</del> <u>An application which includes the dedication to Monroe County of one (1) vacant, legally-platted lot of sufficient minimum lot size and upland area to be buildable. Each additional vacant, legally-platted, buildable lot which is dedicated that meets the aforementioned requirements will earn the additional points as specified.</u>
+2	On Big Pine Key and No Name Key, an application which includes the dedication to the county of one vacant, legally-platted, buildable lot, zoned SC, IS, IS-D, IS-M, URM, URM-L, or CFV, or a legally-platted, buildable lot within any CFSD that authorizes dwelling units. Each additional vacant, legally-platted, buildable lot which is dedicated that meets the above requirements will earn the application the additional points as specified.

<p>+1 per 5,000 square feet of lot area</p>	<p><del>An application which includes the dedication to the county of a vacant, legally platted, buildable lot of 5,000 square feet or more within a suburban residential district (SR) or suburban residential limited district (SR-L) in a designated tier I area. Each additional vacant, legally platted, buildable lot of 5,000 square feet or more that meets the above requirements will earn points as specified.</del> <u>An application which includes the dedication to Monroe County of a vacant legally platted lot of five thousand (5,000) square feet or more in size, designated as Residential Low on the future land use map with maximum net density within a Tier I area and containing sufficient upland to be buildable. Each additional vacant, legally platted lot, that meets the aforementioned requirements will earn points as specified.</u></p>
<p>+0.5</p>	<p><del>An application which includes the dedication to the county of one vacant, legally platted lot of 5,000 square feet or more within a native area district (NA) or sparsely settled district (SS) within a designated tier I area. Each additional vacant, legally platted, buildable lot that meets the above requirements will earn the half-point as specified.</del> <u>An application which includes the dedication to Monroe County one (1) vacant, legally platted lot of five thousand (5,000) square feet or more within a Tier I area designated as Residential Conservation or Residential Low on the future land use map with no maximum net density, containing sufficient upland to be buildable. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.</u></p>
<p>+4</p>	<p><del>An application which includes the dedication to the county of at least one acre of vacant, unplatted, buildable land located within a designated tier I area. Each additional one acre of vacant, unplatted, buildable land that meets the above requirements will earn the points as specified.</del> <u>An application which includes the dedication to Monroe County of at least one (1) acre of vacant, unplatted land located within a Tier I area containing sufficient upland to be buildable. Each additional one (1) acre of vacant, unplatted land that meets the aforementioned requirements will earn the points as specified.</u></p>
<p>+2</p>	<p>On Big Pine Key and No Name Key, an application which includes the dedication to the county of at least one acre of vacant, unplatted, buildable land located within a designated tier I area. Each additional one acre of vacant, unplatted, buildable land that meets the above requirements will earn the points as specified.</p>
<p>+2</p>	<p><u>Proposes dedication to Monroe County of one (1) vacant, legally platted lot which contains undisturbed wetlands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.</u></p>
<p>+2</p>	<p><u>Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier III-A (Special Protection Area-SPA) of sufficient minimum lot size and containing sufficient upland area to be</u></p>

	<u>buildable. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.</u>
<i>Additional requirements:</i>	
1. The application shall include, but not be limited to, the following:	
(a) An affidavit of ownership of all affected lots, parcels, acreage or land; and	
(b) A statutory warranty deed that conveys the dedicated property to the county, which shall be approved by the growth management director and county attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award.	
2. Lots or parcels dedicated for positive points under this subsection shall not be eligible for meeting the mitigation requirements of the Big Pine Key and No Name Key Overlay Zone.	
3. Only lots or parcels on Big Pine Key and No Name Key dedicated for positive points under this subsection will allow for positive points for applications on Big Pine Key and No Name Key.	

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(+) (5) *Special flood hazard area.* The following points are intended to discourage development within high risk special flood hazard zones:

<i>Point Assignment</i>	<i>Criteria</i>
- 4	An application which proposes development within a V zone on the FEMA flood insurance rate map.

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(+) (6) *Perseverance points.* The following points are intended to reward an application based upon the number of years spent in the nonresidential ROGO system without receiving an allocation award.

<i>Point assignment</i>	<i>Criteria</i>
+1	A point shall be awarded on the anniversary of the controlling date for each year that the application remains in the NROGO system, up to four years.
+2	Points shall be awarded on the anniversary of the controlling date for each year over four that the application remains in the NROGO system.

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(+) (7) *Highway access.* The following points are intended to encourage connections between commercial uses and reduction of the need for trips and access onto U.S. Highway 1:

<i>Point assignment</i>	<i>Criteria</i>
+3	The project eliminates an existing driveway or accessway to U.S. Highway 1.
+2	The projects does not provide for a new driveway or accessway to U.S. Highway 1

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(+) (8) *Landscaping and water conservation.* The following points are intended to encourage the planting of native vegetation and promote water conservation:

<i>Point assignment</i>	<i>Criteria</i>
+3	The project provides a total of 200 percent of the number of native landscape plants on its property than the number of native landscape plants required by this chapter within landscaped bufferyards and parking areas.
+1	25 percent of the native plants provided to achieve the three point award above or provided to meet the landscaped bufferyard and parking area requirements of this chapter are listed as threatened or endangered plants native to the Florida Keys.
+2	Project landscaping is designed for water conservation such as use of 100 percent native plants for vegetation, collection and direction of rainfall to landscaped areas, or application of reused wastewater or treated seawater for watering landscaped plants.
<i>Additional requirements:</i>	
Prior to the issuance of a certificate of occupancy for the building permit authorized by an allocation award, the applicant shall:	
(a) Post a two-year performance bond in accordance with this chapter to ensure maintenance of the native plants; and,	
(b) Sign an affidavit acknowledging that he is subject to code enforcement action should the native plants not be maintained.	

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(8) (9) *Central wastewater treatment system availability.* The following points shall be assigned to encourage development in areas served by central wastewater treatment systems:

<i>Point Assignment</i>	<i>Criteria</i>
+ 4	An application for which development is required to be connected to a central wastewater treatment system that meets BAT/AWT standards established by the state legislature.

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(9) (10) *Employee housing.* The following points, up to a maximum of four, shall be assigned to allocation applications that make provisions for employee housing units:

<i>Point Assignment</i>	<i>Criteria</i>
+ 2 per unit	Proposes an employee housing unit which is located on the parcel with the nonresidential floor space requested in the allocation application. Up to a maximum of four points may be awarded.
<i>Additional Requirements:</i>	
1. The employee housing unit shall be required to meet the applicable provisions of section 130-161	
2. The proposed employee housing unit shall be included in the development approval for the nonresidential development proposed in the allocation application.	

3. A certificate of occupancy shall be granted for the nonresidential development authorized by the allocation award, but shall not be issued prior to the certificate of occupancy for the employee housing units.

(11) *Payment to land acquisition fund.* Up to two points shall be awarded for a monetary payment to the county's land acquisition fund for the purchase by the county of lands for conservation and retirement of development rights. Points for payment to this fund shall be assigned as follows:

<i>Point Assignment</i>	<i>Criteria</i>
+1 to +2	Proposes payment to the county's land acquisition fund in an amount equal to the monetary value of a ROGO dedication point times the number of points to be purchased, up to a maximum of two points.
<i>Additional Requirements:</i>	
1. The monetary value of each point shall be established annually by resolution of the board of county commissioners.	
2. The monetary value of each point shall be based upon the average market value of privately-owned, buildable, vacant, IS/URM, platted lots in tier I, divided by four.	
3. Payment to the county's land acquisition fund shall be prior to the issuance of any building permit pursuant to the allocation award.	

~~(b) *Rescoring of applications not receiving allocations.* All applications in the NROGO system on the effective date of the ordinance from which this article is derived that do not receive an allocation award in quarter 4, ROGO year 14, ending July 13, 2006, shall be rescored in quarter 1, ROGO year 15, pursuant to the provisions of subsection (a) of this section, as modified by the vesting provisions of subsection (c) of this section.~~

~~(c) *Retroactive vesting provisions.* Notwithstanding the provisions of subsection (a) of this section, upon the effective date of the ordinance from which this article is derived, the following vesting provision shall apply to the scoring of applications in the ROGO system prior to the effective date of the ordinance from which this article is derived:~~

~~(1) All applicants in the NROGO system upon the effective date of the ordinance from which this article is derived shall be notified by regular mail within 30 days from the effective date of the ordinance from which this article is derived by the county planning and environmental resources department of the new NROGO scoring system.~~

~~(2) In such notification, applicants shall be informed that they have 30 days from the date of the notification, if they so chose, to submit a revision to their NROGO application to receive positive points through aggregation, land dedication, or payment of fees to the land acquisition fund.~~

~~(3) Within this one-time, 30-day time period, applicants shall be able to revise their applications without payment of fees or a change in their controlling date, upon condition that their approved building permit application is not revised to involve any further clearing of upland native habitat.~~

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**IV RECOMMENDATION**

Staff has found that the proposed text amendment would be consistent with the provisions of MCC §102-158(d)(5)(b): 1. Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based; 2. Changed assumptions (e.g., regarding demographic trends); 3. Data errors, including errors in mapping, vegetative types and natural features described in volume I of the plan; 4. New issues; 5. Recognition of a need for additional detail or comprehensiveness; or 6. Data updates. Specifically, staff has found that the proposed text amendments are necessary due to recognition of a need for additional detail or comprehensiveness.

Staff recommends that the Board of County Commissioners amend the Monroe County Code as stated in the text of this staff report.



**MONROE COUNTY, FLORIDA  
MONROE COUNTY BOARD OF COUNTY COMMISSIONERS  
RESOLUTION NO. 022-2012**

**A RESOLUTION BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS TRANSMITTING TO THE STATE LAND PLANNING AGENCY AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING POLICIES 101.5.4 AND 101.5.5 OF THE MONROE COUNTY 2010 COMPREHENSIVE PLAN TO ASSIGN POINTS, UNDER ROGO AND NROGO, FOR THE DEDICATION OF PARCELS THAT CONTAIN WETLANDS OR THE DEDICATION OF PARCELS DESIGNATED AS TIER III-A (SPECIAL PROTECTION AREA).**

**WHEREAS, The Monroe County Board of County Commissioners conducted a public hearing for the purpose of considering the transmittal to the State Land Planning Agency a proposed amendment to the Monroe County 2010 Comprehensive Plan amending Policies 101.5.4 and 101.5.5 to assign points, under ROGO and NROGO, for the dedication of parcels that contain wetlands or the dedication of parcels designated as TIER III-A (Special Protection Area).**

**WHEREAS, the Monroe County Planning Commission and the Monroe County Board of County Commissioners support the requested text amendment;**

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:**

**Section 1: The Board of County Commissioners does hereby adopt the recommendation of the Planning Commission to transmit the draft ordinance for adoption of the proposed text amendment.**

**Section 2: The Board of County Commissioners does hereby transmit the proposed amendment to the Florida Department of Economic Opportunity for review and comment in accordance with the provisions of Chapter 163.3184, Florida Statutes.**

**Section 3: The Monroe County staff is given authority to prepare and submit the required transmittal letter and supporting documents for the proposed amendment.**

**Section 4: The Clerk of the Board is hereby directed to forward a certified copy of this resolution to the Director of Planning.**

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a special meeting held on the 13<sup>th</sup> day of February, 2012.

Mayor David Rice	<u>Yes</u>
Mayor <i>pro tem</i> Kim Wigington	<u>Yes</u>
Commissioner Heather Carruthers	<u>Yes</u>
Commissioner George Neugent	<u>Yes</u>
Commissioner Sylvia Murphy	<u>Yes</u>

**BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA**

BY

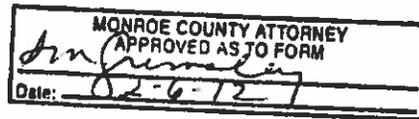


\_\_\_\_\_  
Mayor David Rice



ATTEST: DANNY L. KOLHAGE, CLERK

  
\_\_\_\_\_  
DEPUTY CLERK



FILED FOR RECORD  
2012 FEB 22 PM 1:46



**MONROE COUNTY, FLORIDA  
MONROE COUNTY BOARD OF COUNTY COMMISSIONERS  
RESOLUTION NO. 024 - 2012**

**A RESOLUTION BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS TRANSMITTING TO THE STATE LAND PLANNING AGENCY AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING POLICIES 101.5.4 AND 101.5.5 TO REVISE THE PERMIT ALLOCATION SCORING SYSTEMS (ROGO AND NROGO) TO ASSIGN NEGATIVE POINTS TO TIER III PARCELS THAT CONTAIN SUBMERGED LANDS AND/OR WETLANDS REQUIRING 100% OPEN SPACE PURSUANT TO POLICIES 102.1.1 AND 204.2.1 AND THAT ARE LOCATED ADJACENT TO OR CONTIGUOUS TO TIER I PROPERTIES.**

---

**WHEREAS**, the Monroe County Board of County Commissioners conducted a public hearing for the purpose of considering the transmittal to the State Land Planning Agency a proposed amendment to the Monroe County 2010 Comprehensive Plan as described above; and

**WHEREAS**, the Monroe County Planning Commission and the Monroe County Board of County Commissioners support the requested text amendment; and

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:**

**Section 1:** The Board of County Commissioners does hereby adopt the recommendation of the Planning Commission to transmit the draft ordinance for adoption of the proposed text amendment.

**Section 2:** The Board of County Commissioners does hereby transmit the proposed amendment as part of a set of comprehensive plan amendments for 2012 to the State Land Planning Agency for review and comment in accordance with the State Coordinated Review process pursuant to Section 163.3184(4), Florida Statutes.

**Section 3.** The Monroe County staff is given authority to prepare and submit the required transmittal letter and supporting documents for the proposed amendment.

**Section 4.** The Clerk of the Board is hereby directed to forward a certified copy of this resolution to the Director of Planning.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a special meeting held on the 13<sup>th</sup> day of February, 2012.

Mayor David Rice	<u>Yes</u>
Mayor <i>pro tem</i> Kim Wigington	<u>Yes</u>
Commissioner Sylvia Murphy	<u>Yes</u>
Commissioner George Neugent	<u>Yes</u>
Commissioner Heather Carruthers	<u>Yes</u>

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

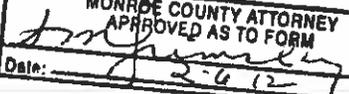
BY

  
\_\_\_\_\_  
Mayor David Rice



ATTEST: DANNY L. KOLHAGE, CLERK

  
\_\_\_\_\_  
DEPUTY CLERK

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM  
  
Date: 2-6-12

FILED FOR RECORD  
2012 FEB 22 PM 1:47



## MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

*We strive to be caring, professional and fair*

To: Monroe County Planning Commission  
Through: Townsley Schwab, Senior Director of Planning & Environmental Resources  
From: Joseph Haberman, AICP, Planning & Development Review Manager  
Date: May 7, 2012  
Subject: *AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTIONS 138-19, RATE OF GROWTH ORDINANCE (ROGO), 138-25, APPLICATION PROCEDURES FOR RESIDENTIAL ROGO, 138-47, NONRESIDENTIAL RATE OF GROWTH ORDINANCE, 138-52, APPLICATION PROCEDURES FOR NROGO; TO ESTABLISH A REQUIREMENT THAT A BUILDING PERMIT APPLICATION THAT IS SUBMITTED TO THE BUILDING DEPARTMENT BE REVISED FOLLOWING RECEIPT OF ITS REQUIRED ROGO/NROGO ALLOCATION(S) AND PRIOR TO BUILDING PERMIT ISSUANCE TO MEET ALL BUILDING CODES IN EFFECT AT THE TIME OF BUILDING PERMIT ISSUANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.*

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**Meeting: May 30, 2012**

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1  
2 I REQUEST  
3

4 The Planning & Environmental Resources Department is proposing amendments to the text  
5 of the Monroe County Code concerning the County's Residential Rate of Growth Ordinance  
6 (ROGO) and Nonresidential Rate of Growth Ordinance (NROGO). The purpose of the text  
7 amendments is establish a requirement that a building permit application be revised  
8 following receipt of its require ROGO and/or NROGO allocation(s) and prior to building  
9 permit issuance to meet all building codes in effect at the time of building permit issuance.  
10

11 II RELEVANT PRIOR COUNTY ACTIONS AND BACKGROUND INFORMATION:  
12

13 The ROGO was implemented within the Monroe County Code as required by Monroe  
14 County Comprehensive Plan Policy 101.2.13.  
15

16 The ROGO was first adopted in 1992 by Ordinance #016-1992. It has been effective from  
17 July 1992 to present. In order to carry out several miscellaneous amendments, MCC Chapter  
18 138, Article II, ROGO has been amended several times from it adoption to present date. Of

1 these amendments, it is important to note that in order to implement the tier scoring system,  
2 the ROGO regulations were amended in 2006 by Ordinance #009-2006.

3  
4 As set forth in MCC §138-19(b), the purposes and intent of the ROGO are: 1) to facilitate  
5 implementation of goals, objectives and policies set forth in the Comprehensive Plan relating  
6 to protection of residents, visitors and property in the county from natural disasters,  
7 specifically including hurricanes; 2) to limit the annual amount and rate of residential  
8 development commensurate with the county's ability to maintain a reasonable and safe  
9 hurricane evacuation clearance time; 3) to regulate the rate and location of growth in order to  
10 further deter deterioration of public facility service levels, environmental degradation and  
11 potential land use conflicts; 4) to allocate the limited number of dwelling units available  
12 annually hereunder, based upon the goals, objectives and policies set forth in the  
13 Comprehensive Plan; and 5) to implement goal 105 of the Comprehensive Plan.

14  
15 The NROGO was carried out as required by Monroe County Comprehensive Plan Policy  
16 101.3.1.

17  
18 The NROGO was first adopted in 2001 by Ordinance #032-2001. It has been effective from  
19 July 2001 to present. In order to carry out several miscellaneous amendments, MCC Chapter  
20 138, Article III, NROGO has been amended several times from its adoption to present date.  
21 Of these amendments, it is important to note that in order to implement the tier scoring  
22 system, the NROGO regulations were amended in 2006 by Ordinance #011-2006.

23  
24 As set forth in MCC §138-47(b), the purposes and intent of the NROGO are: 1) to facilitate  
25 implementation of goals, objectives and policies set forth in the Comprehensive Plan relating  
26 to maintaining a balance between residential and nonresidential growth; 2) to maintain a ratio  
27 of approximately 239 square feet of nonresidential floor area for each new residential permit  
28 issued through the ROGO; 3) to promote the upgrading and expansion of existing small-size  
29 businesses and to retain the predominately small scale character of nonresidential  
30 development in the Florida Keys; 4) to regulate the rate and location of nonresidential  
31 development in order to eliminate potential land use conflicts; and 5) to allocate the  
32 nonresidential floor area annually hereunder, based on the goals, objectives and policies of  
33 the Comprehensive Plan and the Livable CommuniKeys master plans.

### 34 35 III REVIEW

36  
37 Since the adoption of ROGO and NROGO, Monroe County has required applicants for  
38 allocations to obtain building permit approval prior to applying for an allocation. The  
39 existing process requires an applicant to submit a full plan set for the site and all buildings as  
40 part of building permit application(s), as well as application fees for the building permit and  
41 corresponding plan review.

42  
43 Development approved by a building permit should be compliant with the most current  
44 building and life safety codes in place at time of issuance. However, under the current  
45 system, applicants are required to seek building permit approval prior to application for a  
46 ROGO and/or NROGO allocation. Since the reviews by various disciplines occur at the

1 beginning of a process that may take some time (ROGO/NROGO are competitive, point-  
2 based systems and applications may remain in the systems for several years), it is possible  
3 that the building permit application that was reviewed and approved under the building and  
4 life safety codes at time of application may become non-compliant with the building and life  
5 safety code requirements on the date of building permit issuance.  
6

7 To alleviate this issue, staff is proposing a requirement that a building permit application be  
8 revised following receipt of its require ROGO and/or NROGO allocation(s) and prior to  
9 building permit issuance to meet all building codes in effect at the time of building permit  
10 issuance.  
11

12 In addition, this amendment codifies the list of items that are required to be included in  
13 ROGO and NROGO applications. Currently, the requirements are determined  
14 administratively by the ROGO administrator and Director of Planning & Environmental  
15 Resources.  
16

17 Therefore, staff recommends the following changes (Deletions are ~~stricken through~~ and  
18 additions are underlined. Text to remain the same is in black):  
19

20 **Sec. 138-19. Residential rate of growth ordinance (ROGO).**  
21

22 (a) *Definitions.* The following words, terms and phrases, when used in this ~~section~~ article,  
23 shall have the meanings ascribed to them in this ~~subsection~~ section, except where the  
24 context clearly indicates a different meaning:  
25

26 *Allocation period* means a defined period of time within which applications for the  
27 residential ROGO allocation will be accepted and processed.  
28

29 *Annual allocation period* means the 12-month period beginning on July 13, 1992, (the  
30 effective date of the original dwelling unit allocation ordinance), and subsequent one-year  
31 periods.  
32

33 *Annual residential ROGO allocation* means the maximum number of dwelling units for  
34 which building permits may be issued during an annual allocation period.  
35

36 *Buildable lot or parcel*, for the purposes of this chapter, means a lot or parcel which must  
37 contain a minimum of 2,000 square feet of upland, including any disturbed wetlands that  
38 can be filled ~~pursuant to this chapter~~.  
39

40 *Controlling date* means the date and time a ROGO application is submitted. This date  
41 shall be used to determine the annual anniversary date for receipt of a perseverance point  
42 and shall determine precedence when ROGO applications receive identical ranking  
43 scores. A new controlling date shall be established based upon the resubmittal date and  
44 time of any withdrawn or revised application, except pursuant to section 138-25(h).  
45

1 *Lawfully established for ROGO/NROGO exemption* means a residential dwelling unit or  
2 nonresidential floor area that has received a permit or other official approval from the  
3 division of growth management for the ~~units~~ unit and/or nonresidential floor area.  
4

5 *Quarterly allocation period* means the three-month period beginning on July 13, 1992, or  
6 such other date as the board may specify, and successive three-month periods.  
7

8 *Quarterly residential ROGO allocation* means the maximum number of dwelling units  
9 for which building permits may be issued in a quarterly allocation period.  
10

11 *Residential dwelling unit* means a dwelling unit as defined in section 101-1, and  
12 expressly includes the following other terms also specifically defined in section 101-1:  
13 ~~lawfully established hotel~~ rooms, hotel or motel, campground spaces, mobile homes,  
14 transient residential units, institutional residential units (except hospital rooms) and ~~live-~~  
15 ~~aboards~~ live-aboard vessels.  
16

17 *Residential ROGO allocation* means the maximum number of dwelling units for which  
18 building permits may be issued in a given time period.  
19

20 *Residential ROGO allocation award* means the approval of a residential ROGO  
21 application for the issuance of a building permit.  
22

23 *ROGO application* means the residential ROGO application submitted by applicants  
24 seeking allocation awards.  
25

26 (b) *Purpose and intent*. The purposes and intent of residential ROGO are:

- 27 (1) To facilitate implementation of goals, objectives and policies set forth in the  
28 comprehensive plan relating to protection of residents, visitors and property in the  
29 county from natural disasters, specifically including hurricanes;  
30 (2) To limit the annual amount and rate of residential development commensurate with  
31 the county's ability to maintain a reasonable and safe hurricane evacuation clearance  
32 time;  
33 (3) To regulate the rate and location of growth in order to further deter deterioration of  
34 public facility service levels, environmental degradation and potential land use  
35 conflicts;  
36 (4) To allocate the limited number of dwelling units available annually hereunder, based  
37 upon the goals, objectives and policies set forth in the comprehensive plan; and  
38 (5) To implement goal 105 of the comprehensive plan.  
39

40 \* \* \* \* \*

41  
42 **Sec. 138-25. Application procedures for residential ROGO.**  
43

- 44 (a) *Application for allocation*. In each quarterly allocation period, the ~~department of~~ planning  
45 and environmental resources department shall accept applications to enter the residential  
46 ROGO system ~~on forms prescribed by the planning director~~. Except for allocations to be

1 reserved and awarded under section 138-24(b), the ROGO application ~~form~~ must be  
2 accompanied by an approved building permit application ~~and a nonrefundable processing~~  
3 ~~fee~~ in order to be considered in the current allocation period. The planning director, or his  
4 or her designee, shall review the ROGO application for completeness. If the application  
5 is determined to be incomplete, the planning director, or his or her designee, shall reject  
6 the ROGO application and notify the applicant of such rejection, and the reasons  
7 therefore, within ten working days. The application shall be assigned a controlling date  
8 that reflects the time and date of its submittal unless the application is determined to be  
9 incomplete. If the application is rejected, then the new controlling date shall be assigned  
10 when a complete application is submitted. The ROGO application shall be submitted in a  
11 form provided by the planning and environmental resources department and meet the  
12 following requirements:

13 (1) The application shall include a) the name and address of the property owner(s) of  
14 record, b) the property record card(s) from the Monroe County Property Appraiser, c)  
15 a location map, d) a written legal description of the property proposed for  
16 development, e) a boundary survey of the property proposed for development,  
17 prepared by a surveyor registered in the State of Florida, showing the boundaries of  
18 the site, elevations, bodies of water and wetlands on the site and adjacent to the site,  
19 existing structures including all impervious areas, existing easements, total acreage,  
20 and total acreage by habitat and f) the site plan.

21 (2) If a conditional use permit is required in accordance with this Land Development  
22 Code for the development applied for, the conditional use permit shall be obtained  
23 and effective prior to submittal of any ROGO application. A copy of the recorded  
24 development order shall be submitted with the ROGO application.

25 (3) The site plan shall be prepared and sealed by a professional architect, engineer, or any  
26 other professional licensed to prepare a site plan. The site plan shall be drawn to a  
27 scale of one inch equals ten feet or one inch equals twenty feet. At a minimum, the  
28 site plan shall depict the following features and information:

29 a. Date, north point and graphic scale;

30 b. Boundary lines of site, including all property lines and mean high-water lines  
31 shown in accordance with Florida Statutes;

32 c. All attributes from the boundary survey;

33 d. Future Land Use Map (FLUM) designation(s) of the site;

34 e. Land Use (Zoning) District designation(s) of site;

35 f. Tier designation(s) of the site;

36 g. Flood zones pursuant to the Flood Insurance Rate Map;

37 h. Setback lines as required by this Land Development Code;

38 i. Locations and dimensions of all existing and proposed structures, including all  
39 paved areas and clear site triangles;

40 j. Size and type of buffer yards and parking lot landscaping areas, including the  
41 species and number of plants;

42 k. Extent and area of wetlands, open space preservation areas and conservation  
43 easements;

44 l. Delineation of habitat types to demonstrate buildable area on the site, including  
45 any heritage trees identified and any potential species that may use the site

1 (certified by an approved biologist and based on the most current professionally-  
2 recognized mapping by the U.S. Fish and Wildlife Service);

3 m. Drainage plan including existing and proposed topography, all drainage  
4 structures, retention areas, drainage swales and existing and proposed permeable  
5 and impermeable areas;

6 n. Location of fire hydrants or fire wells;

7 o. The location of public utilities, including location of the closest available water  
8 supply system or collection lines and the closest available wastewater collection  
9 system or collection lines (with wastewater system provider) or on-site system  
10 proposed to meet required County and State of Florida wastewater treatment  
11 standards; and

12 p. A table providing the total land area of the site, the total buildable area of the site,  
13 the type and number of all residential dwelling units, the amounts of impervious  
14 and pervious areas, and calculations for land use intensity, open space ratio, and  
15 off-street parking.

16  
17 (b) *Fee for review of application.* Each ROGO application shall be accompanied by a  
18 nonrefundable processing fee ~~as may be~~ established by resolution of the board of county  
19 commissioners. Additional fees are not required for successive review of the same  
20 ROGO application unless the application is withdrawn and resubmitted.

21  
22 (c) *Compliance with other requirements.* The ROGO application shall not constitute an  
23 indication of ~~indicate~~ whether or not the applicant for a residential ~~dwelling unit~~ ROGO  
24 allocation has satisfied and complied with all county, state and federal requirements  
25 otherwise imposed by the county regarding conditions precedent to issuance of a building  
26 permit ~~and shall require that the applicant certify to such compliance.~~

27  
28 (d) ~~Nonecounty~~ Non-county time periods. The county shall develop necessary administrative  
29 procedures and, if necessary, enter into agreements with other jurisdictional entities  
30 which impose requirements as a condition precedent to development in the county, to  
31 ensure that such ~~nonecounty non-county~~ approvals, certifications and/or permits are not  
32 lost due to the increased time requirements necessary for the county to process and  
33 evaluate residential dwelling unit applications and issue allocation awards. The county  
34 may permit evidence of compliance with the requirements of other jurisdictional entities  
35 to be demonstrated by "coordinating letters" in lieu of approvals or permits.

36  
37 (e) *Limitation on number of applications.*

38 (1) An individual entity or organization may submit only one ROGO application per  
39 residential dwelling unit in each quarterly allocation period.

40 (2) There shall be no limit on the number of separate parcels for which ROGO  
41 applications may be submitted by an individual, entity or organization.

42 (3) A ROGO application for a given parcel shall not be for more residential dwelling  
43 units than are permitted by applicable zoning or land use regulations or the  
44 comprehensive plan.  
45

1 (f) *Expiration of allocation award.* Except as provided for in this article, an allocation award  
2 shall expire when its corresponding building permit is not picked up after 60 days of  
3 notification by certified mail of the award or after issuance of the building permit, upon  
4 expiration of the permit or after failure of the applicant to submit required plan revisions  
5 by the required date set forth in subsection (j).  
6

7 (g) *Borrowing from future housing allocations.*

8 (1) The planning commission may award additional units from future annual ~~dwelling~~  
9 ~~unit-residential~~ ROGO allocations to fully grant an application for residential  
10 dwelling units in a project if such an application receives an allocation award for  
11 some, but not all, of the units requested.

12 (2) The board of county commissioners, in approving affordable housing allocations  
13 pursuant to section 138-24(b), may reserve and award additional units from future  
14 annual dwelling unit allocations if the number of available allocations is insufficient  
15 to meet specific project needs.

16 (3) The planning commission shall not reduce any future market rate quarterly allocation  
17 by more than 20 percent and shall not apply these reductions to more than the next  
18 five annual allocations or 20 quarterly allocations.

19 (4) The board of county commissioners, upon recommendation of the planning  
20 commission, may make available for award up to 100 percent of the affordable  
21 housing allocations available over the next five annual allocations or 20 quarterly  
22 allocations.  
23

24 (h) *Revisions of ROGO applications and awards.*

25 (1) An applicant may elect to revise a ROGO application to increase the competitive  
26 points in the application without prejudice or change in the controlling date if a  
27 revision is submitted on a form approved by the planning director to the planning and  
28 environmental resources department no later than 30 days following the planning  
29 commission approval of the previous ROGO rankings. Any such revision shall not  
30 involve changes to the approved building permit application. All other applications  
31 that are withdrawn and resubmitted that do not increase the competitive points or  
32 involve revisions to the approved building permit application shall be considered  
33 new, requiring payment of appropriate fees and receiving a new controlling date.

34 (2) After receipt of an allocation award, and either before or after receipt of a building  
35 permit, but prior to receipt of a certificate of occupancy, no revisions shall be made to  
36 any aspect of the proposed residential development which formed the basis for the  
37 evaluation review, determination of points and allocation rankings, unless such  
38 revision would have the effect of increasing the points awarded.  
39

40 (i) *Clarification of application data.*

41 (1) At any time during the ~~dwelling-unit~~ residential ROGO allocation review and  
42 approval process, the applicant may be requested by the ~~director of~~ planning director  
43 or the planning commission to submit additional information to clarify the  
44 relationship of the allocation application, or any elements thereof, to the evaluation  
45 criteria. If such a request is made, the ~~director of~~ planning director shall identify the

1 specific evaluation criterion at issue and the specific information needed and shall  
2 communicate such request to the applicant.

- 3 (2) Upon receiving a request from the ~~director of~~ planning director for such additional  
4 information, the applicant may provide such information, or the applicant may  
5 decline to provide such information and allow the allocation application to be  
6 evaluated as submitted.

7  
8 (j) Revisions of building permit applications requiring the ROGO allocation(s). A  
9 building permit application for a proposed residential dwelling unit requiring a  
10 ROGO allocation must be approved prior to submitting a ROGO application. In the  
11 event that the Florida Building Code is amended between the date in which a ROGO  
12 application is submitted and the date in which a building permit requiring the ROGO  
13 allocation(s) applied for is issued (which follows the date in which the required  
14 allocation(s) is awarded), if necessary, the applicant shall submit plan revisions to the  
15 building permit application demonstrating full compliance with the current Florida  
16 Building Code in effect. These plan revisions shall be submitted within 180 days of  
17 the ROGO allocation award date or the applicant shall forfeit the ROGO allocation  
18 award. Following receipt of the plan revisions, the building department shall review  
19 the revisions for compliance prior to issuance of the building permit requiring the  
20 ROGO allocation(s) by the building official.

21  
22 (k) Revisions to aspects of the final development affecting the approved total of ROGO  
23 points. After the receipt of a certificate of occupancy or other final inspection, no  
24 revision shall be made to any aspect of the completed residential development which  
25 formed the basis for the evaluation, review, determination of points and allocation  
26 rankings, unless such revisions are accomplished pursuant to a new building permit  
27 and unless such revisions would have the net effect of either maintaining or  
28 increasing the number of points originally awarded.

29  
30 \* \* \* \* \*

31  
32 **Sec. 138-47. Nonresidential rate of growth ordinance (NROGO).**

- 33  
34 (a) *Definitions.* The following words, terms and phrases, when used in this ~~section~~ article,  
35 shall have the meanings ascribed to them in this ~~subsection~~ section, except where the  
36 context clearly indicates a different meaning:

37  
38 *Allocation date* means the specific date and time by which applications for the NROGO  
39 allocation will be accepted and processed.

40  
41 *Annual allocation period* means the 12-month period beginning on July 14, 2001, and  
42 subsequent one-year periods that is used to determine the amount of nonresidential floor  
43 area to be allocated based on the number of ROGO allocations to be issued in the  
44 upcoming ROGO year.

1 *Annual nonresidential ROGO allocation* means the maximum floor area for which  
2 building permits may be issued during an annual allocation period.

3  
4 *Buildable lot or parcel, for the purposes of this chapter,* means ~~the~~ a lot or parcel which  
5 must contain a minimum of 2,000 square feet of uplands, including any disturbed  
6 wetlands that can be filled ~~pursuant to this chapter.~~

7  
8 *Community master plan* means a plan adopted by the board of county commissioners as  
9 part of the Monroe County Livable CommuniKeys Program.

10  
11 *Controlling date* means the same as defined in section 138-19(a), except it shall apply to  
12 NROGO applications under this article.

13  
14 *Covered walkways* means a covered area of any length but no wider than five feet that is  
15 used for providing weather protected pedestrian access from one part of a property to  
16 another part of the same property.

17  
18 *Historic resources* means a building, structure, site, or object listed or eligible for listing  
19 individually or as a contributing resource in a district in the National Register of Historic  
20 Places, the state inventory of historic resources or the county register of designated  
21 historic properties.

22  
23 *Infill* means the development or redevelopment of land that has been bypassed, remained  
24 vacant, and/or underused in otherwise built up areas which are serviced by existing  
25 infrastructure.

26  
27 *Lawfully established for ROGO/NROGO exemption* means a residential dwelling unit or  
28 nonresidential floor area that has received a permit or other official approval from the  
29 division of growth management for the units unit and/or nonresidential floor area.

30  
31 *Nonresidential floor area* means the sum of the gross floor area for a nonresidential  
32 building or structure, as defined in section 101-1, any areas used for the provision of food  
33 and beverage services and seating, whether covered or uncovered, and all covered,  
34 unenclosed areas. Walkways, stairways, entryways, parking, and loading areas are not  
35 considered nonresidential floor area. Additionally, boat barns, covered and unenclosed  
36 boat racks with three or fewer sides not associated with retail sales of boats which do not  
37 exceed 50 percent of the net buildable area of the lot/parcel are not considered  
38 nonresidential floor area. The term "nonresidential floor area" does not include space  
39 occupied by transient residential and institutional residential principal uses.

40  
41 *Nonresidential ROGO allocation, also referred to as NROGO allocation,* means the  
42 maximum amount of nonresidential floor area for which building permits may be issued  
43 in a given time period.

44  
45 *Nonresidential ROGO allocation award, also referred to as NROGO allocation award,*  
46 means the approval of a nonresidential ROGO application ~~for the~~ prior to the application

1 and subsequent issuance of a building permit to authorize construction of new  
2 nonresidential floor area.

3  
4 *Site* means the parcels of land required to be aggregated ~~under section 130-130~~ to be  
5 developed or from which existing nonresidential floor area is to be transferred or  
6 received.

7  
8 *Storage area* means the outside storage of vehicles, recreational vehicles, boats, campers,  
9 equipment, goods and materials for more than 24 hours. The term "storage area" includes  
10 a contractor's equipment storage, but does not include outdoor retail sales. This is  
11 considered a light industrial use and does not include waste transfer stations, junkyards,  
12 yards or other heavy industrial uses.

13  
14 *Sunshade* means an unenclosed structure used as protection from the weather.

15  
16 (b) *Purpose and intent.* The purposes and intent of the nonresidential rate of growth  
17 ordinance are:

18 (1) To facilitate implementation of goals, objectives and policies set forth in the  
19 comprehensive plan relating to maintaining a balance between residential and  
20 nonresidential growth.

21 (2) To maintain a ratio of approximately 239 square feet of nonresidential floor area for  
22 each new residential permit issued through the residential rate of growth ordinance  
23 (ROGO).

24 (3) To promote the upgrading and expansion of existing small-size businesses and to  
25 retain the predominately small scale character of nonresidential development in the  
26 Florida Keys.

27 (4) To regulate the rate and location of nonresidential development in order to eliminate  
28 potential land use conflicts.

29 (5) To allocate the nonresidential floor area annually hereunder, based on the goals,  
30 objectives and policies of the comprehensive plan and the ~~Livable CommuniKeys~~  
31 community master plans.

32 \* \* \* \* \*

33  
34  
35 **Sec. 138-52. - Application procedures for NROGO.**

36  
37 (a) *Application for allocation.* The planning and environmental resources department shall  
38 accept applications to enter the NROGO system ~~on forms provided by the planning~~  
39 ~~director~~. The NROGO application ~~form~~ must be accompanied by an approved building  
40 permit application in order to be considered in the current annual allocation period. The  
41 application must state for which allocation category an award is being sought, either  
42 2,500 square feet or less; or ~~more than 2,500~~ 2,501 square feet or more. The planning  
43 director, or his or her designee, shall review the NROGO application for completeness. If  
44 the application is determined to be incomplete, the planning director, or his or her  
45 designee, shall reject the NROGO application and notify the applicant of such rejection,  
46 and the reasons therefor, within ten working days. If determined to be complete, the

1 application shall be assigned a controlling date. The NROGO application shall be  
2 submitted in a form provided by the planning and environmental resources department  
3 and meet the following requirements:

4 (1) The application shall include a) the name and address of the property owner(s) of  
5 record, b) the property record card(s) from the Monroe County Property Appraiser, c)  
6 a location map, d) a written legal description of the property proposed for  
7 development, e) a boundary survey of the property proposed for development,  
8 prepared by a surveyor registered in the State of Florida, showing the boundaries of  
9 the site, elevations, bodies of water and wetlands on the site and adjacent to the site,  
10 existing structures including all impervious areas, existing easements, total acreage  
11 and total acreage by habitat and f) the site plan.

12 (2) If a conditional use permit is required in accordance with this Land Development  
13 Code for the development applied for, the conditional use permit shall be obtained  
14 and effective prior to submittal of any NROGO application. A copy of the recorded  
15 development order shall be submitted with the NROGO application.

16 (3) The site plan shall be prepared and sealed by a professional architect, engineer, or any  
17 other professional licensed to prepare a site plan. The site plan shall be drawn to a  
18 scale of one inch equals ten feet or one inch equals twenty feet. At a minimum, the  
19 site plan shall depict the following features and information:

20 a. Date, north point and graphic scale;

21 b. Boundary lines of site, including all property lines and mean high-water lines  
22 shown in accordance with Florida Statutes;

23 c. All attributes from the boundary survey;

24 d. Future Land Use Map (FLUM) designation(s) of the site;

25 e. Land Use (Zoning) District designation(s) of site;

26 f. Tier designation(s) of the site;

27 g. Flood zones pursuant to the Flood Insurance Rate Map;

28 h. Setback lines as required by this Land Development Code;

29 i. Locations and dimensions of all existing and proposed structures, including all  
30 paved areas and clear site triangles;

31 j. Size and type of buffer yards and parking lot landscaping areas, including the  
32 species and number of plants;

33 k. Extent and area of wetlands, open space preservation areas and conservation  
34 easements;

35 l. Delineation of habitat types to demonstrate buildable area on the site, including  
36 any heritage trees identified and any potential species that may use the site  
37 (certified by an approved biologist and based on the most current professionally-  
38 recognized mapping by the U.S. Fish and Wildlife Service);

39 m. Drainage plan including existing and proposed topography, all drainage  
40 structures, retention areas, drainage swales and existing and proposed permeable  
41 and impermeable areas;

42 n. Location of fire hydrants or fire wells;

43 o. The location of public utilities, including location of the closest available water  
44 supply system or collection lines and the closest available wastewater collection  
45 system or collection lines (with wastewater system provider) or on-site system

1 proposed to meet required County and State of Florida wastewater treatment  
2 standards; and

3 p. A table providing the total land area of the site, the total buildable area of the site,  
4 the type and square footage of all nonresidential land uses, the type and number of  
5 all residential dwelling units, the amounts of impervious and pervious areas, and  
6 calculations for land use intensity, open space ratio, and off-street parking.  
7

8 (b) *Fee for review of application.* Each NROGO application shall be accompanied by a  
9 nonrefundable processing fee ~~as may be established~~ by resolution of the board of county  
10 commissioners. Additional fees are not required for successive review of the same  
11 NROGO application unless the application is withdrawn and resubmitted.  
12

13 (c) *Compliance with other requirements.* The NROGO ~~applications~~ application shall ~~indicate~~  
14 ~~not constitute an indication of~~ whether ~~or not~~ the applicant for the nonresidential floor  
15 area allocation has satisfied and complied with all county, state, and federal requirements  
16 otherwise imposed by the county regarding conditions precedent to issuance of a building  
17 permit ~~and shall require that the applicant certify to such compliance.~~  
18

19 (d) *Time of review.* ~~Notwithstanding the time periods set forth in section 110-142, the~~  
20 ~~director of~~ The planning director may retain the allocation application and its associated  
21 building permit application for review pursuant to the evaluation procedures and criteria  
22 set forth in section 138-53 and section 138-55.  
23

24 (e) ~~Nonecounty~~ Non-county *time periods.* The county shall develop necessary administrative  
25 procedures and, if necessary, enter into agreements with other jurisdictional entities  
26 which impose requirements as a condition precedent to development in the county, to  
27 ensure that such ~~nonecounty~~ non-county approvals, certifications and/or permits are not  
28 lost due to the increased time requirements necessary for the county to process and  
29 evaluate ~~residential dwelling unit~~ NROGO applications and issue allocation awards. The  
30 county may permit evidence of compliance with the requirements of other jurisdictional  
31 entities to be demonstrated by coordination letters in lieu of approvals or permits.  
32

33 (f) *Limitation on number of applications.*

34 (1) An individual entity or organization may have only one active NROGO application  
35 per site in the ~~annual~~ allocation period.

36 (2) There shall be no limit on the number of separate projects for which NROGO  
37 applications may be submitted by an individual, entity or organization.  
38

39 (g) *Expiration of allocation award.* An allocation award shall expire when its corresponding  
40 building permit is deemed to expire pursuant to chapter 102, article VII, ~~or~~ after 60 days  
41 of mailing of notification for the award of the allocation of nonresidential floor area or  
42 after failure of the applicant to submit required plan revisions by the required date set  
43 forth in subsection (k).  
44

45 (h) *Withdrawal of NROGO application.* An applicant may elect to withdraw a NROGO  
46 application without prejudice at any time up to finalization of the evaluation rankings by

1 the planning commission. Revision and resubmission of the withdrawn application must  
2 be in accordance with subsection (i) of this section.  
3

4 (i) *Revisions to applications and awards.*

- 5 (1) Upon submission of a NROGO application, an applicant may revise the application if  
6 it is withdrawn and resubmitted prior to the allocation date for the allocation period in  
7 which the applicant wishes to compete. Resubmitted applications shall be considered  
8 new, requiring payment of appropriate fees and receiving a new controlling date.  
9 (2) After receipt of an allocation award, and either before or after receipt of a building  
10 permit being obtained, but prior to receipt of a certificate of occupancy or final  
11 inspection, no revisions shall be made to any aspect of the proposed nonresidential  
12 development which formed the basis for the evaluation review, determination of  
13 points and allocation rankings, unless such revision would have the effect of  
14 increasing the points awarded.  
15 (3) After the receipt of an allocation award, a building permit and a certificate of  
16 occupancy or final inspection, no revision shall be made to any aspect of the  
17 completed nonresidential development which formed the basis for the evaluation,  
18 review, determination of points and allocation rankings, unless such revisions are  
19 accomplished pursuant to a new building permit and unless such revisions would  
20 have the net effect of either maintaining or increasing the number of points originally  
21 awarded.  
22

23 (j) *Clarification of application data.*

- 24 (1) At any time during the NROGO allocation review and approval process, the applicant  
25 may be requested by the ~~director of~~ planning director or the planning commission, to  
26 submit additional information to clarify the relationship of the allocation application,  
27 or any elements thereof, to the evaluation criteria. If such a request is made, the  
28 ~~director of~~ planning director shall identify the specific evaluation criterion at issue  
29 and the specific information needed and shall communicate such request to the  
30 applicant.  
31 (2) Upon receiving a request from the ~~director of~~ planning director for such additional  
32 information, the applicant may provide such information; or the applicant may  
33 decline to provide such information and allow the allocation application to be  
34 evaluated as submitted.  
35

36 (k) Revisions of building permit applications requiring the NROGO allocation(s). A  
37 building permit application for a proposed nonresidential floor area requiring a  
38 NROGO allocation must be approved prior to submitting a NROGO application. In  
39 the event that the Florida Building Code is amended between the date in which a  
40 NROGO application is submitted and the date in which a building permit requiring  
41 the NROGO allocation(s) applied for is issued (which follows the date in which the  
42 required allocation(s) is awarded), if necessary, the applicant shall submit plan  
43 revisions to the building permit application demonstrating full compliance with the  
44 current Florida Building Code in effect. These plan revisions shall be submitted  
45 within 180 days of the NROGO allocation award date or the applicant shall forfeit the  
46 NROGO allocation award. Following receipt of the plan revisions, the building

1 department shall review the revisions for compliance prior to issuance of the building  
2 permit requiring the NROGO allocation(s) by the building official.

3  
4 (1) Revisions to aspects of the final development affecting the approved total of NROGO  
5 points. After the receipt of a certificate of occupancy or other final inspection, no  
6 revision shall be made to any aspect of the completed nonresidential development  
7 which formed the basis for the evaluation, review, determination of points and  
8 allocation rankings, unless such revisions are accomplished pursuant to a new  
9 building permit and unless such revisions would have the net effect of either  
10 maintaining or increasing the number of points originally awarded.

11  
12 **IV RECOMMENDATION**

13  
14 Staff has found that the proposed text amendment would be consistent with the provisions of  
15 §102-158(d)(5)(b): 1. Changed projections (e.g., regarding public service needs) from those  
16 on which the text or boundary was based; 2. Changed assumptions (e.g., regarding  
17 demographic trends); 3. Data errors, including errors in mapping, vegetative types and  
18 natural features described in volume I of the plan; 4. New issues; 5. Recognition of a need for  
19 additional detail or comprehensiveness; or 6. Data updates. Specifically, staff has found that  
20 the proposed text amendments are necessary due to a recognition of a need for additional  
21 detail or comprehensiveness.

22  
23 Staff recommends that the Board of County Commissioners amend the Monroe  
24 County Code as stated in the text of this staff report.