MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Planning Commission

Through: Emily Schemper, AICP, CFM, Senior Director of Planning & Environmental Resources

From: Mayté Santamaria, Senior Planning Policy Advisor

Date: October 5, 2020

Subject: An ordinance by Monroe County Board of County Commissioners adopting amendments to the Monroe County Land Development Code amending the Section 138-24, Residential ROGO Allocations, to establish a new building permit allocation category to award 300 workforce housing early evacuation unit building permit allocations pursuant to the Workforce-Affordable Housing Initiative (Workforce Initiative) authorized by the Florida Administration Commission and the Florida Department Economic Opportunity and to establish the specific Workforce Initiative requirements. (File 2020-068)

Meeting: October 28, 2020

I. REQUEST

As directed by the BOCC on February 19, 2020 and July 15, 2020, the Monroe County Planning & Environmental Resources Department is proposing an amendment to the Land Development Code amending the Section 138-24, Residential ROGO Allocations, to establish a new building permit allocation category to award 300 workforce housing early evacuation unit building permit allocations pursuant to the Workforce-Affordable Housing Initiative (Workforce Initiative) authorized by the Florida Administration Commission and the Florida Department Economic Opportunity and to establish the specific Workforce Initiative requirements.

On the February 19, 2020, BOCC meeting, the BOCC discussed whether to direct staff to process a comprehensive plan and land development code amendment to: 1) move a portion of the 378 remaining Market Rate - Rate of Growth Ordinance (ROGO) units through 2026 to the Affordable Housing allocation pool and/or 2) accept the 300 Workforce Housing units offered by the Department of Economic Opportunity (DEO) required to evacuate in Phase 1 of the hurricane evacuation model. The BOCC did not decide on the potential shifting of market rate allocations to the affordable housing pool (BOCC wanted staff to develop a menu of options). Additionally, the BOCC directed staff to start the process to *accept* the 300 workforce housing units.

On July 15, 2020, during a discussion item on potentially shifting market rate allocations to the affordable housing pool (agenda item I5), the BOCC provided further direction to staff on accepting the 300 workforce housing early evacuation unit building permit allocations. The BOCC directed: *accept*

the 300 workforce housing early evacuation unit building permit allocations to be used in exchange for existing affordable allocations at multifamily developments (for developers that agree to the early evacuation restriction) and the affordable housing allocations returned to the County (returned in the exchange) be set aside and banked for takings cases (bank them within an administrative relief pool).

II. BACKGROUND INFORMATION

Section 380.0552, F.S., the Florida Keys Area protection and designation as area of critical state concern, establishes the intent to "ensure that the population of the Florida Keys can be safely evacuated," [380.0552(2)(j), F.S.] and requires that amendments to each local government's comprehensive plan to include "goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency" [380.0552(9)(a)2, F.S.].

In order to accomplish the hurricane evacuation requirements by the State, in 1992 the County adopted a Permit Allocation System known as the Rate of Growth Ordinance (ROGO).

> The purpose of this Amendment is to implement goals, objectives and policies of the Florida Keys' Comprehensive Plan related to protection of residents, visitors and property in the County from natural disasters, specifically including hurricanes, by adopting a Dwelling Unit Allocation Ordinance limiting annual residential development in Monroe County to an amount and rate commensurate with the County's ability to maintain a reasonable and safe hurricane evacuation clearance time, as determined by policy decisions and recently completed studies. The present hurricane evacuation clearance time in Monroe County is unacceptably high. Based on a continuation of Monroe County's historic rate of growth, clearance time will continue to increase. Therefore, consistent with its responsibility for protecting the health and safety of its citizens, Monroe County must regulate the rate of population growth commensurate with planned increases in evacuation capacity to prevent further unacceptable increases in hurricane evacuation clearance time. Regulation of the rate of growth will also help to prevent further deterioration of public facility service levels, irreversible environmental degradation, and potential land use conflicts.

ROGO adopted pursuant to Ordinance 016-1992, adopted 6/23/1992

The Rate of Growth Ordinance (ROGO) was implemented in order to provide for the safety of residents in the event of a hurricane evacuation and to protect the significant natural resources of Monroe County, as required by the State of Florida. The County originally reduced the annual permitting rate from approximately 500+ units per year to 255 units per year. Later the State adjusted the annual allocation (see Rule 28-20, F.A.C.) to 197 units per year. Each year's ROGO allocation of 197 new units is split with a minimum of 71 units allocated for affordable housing and market rate allocations cannot to exceed 126 new residential units per year.

In 2012, the County entered into a Memorandum of Understanding (MOU) with the Department of Economic Opportunity (DEO), the Division of Emergency Management (DEM), Marathon, Islamorada, Key West, Key Colony Beach and Layton. The MOU provided the distribution of allocations among the local governments based upon a vacant land analysis (excerpt below).

> **WHEREAS,** DEO and the Local Governments recognize that significant vacant lands remain in the Florida Keys: Monroe County with 8,758 vacant parcels (77% of total vacant lands), Marathon with 1,281 vacant parcels (11%), Islamorada with 1,109 vacant parcels (10%), Key Colony Beach with 92 vacant parcels (0.81%), Key West with 84 vacant parcels (0.74%), and Layton with 13 vacant parcels (0.11%); and

In 2012, pursuant to Rule 28-20.140, F.A.C., DEM and DEO completed the hurricane evacuation clearance time modeling task and found that with 10 years' worth of building permits, the Florida Keys would be at a 24 hour evacuation clearance. Based upon the resulting 24 hour evacuation clearance, DEO determined the remaining allocations for the Florida Keys (3,550 additional permits countywide, 1,970 of these permits would go to Monroe County - excerpt below). In March 2013, the Governor and Cabinet, sitting as the State Administration Commission, approved the recommendation to allocate 10 years' worth of growth to the Florida Keys.

> **WHEREAS,** from among the scenarios provided by DEO at the June 8, 2012, Work Group meeting, Scenario M5 included the 2010 Census site-built units (43,760 units); the maximum number of residential building permits for new construction for all Local Governments per year for 10 years (annually, County 197, Marathon 30, Islamorada 28, Key West 90, Key Colony Beach 6 and Layton 3); 1,248 mobile home units projected to convert to site-built units; the exclusion of 870 dwelling units on the Naval Air Station; as well as two (2) functional evacuation lanes from MM 108-126. Further, the Work Group recommended Scenario M5 with the provision that the City of Key West would transfer annually (by July 13th) any remaining or unused (90 allocations) allocations to the other Local Governments based upon the Local Governments' ratio of vacant land; and
>
> WHEREAS, following the June 8, 2012, Work Group meeting, technical corrections were made to the Census site built units revising that number to 43,718 and revising the Key West building permit allocation to 91, which corrections do not affect the hurricane evacuation clearance time for the population of the Florida Keys; and

On April 13, 2016, the BOCC adopted the 2030 Comprehensive Plan and Land Development Code, which included a ROGO allocation distribution through the year 2023, based on Rule 28-20.140, F.A.C., and the Department of Economic Opportunity's completion of the hurricane evacuation clearance time modeling task that found with 10 years' worth of building permits, the Florida Keys would be at a 24 hour evacuation clearance time (Phase 2 of the 48-hr phased/staged evacuation).

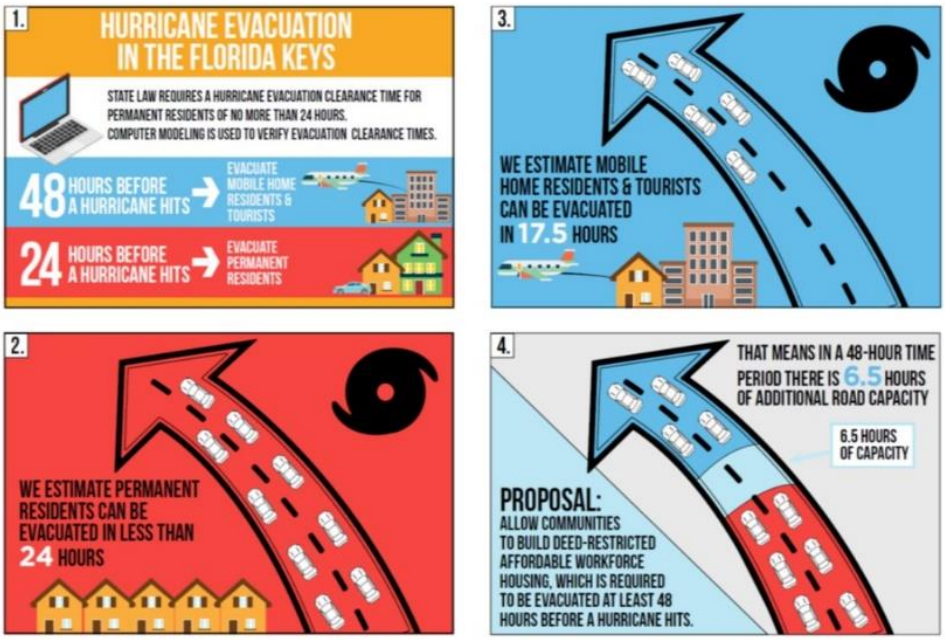
On May 2, 2018, Governor Rick Scott issued a press release outlining an initiative to the Florida Department of Economic Opportunity ("DEO") for a Keys Workforce Housing Initiative (**exhibit 1**). The proposed initiative would allow 1,300 additional Rate of Growth Ordinance (ROGO) allocations throughout the Florida Keys (ROGOs or Building Permit Allocation Systems) for rental workforce housing, with a condition that the rental occupants evacuate in the early phase (48-hour window) of a hurricane evacuation. Any development receiving the units would be required to sign a rental management agreement indicating they would be required to assure the evacuation of all occupants of the development. Under the initiative, each jurisdiction would be eligible to receive up to 300 of these units. The press release specifically stated, "To meet the increased demand for workforce housing, the innovative Keys Workforce Housing Initiative will require new construction that participates to commit to evacuating renters in the 48-hour window of evacuation."

On June 13, 2018, the Florida Administration Commission approved the Workforce Housing Initiative. It was noted that Florida Keys' local governments that choose to participate in the initiative are to work

with DEO to amend their respective comprehensive plans to allow for additional building permits for rental workforce housing with the condition of early evacuation.

The DEO issued the graphic below demonstrating the 2012 Hurricane Evacuation model results that indicated there were still 6.5 hours of additional road capacity in Phase 1 of the hurricane evacuation model. Pursuant to the 2030 Monroe County Comprehensive Plan Policies 101.2.4 and 215.1.4, Phase 1 of the staged/phased evacuation procedures include:

1. *Approximately 48 hours in advance of tropical storm winds, a mandatory evacuation of non-residents, visitors, recreational vehicles (RVs), travel trailers, live-aboard vessels (transient and non-transient), and military personnel from the Florida Keys shall be initiated. State parks and campgrounds should be closed at this time or sooner and entry into the Florida Keys by non-residents should be strictly limited.*
2. *Approximately 36 hours in advance of tropical storm winds, a mandatory evacuation of mobile home residents, special needs residents, and hospital and nursing home patients from the Keys shall be initiated.*



In support of the Housing Initiative at the June 13, 2018 Cabinet meeting, DEO staff made a presentation stating that the Phase I evacuation (under the existing staged evacuation plan) can be accomplished in 17.5 hours, leaving additional capacity of 6.5 hours in Phase I. DEO stated, "The proposed Keys' Workforce Housing Initiative can provide a path forward by allowing local government to grant new building permit allocations for workforce rental properties that agree to evacuate 48 hours in advance of hurricane landfall. DEO proposes to allow up 1,300 new building permit allocations for deed-restricted workforce rental housing throughout Monroe County with an initial allocation of no more than 300 per community." DEO concluded that the Housing Initiative "will not interfere with the 24-hour evacuation model and satisfies the statutory mandate to provide affordable housing." [quote from DOAH recommended order on the challenges to the municipality Comprehensive Plan amendments to accept the 300 Workforce Housing units.]

DEO provided County staff with preliminary draft language based on the minimum requirements established in the initiative to use as a starting point (**exhibit 2**). DEO indicated the County should

consider the language provided and make modifications as necessary to ensure the Workforce Housing Initiative is locally driven.

On January 30, 2019, the BOCC considered options to accept the 300 units. Staff drafted three (3) options for consideration by the BOCC:

1. Do not accept the 300 early evacuation affordable ROGOs and extend ROGO allocations through 2026;
2. Accept the 300 early evacuation affordable ROGOs and extend ROGO allocations until 2026; and
3. Accept the 300 early evacuation affordable ROGOs and do not extend ROGO beyond 2023.

The BOCC discussed and did not agree to accept the 300 units offered on May 2, 2018, by Governor Rick Scott and DEO for the Keys Workforce Housing Initiative.

On January 22, 2020, the BOCC adopted Ord. 005-2020 to extend the remaining market rate ROGOs out for an additional three (3) years from 2023 to 2026 within the Comprehensive Plan.

On January 22, 2020, the BOCC adopted Ord. 006-2020 to extend the remaining market rate ROGOs out for an additional three (3) years from 2023 to 2026 within the Land Development Code.

On January 22, 2020, the BOCC directed staff to prepare an agenda item to discuss and provide direction on whether to direct staff to process Comprehensive Plan and Land Development Code amendments to: 1) move a portion of market-rate Rate Of Growth Ordinance (ROGO) units to the affordable housing allocation pool and/or 2) accept the 300 Workforce Housing units offered by the Department of Economic Opportunity (DEO) required to evacuate in Phase 1 of the Hurricane Evacuation model.

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The BOCC's updated policy direction would limit the use of the 300 workforce housing early evacuation unit building permit allocations for only the exchange of affordable allocations and not for the use to develop new (not approved or built) units. The BOCC described that the affordable allocations returned to the County in exchange for workforce housing early evacuation unit allocations should be banked to resolve takings cases. The County has been evaluating the potential of takings for many years, but in particular since the 2012, when the hurricane evacuation clearance time modeling found that with 10 years' worth of building permits, the Florida Keys would be at a 24 hour evacuation clearance. The County's most recent white paper on this issue is attached to this report as **exhibit 3**.

It should be noted that Cities of Islamorada (Ordinance 19-03), Marathon (Ordinance 2018-09), and Key West (Ordinance 19-06) have amended their Comprehensive Plans to accept the 300 Workforce Housing units and those amendments were challenged. Hearings were held in December 2019, before Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings (DOAH). On April 24, 2020, the DOAH Administrative Law Judge recommended approval of Marathon, Key West, and Islamorada's respective ordinances accepting the 300 ROGOs under the Workforce Housing Initiative (**exhibit 4**).

DEO remanded the case to DOAH on August 21, 2020, "for the limited purposes of issuing Findings of Fact and Conclusions of Law on the issue of whether the plan amendments establish meaningful and predictable standards." On September 25, 2020, DOAH issued a recommended order, again, recommending approval of Marathon, Key West, and Islamorada's respective ordinances accepting the 300 ROGOs under the Workforce Housing Initiative (**included within exhibit 4**) Currently, it is unknown when the final order will be issued or if the final order may be challenged. The final outcome of the City's amendments are not known at this point. The Workforce Housing amendments for the three cities are attached to this report as **exhibits 5, 6 and 7**.

The need for additional affordable housing in the County has been well documented for many years. See excerpts from some recent studies:

- Monroe County Workforce Housing Assessment Report - April 2015
  http://www.monroecounty-fl.gov/DocumentCenter/View/9474/2015-MC-Workforce-Housing-Stakeholder-Assessment?bidId=

> The workforce housing affordability crisis in the Florida Keys identified by the Monroe County Commission in 2014 is real. "Cost-burdened" households pay more than 30% of income for rent or mortgage costs. In 2013, 51% (or 16,849) of Monroe County households pay more than 30% of income for housing while statewide that figure is 43%. More than half of Monroe County renters are cost burdened (8,350 of 14,002) while about 45% of Monroe County homeowners are cost burdened (8,499 of the 18,936).

- 2019 Rental Market Study by the UF Shimberg Center for Housing Studies:
  http://flhousingdata.shimberg.ufl.edu/2019-rental-market-study.pdf

	0-30% AMI			30.01-60% AMI			60.01-80% AMI		
	All Renters in Income Category	Cost Burdened (>40%) Renters in Category	% Cost Burdened	All Renters in Income Category	Cost Burdened (>40%) Renters in Category	% Cost Burdened	All Renters in Income Category	Cost Burdened (>40%) Renters in Category	% Cost Burdened
Hardee	388	257	66%	723	457	63%	372	(X)	(X)
Hendry	609	394	65%	887	512	58%	627	(X)	(X)
Holmes	291	195	67%	387	218	56%	206	59	29%
Jackson	1,320	614	47%	1,324	489	37%	612	(X)	(X)
Jefferson	350	163	47%	351	130	37%	162	(X)	(X)
Lafayette	171	72	42%	143	53	37%	64	(X)	(X)
Levy	651	375	58%	814	376	46%	381	(X)	(X)
Liberty	176	82	47%	176	65	37%	81	(X)	(X)
Madison	504	213	42%	422	157	37%	187	(X)	(X)
Monroe	2,697	1,667	62%	3,214	2,573	80%	1,714	1,058	62%
Nassau	1,416	731	52%	2,131	884	41%	1,198	(X)	(X)
Okeechobee	629	407	65%	916	529	58%	647	(X)	(X)
Putnam	1,528	1,013	66%	1,689	902	53%	892	195	22%
Suwannee	1,225	517	42%	1,024	380	37%	455	(X)	(X)
Taylor	516	218	42%	431	160	37%	192	(X)	(X)
Union	210	121	58%	262	121	46%	123	(X)	(X)
Wakulla	600	279	47%	601	222	37%	278	(X)	(X)
Walton	1,396	936	67%	1,858	1,047	56%	990	284	29%
Washington	349	234	67%	465	262	56%	248	71	29%
Small Total	**20,955**	**11,624**	**55%**	**24,952**	**12,745**	**51%**	**12,900**	**3,008**	**23%**
State Total	**496,556**	**345,482**	**70%**	**661,866**	**450,123**	**68%**	**370,317**	**120,701**	**33%**

Notes: (X) indicates results that are suppressed because estimates are not statistically significantly different from zero. Where possible, missing values are included in data aggregated to a higher level, such as state totals of data from county-size categories. Therefore, totals for columns and rows with missing values will be higher than the sum of the numeric values that do appear.

Sources: U.S. Census Bureau, 2013-2017 5-Year American Community Survey; University of Florida Bureau of Economic and Business Research, 2017 Population Projections

	80.01-120% AMI			120.01-140% AMI		
	All Renters in Income Category	Cost Burdened (>40%) Renters in Category	% Cost Burdened	All Renters in Income Category	Cost Burdened (>40%) Renters in Category	% Cost Burdened
Jefferson	237	(X)	(X)	45	(X)	(X)
Lafayette	100	(X)	(X)		(X)	(X)
Levy	731	(X)	(X)	212	(X)	(X)
Liberty	119	(X)	(X)	23	(X)	(X)
Madison	294	(X)	(X)		(X)	(X)
Monroe	2,493	748	30%	870	103	12%
Nassau	1,189	(X)	(X)		(X)	(X)
Okeechobee	769	(X)	(X)		(X)	(X)
Putnam	1,260	(X)	(X)	403	(X)	(X)
Suwannee	713	(X)	(X)		(X)	(X)
Taylor	300	(X)	(X)		(X)	(X)
Union	235	(X)	(X)	68	(X)	(X)
Wakulla	405	(X)	(X)	77	(X)	(X)
Walton	1,487	(X)	(X)	583	(X)	(X)
Washington	372	(X)	(X)	146	(X)	(X)
Small Total	**18,455**	**748**	**4%**	**5,455**	**(X)**	**(X)**
State Total	**542,154**	**60,762**	**11%**	**178,747**	**7,647**	**4%**

Notes: (X) indicates results that are suppressed because estimates are not statistically significantly different from zero. Where possible, missing values are included in data aggregated to a higher level, such as state totals of data from county-size categories. Therefore, totals for columns and rows with missing values will be higher than the sum of the numeric values that do appear.

Sources: U.S. Census Bureau, 2013-2017 5-Year American Community Survey; University of Florida Bureau of Economic and Business Research, 2017 Population Projections

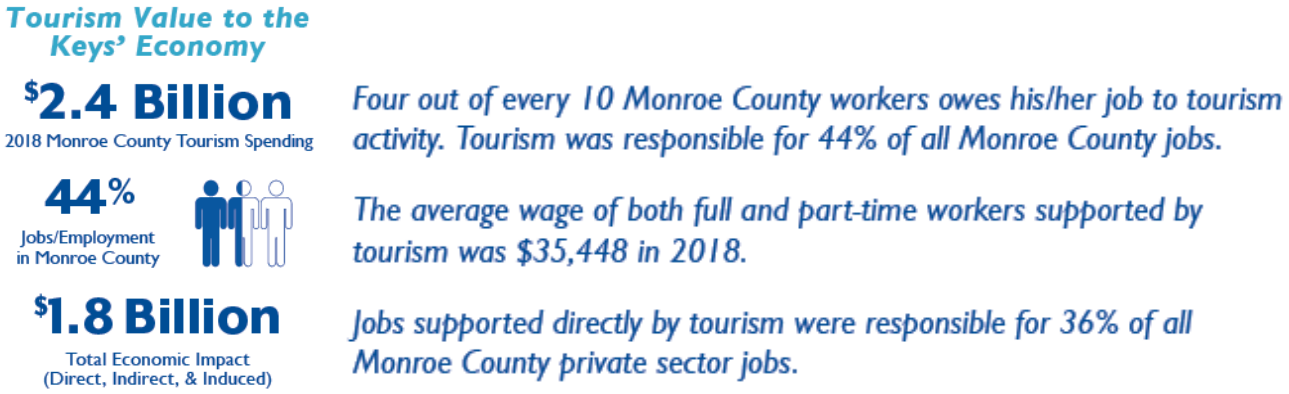
- 2018 ALICE Study in Florida by the United Way: https://www.uwof.org/sites/uwof.org/files/2018%20FL%20ALICE%20REPORT%20AND%20CO%20PAGES.pdf

ALICE IN MONROE COUNTY

2016 Point-in-Time Data

Population: 79,077 • **Number of Households:** 30,318
Median Household Income: $65,717 (state average: $50,860)
Unemployment Rate: 3.3% (state average: 6.0%)
ALICE Households: 30% (state average: 32%) • **Households in Poverty:** 12% (state average: 14%)

The Florida Keys face the quadruple impact of high land values, land limited by geographic and environmental features, housing supply limited by controlled growth (the permit allocation systems) and a tourism economy with a prevalence of lower paying service-sector employment.



2020 Monroe County Tourist Development Council

The housing affordability problem of the Florida Keys has widespread economic impacts, including a growing recognition of the important link between an adequate affordable housing supply and economic growth. Many of the business sectors in the Florida Keys, including professional services, retail trade, tourism and health care, find it increasingly difficult to attract and maintain workers. Affordable housing has posed and continues to pose a major challenge for local governments, public agencies and the private sector in the Florida Keys. The service and retail industries generate high demand for affordable housing from low income earning workers, while the limited land area and linear geography of the Keys severely limit the potential supply and locations of housing. Furthermore, unlike other areas, working families cannot find affordable housing nearby and commute. As a result, a severe imbalance exists between supply and demand, resulting in escalating housing prices. This imbalance is worsened by a number of other contributing factors, including:

- strong demand for second homes which reduces the supply of housing for permanent residents;
- conversion of permanent housing for transient use as vacation rentals which reduces the housing supply and increases affordable housing demand;
- high construction costs due to transportation costs of goods, limited labor market, and caprock conditions;
- higher costs due to regulations and insurance (building standards are among the most rigorous in the State);

- limited permit allocations due to hurricane evacuation standards, habitat protection and water quality objectives; and
- limited non-profit and private sector capacity for funding assistance and housing production.

The need to protect and preserve an adequate inventory of affordable/workforce accessible housing is a continual as well as a growing challenge in the Florida Keys, particularly after the impacts of Hurricane Irma. On September 10, 2017, Hurricane Irma made landfall near Cudjoe Key as a Category 4 Hurricane with maximum sustained winds of 130 mph. Hurricane Irma caused significant damage throughout the Florida Keys:

PRELIMINARY DAMAGE ASSESSMENT (SUMMARY W PARK INFO) - THRU 11/26/17					
KEY NAME	UNAFFECTED	AFFECTED	MINOR	MAJOR	DESTROYED
KEY LARGO	2581	3992	326	75	46
VILLAGE OF ISLAMORADA	0	468	427	47	34
FIESTA KEY	0	0	0	257	0
CRAIG KEY	0	1	0	0	0
CITY OF LAYTON	4	0	160	15	0
LONG KEY	304	86	14	0	1
CONCH KEY	0	78	13	4	10
DUCK KEY	292	361	83	7	0
CITY OF KEY COLONY BEACH	0	462	888	206	1
CITY OF MARATHON	0	4018	829	1402	394
OHIO KEY	0	0	0	397	0
BAHIA HONDA KEY	6	9	6	0	0
BIG PINE KEY	264	1538	663	299	473
LITTLE TORCH KEY	389	300	80	25	37
MIDDLE TORCH KEY	3	0	12	0	0
BIG TORCH KEY	11	4	37	1	0
RAMROD KEY	31	20	493	12	19
SUMMERLAND KEY	1	706	20	10	1
CUDJOE KEY	134	914	624	52	81
SUGARLOAF KEY	125	995	207	103	19
UPPER SUGARLOAF KEY	175	0	0	0	0
LOWER SUGARLOAF KEY	6	161	110	0	0
SADDLEBUNCH KEYS	82	0	0	0	0
SHARK KEY	0	39	0	0	0
BIG COPPITT KEY	122	538	63	4	6
GEIGER KEY	41	252	0	7	12
ROCKLAND KEY	1	60	31	0	5
KEY HAVEN	0	457	1	0	0
STOCK ISLAND	895	565	22	15	17
CITY OF KEY WEST	0	11625	282	39	23
Grand Total	5467	27649	5391	2977	1179

DEO and DEM will run an evacuation model after the completion of the 2020 Census, using updated data and analysis. Staff anticipates this process may take two to three years after the 2020 Census, and will require a new MOU with DEO, DEM, Marathon, Islamorada, Key West, Key Colony Beach and Layton. This will be the earliest timeframe that the County and other jurisdictions will be able to evaluate the results based on any population changes, occupancy changes and other factors in the inputs and assumptions utilized within the hurricane modeling.

On March 1, 2020, the Governor of Florida issued Executive Order Number 20-51 directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19/novel Coronavirus in Florida. On March 9, 2020, the Governor of Florida issued Executive

Order Number 20-52, declaring a State of Emergency for the Stale of Florida related to COVID-19/novel Coronavirus. The Monroe County Mayor declared a State of Local Emergency on March 15, 2020, due to COVID-19/novel Coronavirus, to "initiate protective measures necessary to ensure the health, safety, and welfare of residents and visitors."

Due to the public health emergency, the Governor has issued numerous executive orders to help slow the spread of the virus, including suspending the sale of alcoholic beverages, suspending on-premise food consumption at restaurants and food establishments, prohibiting any medically unnecessary, non-urgent or non-emergency procedure or surgery, limiting occupancy to 50% at restaurants, beach closures, closure of gyms, suspension of vacation rental operations, and safer at home orders (limit movements and personal interactions outside of the home to only those necessary to obtain or provide essential services or conduct essential activities), etc. Monroe County was also temporarily closed to visitors to allow time to prepare for a rise in cases and time for hospitals to adequately prepare with staffing, resources, testing, and facilities.

The economic impacts of COVID-19/novel Coronavirus have been significant globally, to Florida and specifically to Monroe County. The economic impacts are anticipated to increase the demand for the availability of housing opportunities for lower income groups. See excerpt from the DEO Bureau of Workforce Statistics and Economic Research *April* Employment Figures:

Local Area Unemployment Statistics (Not Seasonally Adjusted)

- In April 2020, Lafayette County had the state's lowest unemployment rate (5.5 percent), followed by Liberty County (7.0 percent), Glades County (7.2 percent), and DeSoto County (7.4 percent).
- Osceola County had the highest unemployment rate (20.3 percent) in Florida in April 2020, followed by Monroe County (17.5 percent), Orange County (16.5 percent), and Citrus County (15.8 percent).

STATE OF FLORIDA
LOCAL AREA UNEMPLOYMENT STATISTICS BY COUNTY
(NOT SEASONALLY ADJUSTED)

	APRIL 2020				MARCH 2020				APRIL 2019			
COUNTY	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE
Manatee County	161,474	139,654	21,820	13.5%	182,283	174,524	7,759	4.3%	178,942	173,808	5,134	2.9%
Marion County	129,422	113,768	15,654	12.1%	138,960	131,682	7,278	5.2%	135,997	131,083	4,914	3.6%
Martin County	68,784	60,572	8,212	11.9%	75,312	72,151	3,161	4.2%	73,573	71,430	2,143	2.9%
Miami-Dade County	1,215,918	1,071,624	144,294	11.9%	1,317,241	1,267,181	50,060	3.8%	1,383,594	1,349,404	34,190	2.5%
Monroe County	46,816	38,609	8,207	17.5%	48,214	46,881	1,333	2.8%	46,585	45,680	905	1.9%

See excerpt from the DEO Bureau of Workforce Statistics and Economic Research *May* Employment Figures:

STATE OF FLORIDA
LOCAL AREA UNEMPLOYMENT STATISTICS BY COUNTY
(NOT SEASONALLY ADJUSTED)

	MAY 2020				APRIL 2020				MAY 2019			
COUNTY	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE
Marion County	132,646	117,172	15,474	11.7%	129,001	113,464	15,537	12.0%	137,269	132,133	5,136	3.7%
Martin County	70,467	62,468	7,999	11.4%	68,543	60,432	8,111	11.8%	74,285	72,052	2,233	3.0%
Miami-Dade County	1,212,569	1,075,744	136,825	11.3%	1,213,833	1,070,388	143,445	11.8%	1,374,809	1,341,271	33,538	2.4%
Monroe County	49,703	40,913	8,790	17.7%	48,467	39,906	8,561	17.7%	46,864	45,935	929	2.0%

See excerpt from the DEO Bureau of Workforce Statistics and Economic Research *June* Employment Figures:

STATE OF FLORIDA
LOCAL AREA UNEMPLOYMENT STATISTICS BY COUNTY
(NOT SEASONALLY ADJUSTED)

	JUNE 2020				MAY 2020				JUNE 2019			
COUNTY	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE
Marion County	133,949	122,557	11,392	8.5%	132,803	118,618	14,185	10.7%	137,956	132,220	5,736	4.2%
Martin County	70,946	65,243	5,703	8.0%	69,955	62,659	7,296	10.4%	74,044	71,503	2,541	3.4%
Miami-Dade County	1,269,957	1,124,302	145,655	11.5%	1,220,976	1,074,907	146,069	12.0%	1,369,579	1,335,085	34,494	2.5%
Monroe County	47,377	42,674	4,703	9.9%	48,916	40,866	8,050	16.5%	46,480	45,460	1,020	2.2%

See excerpt from the DEO Bureau of Workforce Statistics and Economic Research *August* Employment Figures:

STATE OF FLORIDA
LOCAL AREA UNEMPLOYMENT STATISTICS BY COUNTY
(NOT SEASONALLY ADJUSTED)

	AUGUST 2020				JULY 2020				AUGUST 2019			
COUNTY	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE	LABOR FORCE	EMPLOY-MENT	UNEMPLOYMENT LEVEL	UNEMPLOYMENT RATE
Manatee County	173,697	162,895	10,802	6.2%	172,752	156,556	16,196	9.4%	178,333	172,279	6,054	3.4%
Marion County	139,263	130,482	8,781	6.3%	137,501	124,693	12,808	9.3%	137,952	132,347	5,605	4.1%
Martin County	72,127	68,150	3,977	5.5%	70,579	64,446	6,133	8.7%	74,133	71,626	2,507	3.4%
Miami-Dade County	1,351,810	1,242,545	109,265	8.1%	1,339,153	1,145,387	193,766	14.5%	1,377,292	1,341,959	35,333	2.6%
Monroe County	48,715	45,408	3,307	6.8%	48,117	43,283	4,834	10.0%	46,583	45,583	1,000	2.1%

Staff is proposing a corresponding amendment to the Comprehensive Plan. The subject of this staff report is the proposed amendment to the Land Development Code.

<u>Community Meeting and Public Participation</u>

In accordance with LDC Section 102-159(b)(3), a Community Meeting was held on July 28, 2020 to provide for public input. There were 11 attendees, inclusive of four County staff members. Seven members of the public provided comments and, in general, the comments expressed opposition and concern for the proposed amendment, as summarized below:

- Not in support of accepting the 300 units
- Concern with public safety related to hurricane evacuation
- Undermines current restrictions on growth
- Accepting additional units nullifies the whole growth management system
- Concern with rapid intensification of storms; we do not have anything to deal with a short notice hurricane
- Not supported by any data or studies and undermines ROGO system for the County
- Bad policy and contravenes state statutes to 'award' 1300 ROGOs for use by permanent residents (workforce) by estimating capacity in tourist phase of evacuation and assuming the workforce can and will evacuate early and often
- Legal challenge to city amendments that have accepted units is still ongoing
- County will end up in a lawsuit too
- Creating this new pool will create more takings cases
- Define onsite property manager and true emergency workers; ensure accessibility to employment centers; and ensure banked allocations will be used for takings cases only
- Concern about the County taking more units from the municipalities

Development Review Committee and Public Input

The Development Review Committee considered the proposed amendment at a regular meeting on August 25, 2020 and received public input, as summarized below:

- Not in support of accepting the 300 units
- Requesting county conduct additional analysis of a successful takings claim and an analysis of the Property Assessor's data base of vacant lots in view of the legal issues
- Not allowing the exchange of units with the cities (interlocal agreements to transfer units)
- Concern with rapid intensification of storms; just saw 2 recent storms rapidly intensify
- Allocations exchanged should retain their previous income category
- Require onsite property manager
- Object to the words "To the greatest extent practicable"

Planning Commission and Public Input

The Planning Commission considered the proposed amendment at a regular meeting on_____, provided for public input and recommended _____.

Previous County Action (exhibit 8)

On May 2, 2018, Governor Rick Scott issued a press release outlining an initiative to the Florida Department of Economic Opportunity ("DEO") for a Keys Workforce Housing Initiative, allowing 1,300 additional Rate of Growth Ordinance (ROGO) allocations throughout the Florida Keys (ROGOs or Building Permit Allocation Systems). Commissioner Rice calls a special meeting for May 10, 2018 at 11 a.m. in Marathon to provide the Commission and the public an opportunity to discuss the proposal prior to the Cabinet meeting (May 15, 2018). At the May 10, 2018 Special BOCC Meeting, the BOCC directed County staff to discuss concerns identified with DEO and provide an update to the BOCC at the next meeting.

On May 16, 2018, the County Attorney provided the BOCC a report on the Governor's proposal for 1,300 additional ROGO allocations following her meeting with DEO and state level staff. He advised the Board that they have a cabinet meeting scheduled for June 13, 2018 to discuss the allocations further.

On May 16, 2018, the BOCC directed County staff to present the Board's questions and concerns regarding the Workforce Initiative at the meeting with the Cabinet on June 13, 2018.

On June 6, 2018, the County sends a letter to DEO providing County comments and questions on the Keys Workforce Housing Initiative.

On June 13, 2018, the Florida Administration Commission approved the Workforce Housing Initiative. Florida Keys' local governments that choose to participate in the initiative will work with DEO to amend their respective comprehensive plans to allow for additional building permits for rental workforce housing with the condition of early evacuation.

On August 15, 2018, the BOCC directed County staff to prepare a discussion and direction item regarding the Keys Workforce Housing Initiative for the September 19, 2018 regular BOCC meeting.

Mr. Shillinger addressed the Board concerning the 1,300 allocations that the Governor has made available. After discussion, it was decided to place a discussion item on the September agenda.

On September 19, 2018, the BOCC directed County staff to draft proposed policy alternatives to the State's initiative that address several concerns raised related to the enforceability of the evacuation provisions. Additionally, the BOCC asked the County Attorney to research whether the state's Florida Keys Workforce Housing Initiative, which, if implemented, would create a precedent that would require the state to award as many as 10,000 additional units in the future vs. the liability of not accepting the units under the State's initiative. During the discussion, the County Attorney stated accepting the units means fewer takings cases (less potential for cases).

> I3 Emily Schemper, Acting Sr. Director of Planning & Environmental Resources, addressed the Board regarding the initiative by the State of Florida Administrative Commission to be administered through the Department of Economic Opportunity (DEO) for the Keys Workforce Housing Initiative to allow up to 1,300 additional affordable housing allocations (up to 300 for unincorporated Monroe County) in Rate of Growth Ordinance Allocations (ROGO) for rental workforce housing, with a condition that developments that receive these ROGO allocations have a rental management agreement in place that requires rental occupants to evacuate in the early phase (48 hours in advance of tropical storm winds reaching the shore of the Florida Keys) of a hurricane evacuation. Currently transient units (hotels) and mobile home occupants are required to evacuate in the early phase of evacuation. Bob Shillinger, County Attorney; and Christine Hurley, Assistant County Administrator, addressed the Board. The following individuals addressed the Board: D.A. Aldridge, representing Last Stand; Robby Majeska, and Dottie Moses. After discussion, motion was made by Commissioner Carruthers and seconded by Commissioner Murphy directing staff to develop a written sample policy; staff will meet with DEO; and then staff will come back to the Board to explain, not only answers to the questions here today, but what could be accepted by the DEO before starting the process of community meetings, DRC and Planning Commission; and additional legal input regarding how to avoid 6,000 to 8,000 takings cases. Motion carried unanimously.

On January 30, 2019, the BOCC considered options to accept the 300 units. Staff drafted three (3) options for consideration by the BOCC:

1. Do not accept the 300 early evacuation affordable ROGOs and extend ROGO allocations through 2026;
2. Accept the 300 early evacuation affordable ROGOs and extend ROGO allocations until 2026; and
3. Accept the 300 early evacuation affordable ROGOs and do not extend ROGO beyond 2023.

> B2 Ms. Schemper, Ms. Hurley and Mr. Shillinger addressed the Board concerning direction regarding the initiative by the State of Florida Administrative Commission to be administered through the Department of Economic Opportunity for the Keys Workforce Housing Initiative to allow up to 1300 additional affordable housing allocations (up to 300 for unincorporated Monroe County) in Rate of Growth Ordinance Allocations (ROGO) for rental workforce housing, with a condition that developments that receive these ROGO allocations have a rental management agreement in place that requires rental occupants to evacuate in the early phase (48 hours in advance of tropical storm winds reaching the shore of the Florida Keys) of a hurricane evacuation. Currently transient units (hotels) and mobile home occupants are required to evacuate in the early phase of evacuation. The following individuals addressed the Board: Joyce Newman, representing Last Stand; Alicia Putney, Captain Ed Davidson, representing Florida Keys Citizens Coalition; and Ann Olsen, representing Friends of the Lower Keys. Board took no official action.

On January 30, 2019, the BOCC discussed and provided direction regarding existing and potential actions, policies and programs to address exhaustion of ROGO allocations and build out of the Florida Keys as of 2023 with a substantial number of platted lots remaining. The discussion involved existing and potential actions, policies and programs; as well as ideas for policy changes to alleviate potential takings liability, if and when the DEO is no longer able to award ROGO allocations to the County.

B3 The following staff addressed the Board concerning direction regarding existing and potential actions, policies and programs to address exhaustion of ROGO allocations and build out of the Florida Keys as of 2023 with a substantial number of platted lots remaining: Ms. Schemper, Mr. Shillinger, Ms. Hurley, Derek Howard, Assistant County Attorney; Mike Roberts, Sr. Administrator, Environmental Resources; Peter Morris, Assistant County Attorney; and Cynthia Guerra, Sr. Biologist The following individuals addressed the Board: Alicia Putney, Stuart Schaffer, representing Sugarloaf Shores and Cudjoe Gardens Homeowner's Association; and Bill Hunter. Board took no official action.

On January 22, 2020, the BOCC adopted Ord. 005-2020 to extend the remaining market rate ROGOs out for an additional three (3) years from 2023 to 2026.

On January 22, 2020, the BOCC directed staff to prepare an agenda item to discuss and provide direction on whether to direct staff to process Comprehensive Plan and Land Development Code amendments to: 1) move a portion of market-rate Rate Of Growth Ordinance (ROGO) units to the affordable housing allocation pool and/or 2) accept the 300 Workforce Housing units offered by the Department of Economic Opportunity (DEO) required to evacuate in Phase 1 of the Hurricane Evacuation model.

On February 19, 2020, the BOCC discussed whether to direct staff to process a comprehensive plan and land development code amendment to: 1) move a portion of the 378 remaining Market Rate - Rate of Growth Ordinance (ROGO) units through 2026 to the Affordable Housing allocation pool and/or 2) accept the 300 Workforce Housing units offered by the Department of Economic Opportunity (DEO) required to evacuate in phase 1 of the hurricane evacuation model. The BOCC did not decide on the potential shifting of market rate allocations to the affordable housing pool but did direct staff to start the process to accept the 300 workforce housing units.

I7 Ms. Schemper gave a Power Point Presentation on the discussion and direction on whether to direct staff to process a Comprehensive Plan and Land Development Code amendment to: 1) move a portion of the 378 remaining market rate Rate of Growth Ordinance units through 2026 to the Affordable Housing Allocation Pool; and/or, 2) accept the 300 workforce housing units offered by the Department of Economic Opportunity required to evacuate in phase 1 of the hurricane evacuation model. Mr. Shillinger, Lisa Tennyson, Legislative Affairs & Grants Acquisition Director; and Ms. Hurley addressed the Board. The following individuals addressed the Board: D.A. Aldridge, representing Last Stand; Jan Edelstein, representing Cudjoe Gardens Property Owner's Association; Stuart Schaffer, representing Sugarloaf Shores Property Owner's Association; and Dotti Moses. After discussion, motion was made by Commissioner Coldiron and seconded by Commissioner Cates to start the process to accept the 300 workforce housing units. Roll call vote was taken with the following results:

Commissioner Cates	Yes
Commissioner Coldiron	Yes
Commissioner Murphy	No
Commissioner Rice	Yes
Mayor Carruthers	No

Motion carried.

On April 15, 2020, the BOCC adopted Resolution 100-2020 providing for a temporary suspension of the expiration of ROGO and NROGO allocation awards, issuance of allocation award letters, deferring administrative relief application deadlines, and deferring the processing of new and existing ROGO and

NROGO applications and Planning Commission review due to the impacts of COVID-19/novel Coronavirus.

On July 15, 2020, during a discussion item on potentially shifting market rate allocations to the affordable housing pool (agenda item I5), the BOCC provided further direction to staff on accepting the 300 workforce housing early evacuation unit building permit allocations. The BOCC directed: *accept the 300 workforce housing early evacuation unit building permit allocations to be used in exchange for existing affordable allocations at multifamily developments (for developers that agree to the early evacuation restriction) and the affordable housing allocations returned to the County (returned in the exchange) be set aside and banked for takings cases (bank them within an administrative relief pool).*

III. PROPOSED LAND DEVELOPMENT CODE TEXT AMENDMENTS

Proposed Amendment (deletions are ~~stricken through~~; additions are shown in underlined)

Sec. 138-24. - Residential ROGO Allocations.

(a) **Number of available annual residential ROGO allocations.** The number of market rate residential ROGO allocations available in each subarea of the unincorporated county and the total number of affordable residential ROGO allocations available countywide shall be as follows:

	Number of Dwelling Units	
Subarea	ROGO Years: July 13, 2020- July 12, 2021 July 13, 2021- July 12, 2022 July 13, 2022- July 12, 2023	ROGO Years: July 13, 2023- July 12, 2024 July 13, 2024- July 12, 2025 July 13, 2025- July 12, 2026
Upper Keys	31	30
Lower Keys	29	28
Big Pine and No Name Keys	4	4
Total market rate	64	62
Affordable Dwelling Units		
Very Low, Low, and Median Incomes	360*	
Moderate Incomes	350*	
*Includes one annually for Big Pine Key and No Name Key		
Workforce Initiative	**300****	
** Workforce housing early evacuation unit allocations shall be distributed on a first-come first-serve basis. Requests for dwelling units developed and/or deed-restricted utilizing the workforce housing early evacuation unit allocations are subject to the provisions of Policy 101.3.12 and Section 138-24(e).		

ROGO Year	**Annual Allocation**		
	Market Rate	**Workforce Initiative**	**Affordable Housing**
July 13, 2013—July 12, 2014	126 U: 61, L: 57, BPK/NNK: 8	N/A	71
July 13, 2014—July 12, 2015	126		71

	U: 61, L: 57, BPK/NNK: 8		
July 13, 2015—July 12, 2016	126 U: 61, L: 57, BPK/NNK: 8		568 total AFH (total available immediately)
July 13, 2016—July 12, 2017	126 U: 61, L: 57, BPK/NNK: 8		
July 13, 2017—July 12, 2018	126 U: 61, L: 57, BPK/NNK: 8		
July 13, 2018—July 12, 2019	126 126 U: 61, L: 57, BPK/NNK: 8		
July 13, 2019—July 12, 2020	126 U: 61, L: 57, BPK/NNK: 8		
July 13, 2020—July 12, 2021	64 U: 31, L:29, BPK/NNK: 4		
July 13, 2021—July 12, 2022	64 U: 31, L:29, BPK/NNK: 4	**300****	
July 13, 2022—July 12, 2023	64 U: 31, L:29, BPK/NNK: 4		
July 13, 2023—July 12, 2024	62 U: 30, L:28, BPK/NNK: 4		
July 13, 2024—July 12, 2025	62 U: 30, L:28, BPK/NNK: 4		
July 13, 2025—July 12, 2026	62 U: 30, L:28, BPK/NNK: 4		
TOTAL	1,260	**300****	710*

*Includes two annual affordable ROGO allocations for the Big Pine Key/No Name Key subarea) through the Incidental Take Permit (ITP) ending in 2023.

** Workforce housing early evacuation unit allocations shall be distributed on a first-come first-serve basis. Requests for dwelling units developed and/or deed-restricted utilizing the workforce housing early evacuation unit allocations are subject to the provisions of Policy 101.3.12 and Section 138-24(e).

The State of Florida, pursuant to Administration Commission Rules, may modify the annual allocation rate. The County-adopted a slower rate of annual allocations for market rate development to extend the allocation timeframe to 2026 without exceeding the total of 1,970 allocations. By July 12, ~~2018~~2023, if substantial financial support is provided by State and Federal partners, the County may reevaluate the ROGO distribution allocation schedule and consider an extended timeframe for the distribution of market rate allocations. If necessary, Monroe County will request a Rule change from the Administration Commission to authorize an alternative allocation timeframe and rate.

(1) *Yearly residential ROGO allocation ratio.* Each subarea shall have its number of market rate residential ROGO allocations available per ROGO year. Affordable ROGO allocations and workforce housing early evacuation unit allocations shall be available for countywide allocation except for Big Pine Key and No Name Key. The allocations for Big Pine Key and No Name Key shall be limited to maximums established in Big Pine Key/No Name Key Livable CommuniKeys Plan, Incidental Take Permit and Habitat Conservation Plan.

(2) *Quarterly residential ROGO allocation ratio.* Each subarea shall have its number of market rate housing residential ROGO allocations available per ROGO quarter determined by the following formula:

a. Market rate residential ROGO allocations available in each subarea per quarter is equal to the market rate residential ROGO allocations available in each subarea divided by four.

b. Affordable housing residential ROGO for all four ROGO quarters, including the allocations available for Big Pine Key, shall be made available at the beginning of the first quarter for a ROGO year. Beginning July 13, 2016, the balance of all remaining affordable housing residential ROGO allocations shall be made available for award.

c. Workforce Initiative allocations shall be made available at the beginning of the first quarter of ROGO year July 13, 2021—July 12, 2022. All allocations shall be available for award, and shall be distributed on a first-come first-serve basis. Requests for workforce housing early evacuation unit allocations shall require a reservation via BOCC resolution.

(3) *Ratio of very low income, low income, and median income allocations to moderate income allocations.* The Planning Commission may amend these proportions for affordable housing during any ROGO quarter.

(4) *Big Pine Key and No Name Key.*

a. All allocation awards on Big Pine Key and No Name Key are subject to the provisions of the Incidental Take Permit (ITP), the Habitat Conservation Plan (HCP) and Livable CommuniKeys Plan (LCP) for the Florida Key Deer and other covered species, which may affect ROGO allocations under this article.

b. In the Big Pine Key/No Name Key sub-area the annual maximum number of residential permit allocations that may be awarded in Tier I shall be no more than one (1) every 2 years. Until the ITP, HCP, Biological Opinion, and LCP are amended, a property owner attempting to develop his property may be granted an allocation through the ROGO process that may be used once that property owner obtains all required permits and authorizations required under the Endangered Species Act and other applicable federal and state laws. The allocation will remain valid so long as the applicant diligently and in good faith continues to work with USFWS to conclude the coordination and pick up a building permit.

(5) *Limit on number of allocation awards in Tier I.*

a. Big Pine Key/No Name Key subarea: The maximum ROGO allocations in Tier I shall be no more than one (1) every two (2) years.

b. Upper Keys subarea: The annual maximum ROGO allocations in Tier I shall be no more than three (3).

c. Lower Keys subarea: The annual maximum ROGO allocations in Tier I shall be no more than three (3).

(b) **Reservation of affordable housing allocations.** Notwithstanding the provisions of Section 138-26 for awarding of affordable housing allocations or workforce initiative (workforce housing early evacuation unit) allocations, the BOCC may reserve by resolution some or all of the available affordable housing allocations or available workforce initiative allocations for award to certain sponsoring agencies or specific housing programs consistent with all other requirements of this chapter. Building permits for these reserved allocations shall be picked up within six months of the effective reservation date, unless otherwise authorized by the BOCC in its resolution. The BOCC may, at its discretion, place conditions on any reservation as it deems appropriate. These reservations may be authorized by the BOCC for:

(1) The county housing authority, nonprofit community development organizations, pursuant to Section 139-1(e), and other public entities established to provide affordable housing by entering into a memorandum of understanding with one or more of these agencies;

(2) Specific affordable or employee housing projects participating in a federal/state housing financial assistance or tax credit program or receiving some form of direct financial assistance from the county upon written request from the project sponsor and approved by resolution of the BOCC;

(3) Specific affordable or employee housing projects sponsored by nongovernmental not-for-profit organizations above upon written request from the project sponsor and approved by resolution of the BOCC;

(4) Specific affordable or employee housing programs sponsored by the county pursuant to procedures and guidelines as may be established from time to time by the BOCC;

(5) Specific affordable or employee housing projects by any entity, organization, or person, contingent upon transfer of ownership of the underlying land for the affordable housing project to the county, a not-for-profit community development organization, or any other entity approved by the BOCC, upon written request from the project sponsor and approved by resolution of the BOCC; or

(6) Rental employee housing projects situated on the same parcel of land as the nonresidential workplace for the tenants of these projects, upon written request from the property owner and approved by resolution of the BOCC; or~~.~~

(7) Workforce initiative housing projects, pursuant to Policy 101.3.12 and Section 138-24(e), that require occupants to evacuate 48 hours in advance of tropical storm winds (Phase 1 of the 48-hr evacuation) of a pending major hurricane, are restricted to rental occupancy, and for those who derive at least 70% of their income as members of the workforce in Monroe County and who meet the affordable housing income categories of the Monroe County Land Development Code.

(c) **Affordable housing allocation awards and eligibility.**

(1) The definition of affordable housing shall be as specified in Sections 101-1 and 139-1.

(2) Any portion of the affordable housing allocation not used for affordable housing at the end of a ROGO year shall be made available for affordable housing for the next ROGO year.

(3) No affordable housing allocation shall be awarded to applicants located within a Tier I designated area, within a V-zone on the county's flood insurance rating map, or within a Tier III-A (special protection area) designated area.

Notwithstanding the foregoing, and notwithstanding Section 138-24(a)(5), affordable housing ROGO allocations may be awarded to Tier I or Tier III-A properties which meet all of the following criteria:

a. The property contains an existing market rate dwelling unit that meets the criteria in LDC Section 138-22(a) and is determined to be exempt from ROGO;

b. The proposed replacement affordable dwelling unit meets current Florida Building Code and is not a mobile home;

c. The proposed replacement dwelling unit shall be deed restricted for a period of at least 99 years as affordable housing pursuant to the standards of the Land Development Code;

d. The proposed site plan for the replacement affordable dwelling unit does not propose any additional clearing of habitat; and

e. The structure is not proposed to be within a V-zone on the county's flood insurance rating map.

(4) Only affordable housing allocations for Big Pine Key may be used on Big Pine Key. No affordable housing allocation may be used on No Name Key.

(d) **Dwelling unit allocation required.** The county shall issue no building permit for a dwelling unit unless such dwelling unit:

(1) Has a dwelling unit allocation award; or

(2) Is exempted from the dwelling unit allocation system pursuant to this chapter or is deemed vested pursuant to Section 138-22.

(e) Workforce Initiative allocation awards, eligibility and requirements.

(1) Pursuant to Policies 101.3.2, 101.3.3 and 101.3.12, Monroe County establishes a new allocation category to award 300 workforce housing early evacuation unit building permit allocations pursuant to the Workforce-Affordable Housing Initiative (Workforce Initiative). The Workforce-Affordable Housing Initiative will require dwelling units constructed and/ or deed restricted with workforce housing early evacuation building permit allocations to evacuate occupants 48 hours in advance of tropical storm winds (Phase 1 of the 48-hr evacuation) of a pending major hurricane.

(2) Dwelling units developed and/or deed restricted utilizing the workforce initiative allocations are subject to the following:

a. Requests for workforce housing early evacuation unit allocations shall be available only for a 1 for 1 exchange for affordable allocations/exemptions and require a reservation via BOCC resolution. The BOCC may, at its discretion, place conditions on any reservation as it deems appropriate. The BOCC may, at its discretion, exchange existing reserved affordable allocations for allocations under the Workforce Initiative to private development and nonprofit sector partners willing to meet the requirements of the workforce housing early evacuation unit allocations. Further, the BOCC may, at its discretion, approve the exchange of existing deed-restricted affordable housing units (lawful affordable exemptions) at existing multifamily residential developments for allocations under the Workforce Initiative to private development and nonprofit sector partners willing to meet the requirements of the workforce housing early evacuation unit allocations.

1. The affordable allocations returned to the County in exchange for workforce housing early evacuation unit allocations shall be banked and used for future administrative relief, beneficial use determinations and to resolve inverse condemnation cases and Bert J. Harris, Jr. Private Property Rights Protection Act cases.
2. To maintain consistency with Rule 28-20.140(2)(b), F.A.C., the affordable allocations returned to the County shall be maintained as affordable allocations and shall also be returned to the original affordable housing category (very low/low/median income vs. moderate income pool).
3. The workforce housing early evacuation unit allocations must be utilized based on the original approved affordable housing income category or a lesser income category.
4. Administrative relief means actions taken by the County granting the owner of real property relief from the continued application of the Rate of Growth Ordinance (ROGO) restrictions provided they meet the criteria established in the Comprehensive Plan and Land Development Code.
5. Beneficial use means the use of property that allows an owner to derive a benefit or profit in the exercise of a basic property right.

b. The construction of dwelling units, the redevelopment or the deed restriction of existing dwelling units utilizing workforce housing early evacuation unit allocations shall require a development agreement.

c. All workforce housing early evacuation units require a deed-restriction ensuring:

1. Before any building permit may be issued for any structure, portion or phase of a project subject to the Workforce Initiative, a restrictive covenant shall be approved by the Planning Director and County Attorney and recorded in the Office of the-Clerk of the County to ensure compliance with the provision of this section running in favor of the County and enforceable by the County and, if applicable, a participating municipality. The following requirements shall apply to these restrictive covenants:

i. The covenants for any workforce housing early evacuation units shall be effective for 99 years.

ii. The covenants shall not commence running until a certificate of occupancy has been issued by the Building Official for the dwelling unit or dwelling units to which the covenant or covenants apply.

iii. For existing dwelling units that are deed-restricted as workforce housing early evacuation units, the covenants shall commence running upon recordation in the Official Records of Monroe County.

2. The covenants shall require that the workforce housing early evacuation units to be restricted to rental occupancy for those who derive at least 70% of their income as members of the workforce in Monroe County and who meet the affordable housing income categories of the Monroe County Land Development Code. The occupants are required to annually verify their employment and/or income eligibility.

3. The covenants shall require occupants to evacuate 48 hours in advance of tropical storm winds (Phase 1 of the 48-hr evacuation) of a pending major hurricane. Persons living in the workforce housing early evacuation units who may be exempted from evacuation requirements are limited to law enforcement, correctional and fire personnel, health care personnel, and public employees with emergency management responsibilities. If there is an occupant that indicates their employment is considered a 'first-responder position' and not included in the list of exemptions above, then the Planning Director shall determine whether the person may be exempted because of a requirement to remain during an emergency. Any person claiming exemption under this provision shall submit of an affidavit of qualification and faithfully certify their status with the onsite property management.

4. The covenants shall require rental agreements which contain a separate disclosure requiring rental occupants to acknowledge that failure to adhere to the Phase 1 evacuation requirement could result in severe penalties, including eviction, to the occupant.

5. The covenants shall require onsite property managers and a separate employment disclosure requiring the maintenance of training in evacuation procedures and an acknowledgement that failure to adhere to the Phase 1 evacuation requirement could result in severe penalties, including termination.

d. Workforce housing early evacuation units shall be restricted to rental occupancy for those who derive at least 70% of their income as members of the workforce in Monroe County and who meet the affordable housing income categories of the Monroe County Land Development Code. Workforce means individuals or families who are gainfully employed supplying goods and/or services to Monroe County residents or visitors.

e. Workforce housing early evacuation units shall require onsite property management with property managers trained in evacuation procedures and required to manage the evacuation of tenants in Phase I of an evacuation. During traditional working hours, the property manager must be at an office within the workforce housing early evacuation unit development subject property. Outside the traditional working hours, the property manager must be available at all times to respond to evacuation orders.

f. The property management entity for the workforce housing early evacuation units shall be required to annually verify the employment and/or income eligibility of tenants; report the total units on the site, the occupancy rates of units, and tenant compliance with the requirement to evacuate the units in Phase I of an evacuation, including the number of occupants that are exempt from the evacuation requirements. The property management

entity must submit a report to the Planning and Environmental Resources Department by May 1 of each year. Further, each lease and this annual report shall be kept by the property manager and be available for inspection by the County during traditional working hours.

g. Workforce housing early evacuation units shall be located within an area designated as Tier III.

h. Workforce housing early evacuation units shall not be located in the V-Zone or within a Coastal Barrier Resource System (CBRS).

i. Workforce housing early evacuation units shall be located on a property which has all infrastructure available (potable water, adequate wastewater treatment and disposal wastewater meeting adopted LOS, paved roads, etc.).

j. All workforce housing early evacuation units must demonstrate compliance with all applicable federal standards for accessibility for persons with disabilities (ADA Compliance).

k. To the greatest extent practicable, a development utilizing workforce housing early evacuation unit allocations shall incorporate sustainable and resilient design principles into the overall site design and be accessible to employment centers in Key West, Stock Island and Marathon.

IV. CONSISTENCY WITH THE MONROE COUNTY LAND DEVELOPMENT CODE

The proposed amendment is consistent with one or more of the required provisions of LDC Section 102-158(d)(7)(b):

1. Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based;
   N/A

2. Changed assumptions (e.g., regarding demographic trends);
   N/A

3. Data errors, including errors in mapping, vegetative types and natural features described in volume 1 of the plan;
   N/A

4. New issues;

   Due to Hurricane Irma on September 10, 2017, there was significant damage and destruction to housing in the Florida Keys, particularly to the housing accessible to the affordable/workforce groups. Further, due to the public health emergency and the economic impacts of COVID-19/novel Coronavirus which have been significant globally, to Florida and specifically to Monroe County, the results of the economic downturn is anticipated to increase the demand for the availability of housing opportunities for lower income groups. The need to protect and preserve an adequate inventory of affordable/workforce accessible housing is a continual as well as a growing challenge in the Florida Keys, particularly after the impacts of Hurricane Irma.

   On May 2, 2018, Governor Rick Scott issued a press release outlining an initiative to the Florida Department of Economic Opportunity ("DEO") for a Keys Workforce Housing Initiative (exhibit 1). The proposed initiative would allow 1,300 additional Rate of Growth Ordinance (ROGO)

allocations throughout the Florida Keys (ROGOs or Building Permit Allocation Systems) for rental workforce housing, with a condition that the rental occupants evacuate in the early phase (48-hour window) of a hurricane evacuation. Any development receiving the units would be required to sign a rental management agreement indicating they would be required to assure the evacuation of all occupants of the development. Under the initiative, each jurisdiction would be eligible to receive up to 300 of these units. The press release specifically stated, "To meet the increased demand for workforce housing, the innovative Keys Workforce Housing Initiative will require new construction that participates to commit to evacuating renters in the 48-hour window of evacuation."

On June 13, 2018, the Florida Administration Commission approved the Workforce Housing Initiative. Florida Keys' local governments that choose to participate in the initiative are to work with DEO to amend their respective comprehensive plans to allow for additional building permits for rental workforce housing with the condition of early evacuation.

As directed by the BOCC on February 19, 2020 and July 15, 2020, the Monroe County Planning & Environmental Resources Department is proposing an amendment to the Land Development Code amending the Section 138-24, Residential ROGO Allocations, to establish a new building permit allocation category to award 300 workforce housing early evacuation unit building permit allocations pursuant to the Workforce-Affordable Housing Initiative (Workforce Initiative) authorized by the Florida Administration Commission and the Florida Department Economic Opportunity and to establish the specific Workforce Initiative requirements.

5. Recognition of a need for additional detail or comprehensiveness; or

The County is proposing text amendments to the Monroe County 2030 Comprehensive Plan Future Land Use Element and the Housing Element to establish a new building permit allocation category to accept and award 300 workforce housing early evacuation unit building permit allocations pursuant to the Workforce-Affordable Housing Initiative (Workforce Initiative).

The proposed text amendments to Section 138-24 are necessary to be consistent with the proposed comprehensive plan amendments. Sections 163.3194 and 163.3201, F.S., require land development regulations to be consistent with and implement the Comprehensive Plan.

6. Data updates;
N/A

In no event shall an amendment be approved which will result in an adverse community change to the planning area in which the proposed development is located or to any area in accordance with a livable communikeys master plan pursuant to findings of the board of county commissioners.

Based on the BOCC policy direction provided on July 15, 2020, the proposed text amendment is not anticipated to have an adverse community change.

The BOCC's policy direction limits the use of the 300 workforce housing early evacuation unit building permit allocations for only the exchange of affordable allocations and not for the development of new (not approved or built) units, thereby not increasing current development

potential. As such, the workforce housing early evacuation unit building permit allocations would be used at sites with existing approvals/dwelling units and require early evacuation of the occupants, but should not otherwise change the development on the site.

V. CONSISTENCY WITH THE MONROE COUNTY COMPREHENSIVE PLAN, THE PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.

A. The proposed amendment is consistent with the Goals, Objectives and Policies of the Monroe County 2030 Comprehensive Plan. Specifically, it furthers:

GOAL 101: Monroe County shall manage future growth to enhance the quality of life, ensure the safety of County residents and visitors, and protect valuable natural resources.

Objective 101.2: As mandated by the State of Florida, pursuant to Section 380.0552, F.S. and Rule 28-20.140, F.A.C., and to maintain the public health, safety, and welfare, Monroe County shall maintain a maximum hurricane evacuation clearance time of 24 hours and will coordinate with the State Land Planning Agency relative to the 2012 Memorandum of Understanding that has been adopted between the County and all the municipalities and the State agencies.

Policy 101.2.1: Monroe County shall maintain a memorandum of understanding with the State Land Planning Agency, Division of Emergency Management, Marathon, Islamorada, Key West, Key Colony Beach, and Layton to stipulate, based on professionally acceptable data and analysis, the input variables and assumptions, including regional considerations, for utilizing the Florida Division of Emergency Management's (DEM) Transportation Interface for Modeling Evacuations ("TIME") Model to accurately depict evacuation clearance times for the population of the Florida Keys.

Policy 101.2.2
Monroe County shall coordinate with all the municipalities, the State Land Planning Agency and Division of Emergency Management to update the variables and assumptions for the evacuation clearance time modeling and analyses of the build-out capacity of the Florida Keys Area of Critical State Concern based upon the release of the decennial Census data. Pursuant to the 2012 completed hurricane evacuation clearance time modeling by the State Land Planning Agency, which incorporates the 2010 Census data, the County may allocate 10 years' worth of growth (197 x 10 = 1,970 allocations, 197 annual ROGO rate based on Rule 28-20.140, F.A.C.) through the year 2023, while maintaining an evacuation clearance time of 24 hours. The County will adopt a slower rate of annual allocations for market rate development to extend the allocation timeframe to 2033 without exceeding the total of 1,970 allocations (see Policy 101.3.2). The County shall reevaluate the annual ROGO allocation rate based on: 1) statutory changes for hurricane evacuation clearance time requirement standards; 2) new hurricane evacuation modeling by the State Land Planning Agency and Division of Emergency Management; and 3) a new or revised memorandum of understanding with the State Land Planning Agency, Division of Emergency Management, Marathon, Islamorada, Key West, Key Colony Beach and Layton (see Policy 101.2.1).

Policy 101.2.4
In the event of a pending major hurricane (Category 3—5) Monroe County shall implement the following staged/phased evacuation procedures to achieve and maintain an overall 24-hour hurricane evacuation clearance time for the resident population.

1. Approximately 48 hours in advance of tropical storm winds, a mandatory evacuation of non-residents, visitors, recreational vehicles (RVs), travel trailers, live-aboard vessels (transient and non-transient), and military personnel from the Florida Keys shall be initiated. State parks and campgrounds should be closed at this time or sooner and entry into the Florida Keys by non-residents should be strictly limited.

2. Approximately 36 hours in advance of tropical storm winds, a mandatory evacuation of mobile home residents, special needs residents, and hospital and nursing home patients from the Keys shall be initiated.
3. Approximately 30 hours in advance of tropical storm winds, a mandatory phased evacuation of permanent residents by evacuation zone (described below) shall be initiated. Existing evacuation zones are as follows:
   a) Zone 1 - Key West, Stock Island and Key Haven to Boca Chica Bridge (MM 1-6)
   b) Zone 2 - Boca Chica Bridge to West end of 7-mile Bridge (MM 6-40)
   c) Zone 3 - West end of 7-Mile Bridge to West end of Long Key Bridge (MM 40-63)
   d) Zone 4 - West end of Long Key Bridge to CR 905 and CR 905A intersection (MM 63-106.5 and MM 1-9.5 of CR 905)
   e) Zone 5 - 905A to, and including Ocean Reef (MM 106.5-126.5)

The actual sequence of the evacuation by zones will vary depending on the individual storm. The concepts embodied in this staged evacuation procedures should be embodied in the appropriate County operational Emergency Management Plans.

The evacuation plan shall be monitored and updated on an annual basis to reflect increases, decreases and or shifts in population; particularly the resident and non-resident populations.

For the purpose of implementing Policy 101.2.4, this Policy shall not increase the number of allocations to more than 197 residential units a year, except for affordable housing. Any increase in the number of allocations shall be for affordable housing.

Objective 101.3: Monroe County shall regulate new residential development based upon the finite carrying capacity of the natural and man-made systems and the growth capacity while maintaining a maximum hurricane evacuation clearance time of 24 hours.

Policy 101.3.1: Monroe County shall maintain a Permit Allocation System for new residential development known as the Residential Rate of Growth Ordinance (ROGO) System. The Permit Allocation System shall limit the number of permits issued for new residential dwelling units. The ROGO allocation system shall apply within the unincorporated area of the county, excluding areas within the county mainland and within the Ocean Reef planned development (Future development in the Ocean Reef planned development is based upon the December 2010 Ocean Reef Club Vested Development Rights Letter recognized and issued by the Department of Community Affairs). New residential dwelling units included in the ROGO allocation system include the following: affordable housing units; market rate dwelling units; mobile homes; and institutional residential units (except hospital rooms).

Vessels are expressly excluded from the allocation system, as the vessels do not occupy a distinct location, and therefore cannot be accounted for in the County's hurricane evacuation model. Under no circumstances shall a vessel, including live-aboard vessels, or associated wet slips be transferred upland or converted to a dwelling unit of any other type. Vessels or associated wet slips are not considered ROGO allocation awards, and may not be used as the basis for any type of ROGO exemption or TRE (Transfer of ROGO Exemption).

ROGO Allocations for rooms, hotel or motel; campground spaces; transient residential units; and seasonal residential units are subject to Policy 101.3.5.

Policy 101.3.2
The number of permits issued for residential dwelling units under the Rate of Growth Ordinance shall not exceed a total of 1,970 new allocations for the time period of July 13, 2013 through July 12, 2026, plus any available unused ROGO allocations from a previous ROGO year. A ROGO year means the twelve-month

period beginning on July 13. Market rate allocations shall not to exceed 126 residential units per year. Unused allocations for market rate shall be available for Administrative Relief.

In 2012, pursuant to Rule 28-20.140, F.A.C., the Department of Economic Opportunity completed the hurricane evacuation clearance time modeling task and found that with 10 years' worth of building permits, the Florida Keys would be at a 24 hour evacuation clearance time. This creates challenges for State of Florida and Monroe County as there are 8,168 privately owned vacant parcels [3,979 Tier I; 393 Tier II, 260 Tier III-A (SPA); 3,301 Tier III, and 235 No tier (ORCA, etc.)] and with 1,970 new allocations this may result in a balance of 6,198 privately held vacant parcels at risk of not obtaining permits in the future. In recognition of the possibility that the inventory of vacant parcels exceeds the total number of allocations which the State will allow the County to award, the County will consider adopting an extended timeframe for distribution of the ROGO allocations through 2033 with committed financial support from its State and Federal partners. This timeframe can provide a safety net to the County and provide additional time to implement land acquisition and other strategies to reduce the demand for ROGO allocations and help transition land into public ownership.

The County is actively engaged in acquisitions and is requesting its State and Federal partners for assistance with implementing land acquisitions in Monroe County. The County will allocate the 1,970 new dwelling unit allocations over a 10 year timeframe. If substantial financial support is provided by July 12, 2018, the County will reevaluate the ROGO distribution allocation schedule and consider an extended timeframe for the distribution of market rate allocations (through a comprehensive plan amendment). Further, the State and County shall develop a mutually agreeable position defending inverse condemnation cases and Bert J. Harris, Jr. Private Property Rights Protection Act cases, with the State having an active role both directly and financially in the defense of such cases.

The County shall distribute ROGO allocations by ROGO year, as provided in the table below.

* * * * * *

Policy 101.3.3: Monroe County shall allocate at least 20% of the annual allocation, or as may be established by the State of Florida, pursuant to Administration Commission Rules, to affordable housing units as part of ROGO. Any portion of the allocations not used for affordable housing shall be retained and be made available for affordable housing from ROGO year to ROGO year. Affordable housing eligible for this separate allocation shall meet the criteria specified in Policy 601.1.4 and the Land Development Code, but shall not be subject to the competitive Residential Permit Allocation and Point System in Policy 101.6.4. Any parcel proposed for affordable housing shall not be located within an area designated as Tier I as set forth under Goal 105 or within a Tier III-A Special Protection Area as set forth in Policy 205.1.1.

Notwithstanding the foregoing, and notwithstanding Policy 101.6.2. affordable housing ROGO allocations may be awarded to Tier I or Tier III-A properties which meet all of the following criteria:

1. The property contains an existing market rate dwelling unit that meets the criteria in LDC Section 138-22(a) and is determined to be exempt from ROGO;
2. The proposed replacement affordable dwelling unit meets current Florida Building Code and is not a mobile home;
3. The proposed replacement dwelling unit shall be deed restricted for a period of at least 99 years as affordable housing pursuant to the standards of the Land Development Code; and
4. The proposed site plan for the replacement affordable dwelling unit does not propose any additional clearing of habitat.

Policy 101.3.5: Due to the limited number of allocations and the State's requirement that the County maintain a maximum hurricane evacuation clearance time of 24 hours, Monroe County shall prohibit new transient residential allocations for hotel or motel rooms, campground spaces, or spaces for parking a recreational

vehicle or travel trailer until May 2022. Lawfully established transient units shall be entitled to one unit for each type of unit in existence before January 4, 1996 for use as a ROGO exemption.

Policy 101.7.1: Monroe County, the state, or other acquisition agency shall, upon a property owner's request, offer to purchase the property for fair market value or permit the minimum reasonable economic use of the property, if the property owner meets the following conditions:

1. they have been denied an allocation award for four successive years in the Residential (ROGO) or Nonresidential (NROGO) Permit Allocation System;
2. their proposed development otherwise meets all applicable county, state, and federal regulations;
3. their allocation application has not been withdrawn;
4. they have complied with all the requirements of the Residential or Nonresidential Permit Allocation System; and
5. they follow the procedures for administrative relief contained in the land development regulations.

As used in this Policy, "minimum reasonable economic use" shall mean, as applied to any residentially zoned parcel of record which was buildable immediately prior to the effective date of the Plan, no less than a single-family residence.

A purchase offer is the preferred option for administrative relief, if the subject permit is for development located within:

1. a designated Tier I area or within the Florida Forever (or its successor) targeted acquisition areas (unless, after 60 days from the receipt of a complete application for administrative relief, it has been determined no county, state or federal agency or any private entity is willing to offer to purchase the parcel);
2. a designated Tier II or III-A (Special Protection Area); or,
3. a designated Tier III area on a non-waterfront lot for affordable housing.

Refusal of the purchase offer by a property owner shall not be grounds for the granting of a ROGO or NROGO allocation award.

Objective 101.17: Monroe County shall protect established rights of landowners affected by the provisions of this Plan or the land development regulations; and, therefore adopts the following policies for the determination of vested rights and beneficial use.

Policy 101.17.4: BENEFICIAL USE

1. It is the policy of Monroe County to ensure that neither the provisions of this Plan nor the LDC shall result in an unconstitutional taking of private property. Accordingly, Monroe County shall adopt a beneficial use procedure to provide a means to resolve a landowner's claim that a land development regulation or comprehensive plan policy has had an unconstitutional effect on property in a nonjudicial forum. For the purpose of this policy, beneficial use shall mean the minimum use of the property necessary to avoid the finding of a regulatory taking under current land use case law.
2. The relief to which an owner shall be entitled may be provided through the use of one or a combination of the following:
   a) granting of a permit for development which shall be deducted from the Permit Allocation System;
   b) granting of use of transferable development rights (TDRs);
   c) Government purchase offer of all or a portion of the lots or parcels upon which there is no beneficial use. This alternative shall be the preferred alternative when beneficial use has been deprived by application of Chapter 138 of the Land Development Code. This alternative shall be the preferred alternative for Tier I, II, or III-A(SPA) lands;
   d) such other relief as the County may deem appropriate and adequate.

   The relief granted shall be the minimum necessary to avoid the finding of a regulatory taking of the property under state and federal law. With respect to the relief granted pursuant to this policy or Policy 101.7.1 (Administrative Relief), a purchase offer shall be the preferred form of relief for any land within Tier I and Tier II, or Tier III-A (SPA).

3. Development approved pursuant to a beneficial use determination shall be consistent with all other objectives and policies of the Plan and LDC unless specifically exempted from such requirements in the final beneficial use determination.
4. This policy is not intended to provide relief related to regulations promulgated by agencies other than the county or to provide relief for claims that are not cognizable in court at the time of application of this policy. Further, the procedures established for this policy are not intended, nor do they create, a judicial cause of action.
5. The land development regulations shall establish standards, procedures, and remedies for an administrative determination of beneficial use.

Goal 601: Monroe County shall adopt programs and policies to facilitate access by residents to adequate and affordable housing that is safe, decent, and structurally sound, and that meets the needs of the population based on type, tenure characteristics, unit size and individual preferences.

Objective 601.1: Monroe County shall implement the following defined policies to reduce estimated affordable housing need for households in the very low, low, median and moderate income classifications.

Policy 601.1.4: All affordable housing projects which receive development benefits from Monroe County, including but not limited to ROGO allocation award(s) reserved for affordable housing, maximum net density, or donations of land, shall be required to maintain the project as affordable for a period of 99 years pursuant to deed restrictions or other mechanisms specified in the Land Development Code, and administered by Monroe County or the Monroe County Housing Authority.

Policy 601.1.8: Monroe County shall allocate at least 20% of the annual ROGO allocation, or as may be established by the State of Florida, pursuant to Administration Commission Rules, to affordable housing units, as specified in Policy 101.3.3. Affordable housing eligible for this separate allocation must meet the criteria established in the Land Development Code.

Policy 601.1.9: Monroe County shall maintain land development regulations which may include density bonuses, impact fee waiver programs, and other possible regulations to encourage affordable housing.

Objective 601.3: Monroe County shall continue implementation efforts to eliminate substandard housing and to preserve, conserve and enhance the existing housing stock, including historic structures and sites.

B. The amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statutes.

For the purposes of reviewing consistency of the adopted plan or any amendments to that plan with the principles for guiding development and any amendments to the principles, the principles shall be construed as a whole and no specific provision shall be construed or applied in isolation from the other provisions.

(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
(b) Protecting shoreline and benthic resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
(c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

(d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
(e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.
(f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.
(g) Protecting the historical heritage of the Florida Keys.
(h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

1. The Florida Keys Aqueduct and water supply facilities;
2. Sewage collection, treatment, and disposal facilities;
3. Solid waste treatment, collection, and disposal facilities;
4. Key West Naval Air Station and other military facilities;
5. Transportation facilities;
6. Federal parks, wildlife refuges, and marine sanctuaries;
7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
8. City electric service and the Florida Keys Electric Co-op; and
9. Other utilities, as appropriate.

(i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems.
(j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.
(k) Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.
(l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.
(m) Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan.
(n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is not inconsistent with the Principles for Guiding Development as a whole and is not inconsistent with any Principle.

C. The proposed amendment is consistent with the Part II of Chapter 163, Florida Statute (F.S.). Specifically, the amendment furthers:

163.3161(4), F.S. – It is the intent of this act that local governments have the ability to preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

163.3161(6), F.S. – It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

163.3164(3), F.S. – "Affordable housing" has the same meaning as in s. 420.0004(3).

163.3177(1), F.S. – The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

163.3177(6)(f), F.S. – 1. A housing element consisting of principles, guidelines, standards, and strategies to be followed in:

a. The provision of housing for all current and anticipated future residents of the jurisdiction.
b. The elimination of substandard dwelling conditions.
c. The structural and aesthetic improvement of existing housing.
d. The provision of adequate sites for future housing, including *affordable workforce housing* as defined in s. 380.0651(1)(h), housing for low-income, very low-income, and moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting infrastructure and public facilities. The element may include provisions that specifically address affordable housing for persons 60 years of age or older. Real property that is conveyed to a local government for affordable housing under this sub-subparagraph shall be disposed of by the local government pursuant to s. 125.379 or s. 166.0451.
e. Provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement.
f. The formulation of housing implementation programs.
g. The creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction.

2. The principles, guidelines, standards, and strategies of the housing element must be based on data and analysis prepared on housing needs, which shall include the number and distribution of dwelling units by type, tenure, age, rent, value, monthly cost of owner-occupied units, and rent or cost to income ratio, and shall show the number of dwelling units that are substandard. The data and analysis shall also include the methodology used to estimate the condition of housing, a projection of the anticipated number of households by size, income range, and age of residents derived from the population projections, and the minimum housing need of the current and anticipated future residents of the jurisdiction.

3. The housing element must express principles, guidelines, standards, and strategies that reflect, as needed, the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, adequate sites, and distribution of housing for a range of incomes and types, including mobile and manufactured homes. The element must provide for specific programs and actions to partner with private and nonprofit sectors to address housing needs in the jurisdiction, streamline the permitting process, and minimize costs and delays for affordable

housing, establish standards to address the quality of housing, stabilization of neighborhoods, and identification and improvement of historically significant housing.

163.3201, F.S. – Relationship of comprehensive plan to exercise of land development regulatory authority.—It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.

420.0004, F.S. – Definitions.—As used in this part, unless the context otherwise indicates:

(1) "Adjusted for family size" means adjusted in a manner which results in an income eligibility level which is lower for households with fewer than four people, or higher for households with more than four people, than the base income eligibility determined as provided in subsection (9), subsection (11), subsection (12), or subsection (17), based upon a formula as established by the United States Department of Housing and Urban Development.

(2) "Adjusted gross income" means all wages, assets, regular cash or noncash contributions or gifts from persons outside the household, and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under s. 62 of the Internal Revenue Code.

(3) "Affordable" means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households as indicated in subsection (9), subsection (11), subsection (12), or subsection (17).

(4) "Corporation" means the Florida Housing Finance Corporation.

(5) "Community-based organization" or "nonprofit organization" means a private corporation organized under chapter 617 to assist in the provision of housing and related services on a not-for-profit basis and which is acceptable to federal and state agencies and financial institutions as a sponsor of low-income housing.

(6) "Department" means the Department of Economic Opportunity.

(7) "Disabling condition" means a diagnosable substance abuse disorder, serious mental illness, developmental disability, or chronic physical illness or disability, or the co-occurrence of two or more of these conditions, and a determination that the condition is:

(a) Expected to be of long-continued and indefinite duration; and

(b) Not expected to impair the ability of the person with special needs to live independently with appropriate supports.

(8) "Elderly" describes persons 62 years of age or older.

(9) "Extremely-low-income persons" means one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.

(10) "Local public body" means any county, municipality, or other political subdivision, or any housing authority as provided by chapter 421, which is eligible to sponsor or develop housing for farmworkers and very-low-income and low-income persons within its jurisdiction.

(11) "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

(12) "Moderate-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

(13) "Person with special needs" means an adult person requiring independent living services in order to maintain housing or develop independent living skills and who has a disabling condition; a young adult formerly in foster care who is eligible for services under s. 409.1451(5); a survivor of domestic violence as defined in s. 741.28; or a person receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or from veterans' disability benefits.

(14) "Student" means any person not living with his or her parent or guardian who is eligible to be claimed by his or her parent or guardian as a dependent under the federal income tax code and who is enrolled on at least a half-time basis in a secondary school, career center, community college, college, or university.

(15) "Substandard" means:

(a) Any unit lacking complete plumbing or sanitary facilities for the exclusive use of the occupants;

(b) A unit which is in violation of one or more major sections of an applicable housing code and where such violation poses a serious threat to the health of the occupant; or

(c) A unit that has been declared unfit for human habitation but that could be rehabilitated for less than 50 percent of the property value.

(16) "Substantial rehabilitation" means repair or restoration of a dwelling unit where the value of such repair or restoration exceeds 40 percent of the value of the dwelling.

(17) "Very-low-income persons" means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

420.502, F.S. – Legislative findings.—

(8)(b) It is necessary to create a state housing finance strategy to provide affordable workforce housing opportunities to essential services personnel in areas of critical state concern designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing, and areas that were designated as areas of critical state concern for at least 20 consecutive years before removal of the designation. The lack of affordable workforce housing has been exacerbated by the dwindling availability of developable land, environmental constraints, rising construction and insurance costs, and the shortage of lower-cost housing units. As this state's population continues to grow, essential services personnel vital to the economies of areas of critical state concern are unable to live in the communities where they work, creating transportation congestion and hindering their quality of life and community engagement.

420.503, F.S. – Definitions.—

(18) "Essential services personnel" means natural persons or families whose total annual household income is at or below 120 percent of the area median income, adjusted for household size, and at least one of whom is employed as police or fire personnel, a child care worker, a teacher or other education personnel, health care personnel, a public employee, or a service worker.

420.5095, F.S. Community Workforce Housing Innovation Pilot Program.–

(1) The Legislature finds and declares that recent rapid increases in the median purchase price of a home and the cost of rental housing have far outstripped the increases in median income in the state, preventing essential services personnel from living in the communities where they serve and thereby creating the need for innovative solutions for the provision of housing opportunities for essential services personnel.

(2) The Community Workforce Housing Innovation Pilot Program is created to provide affordable rental and home ownership community workforce housing for essential services personnel affected by the high

cost of housing, using regulatory incentives and state and local funds to promote local public-private partnerships and leverage government and private resources.
(3) For purposes of this section, the term:
(a) "Workforce housing" means housing affordable to natural persons or families whose total annual household income does not exceed 140 percent of the area median income, adjusted for household size, or 150 percent of area median income, adjusted for household size, in areas of critical state concern designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing, and areas that were designated as areas of critical state concern for at least 20 consecutive years prior to removal of the designation.

125.01055, F.S. – Notwithstanding any other provision of law, a county may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.

VI. PROCESS

Land Development Code Amendments may be proposed by the Board of County Commissioners, the Planning Commission, the Director of Planning, private application, or the owner or other person having a contractual interest in property to be affected by a proposed amendment. The Director of Planning shall review and process applications as they are received and pass them onto the Development Review Committee and the Planning Commission.

The Planning Commission shall hold at least one public hearing. The Planning Commission shall review the application, the reports and recommendations of the Department of Planning & Environmental Resources and the Development Review Committee and the testimony given at the public hearing. The Planning Commission shall submit its recommendations and findings to the Board of County Commissioners (BOCC). The BOCC holds a public hearing to consider the adoption of the proposed amendment, and considers the staff report, staff recommendation, Planning Commission recommendation and the testimony given at the public hearing. The BOCC may adopt the proposed amendment based on one or more of the factors established in LDC Section 102-158(d)(7).

In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, the board of county commissioners shall hold two (2) advertised public hearings on the proposed ordinance.

VII. STAFF RECOMMENDATION

Based on the BOCC direction to staff on February 19, 2020 to start the process to *accept* the 300 workforce housing units and on July 15, 2020, to *accept* the 300 workforce housing early evacuation unit building permit allocations to be used in exchange for existing affordable allocations at multifamily developments (for developers that agree to the early evacuation restriction) and the affordable housing allocations returned to the County (returned in the exchange) be set aside and banked for takings cases (bank them within an administrative relief pool), staff recommends approval.

The BOCC's policy direction limits the use of the 300 workforce housing early evacuation unit building permit allocations for *only* the exchange of affordable allocations and not for the development of new (not approved or built) units, thereby not increasing current development potential.

As such, the workforce housing early evacuation unit building permit allocations would be used at sites with existing approvals/dwelling units and require early evacuation of the occupants, but should not otherwise change the development on the site or countywide. The BOCC direction of making this program for the exchange of allocations, maintains the County's focus on redevelopment and infill by swapping allocations types and including additional requirements (ex: early evacuation) on existing approvals and not incentivizing new development or encroachments into habitat with new development.

Further, the BOCC policy direction included that the affordable allocations returned to the County in exchange for workforce housing early evacuation unit allocations shall be banked to resolve takings. Banking these units may provide the County with an option to address potential liability for future inverse condemnation cases and Bert J. Harris, Jr. Private Property Rights Protection Act cases for the undeveloped, privately-owned parcels in the County which far exceed the remaining permit allocations.

Staff does not recommend approval of the general acceptance of the 300 workforce housing early evacuation unit building permit allocations, without the criteria and provisions explained above and included in proposed language as identified in Section III (proposed land development code text amendments) of this Report.

VIII. EXHIBITS

1. May 2, 2018, Governor Rick Scott press release outlining an initiative to the Florida Department of Economic Opportunity ("DEO") for a Keys Workforce Housing Initiative.
2. DEO provided preliminary draft language based on the minimum requirements established in the Keys Workforce Housing Initiative to use as a starting point.
3. County Takings Claims Bill Whitepaper
4. Administrative Law Judge recommended order recommending approval of Marathon, Key West, and Islamorada's respective ordinances accepting the 300 ROGOs under the Workforce Housing Initiative.
5. Islamorada (Ordinance 19-03) Comprehensive Plan amendment to accept the 300 Workforce Housing units
6. Marathon (Ordinance 2018-09) Comprehensive Plan amendment to accept the 300 Workforce Housing units
7. Key West (Ordinance 19-06) Comprehensive Plan amendment to accept the 300 Workforce Housing units
8. Table of Summary of County Actions on 300 Workforce early evacuation units

Exhibit 1

FROM THE OFFICE OF
GOVERNOR
RICK SCOTT

@FLGOVSCOTT | www.FLGOV.com | 850-717-9282 | media@eog.myflorida.com

FOR IMMEDIATE RELEASE
May 2, 2018

CONTACT: GOVERNOR'S PRESS OFFICE
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Gov. Scott Directs DEO to Enhance Workforce Housing in the Florida Keys

TALLAHASSEE, Fla. – Governor Scott today directed the Department of Economic Opportunity (DEO) to propose enhanced workforce housing in the Florida Keys as part of the continued efforts to recover from the tremendous impact Hurricane Irma had on the Keys. Hurricane Irma destroyed much of the housing that served the workforce population and the proposed Keys Workforce Housing Initiative will allow local governments to grant additional building permits for rental properties. This initiative will be presented to the Florida Cabinet at the next meeting.

Governor Scott said, "Hurricane Irma left a devastating impact on our state, especially in the Florida Keys and since the storm we have been working hard to rebuild even stronger than before. For business owners across the Keys, the availability of affordable workforce housing has been a challenge that was compounded by Hurricane Irma. The Keys Workforce Housing Initiative will provide much-needed access to workforce housing, allowing businesses the opportunity to grow while providing a plan to ensure Keys residents can evacuate safely before a storm."

DEO is charged with reviewing local development decisions in the Florida Keys due to its legislative designation as an Area of Critical State Concern. State law requires that growth be limited in the Keys to ensure that residents can evacuate safely within 24 hours in advance of a hurricane. To meet the increased demand for workforce housing, the innovative Keys Workforce Housing Initiative will require new construction that participates to commit to evacuating renters in the 48-hour window of evacuation.

The initiative will allow up to 1,300 new building permits for workforce housing throughout the Florida Keys. Local governments that choose to participate in the initiative will work with DEO to amend their comprehensive plans to allow for additional building permits that meet these safety requirements.

Cissy Proctor, Executive Director of DEO, said, "As I have toured the damage from Hurricane Irma, the number one priority of business and community leaders is the need for more workforce housing. We are proud to provide an option to local governments that will help businesses have the talent they

need to remain in the Keys and grow their companies. This solution will not only provide workforce housing for private-sector businesses but public servants, like law enforcement and teachers, as well. Our agency is committed to working with our partners in the Keys to provide ample workforce housing without compromising the safety of Floridians. We appreciate our partners at the Florida Division of Emergency Management for working with us to make sure Keys residents are still able to safely evacuate."

Representative Holly Raschein said, "Hurricane Irma pushed the affordable housing problem in the Florida Keys to a critical state, decimating an already strained stock of housing for our workforce. I have discussed this concern with Governor Scott and the Department of Economic Opportunity (DEO) both in Tallahassee and during the Governor's many visits to the Keys as he's lead us through our recovery efforts. The plan Governor Scott has directed DEO to bring before Cabinet is a creative solution to the most pressing recovery challenge still facing the Florida Keys and I encourage all Cabinet members to support this proposal."

Wes Maul, Director of the Florida Division of Emergency Management, said, "Our agency's primary goal is the safety of Florida residents during disasters. The Keys Workforce Housing Initiative ensures the safety of tourists and residents of the Keys during major storms, while allowing critical economic development activities to continue. We appreciate DEO's partnership in this endeavor."

##

Exhibit 2

Goal X – Workforce-Affordable Housing Initiative.
To support Monroe County's workforce by alleviating constraints on affordable housing the County shall participate in the Workforce-Affordable Housing Initiative, as approved during the June 13, 2018 meeting of the Administration Commission. The Workforce-Affordable Housing Initiative will require new construction that participates to commit to evacuating renters in the 48-hour window of evacuation.

Objective XX – Provide Workforce-Affordable Housing Building Permit Allocations.
The County shall establish a new limited category (needs a name-Phase One Affordable (POA)????) for 300 workforce-affordable building permit allocations to participate in the Workforce-Affordable Housing Initiative. These allocations are in addition to the maximum allocations identified in Rules 28-18, Florida Administrative Code. The County shall be responsible for the management, distribution, and enforcement of requirements associated with the POA allocations. Monroe County shall ensure adherence to these requirements through implementing the policies of this objective.

Policy X.1.1 – Distribution of Workforce-Affordable Housing Allocations. Workforce-affordable housing allocations shall be distributed in accordance with (**insert policy describing BPAS ranking procedures or ranking procedures specific to POA**).

Policy X.1.2 - Specific Standards and Requirements for Workforce-Affordable Housing. Workforce-affordable housing units built under this program shall:

a. be multifamily structures;
b. be rental units;
c. require, at a minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission;
d. not be placed in the V-Zone or within the Coastal Barrier Resource Systems;
e. require on-site property management;
f. comply with applicable locational criteria and densities for multifamily affordable housing units;
g. incorporate sustainable and resilient design principles into the overall site design;
h. ensure accessibility to employment centers and amenities;
i. require deed-restrictions ensuring:
    i. the property remains workforce-affordable housing in perpetuity;
    ii. tenants evacuate during the period in which transient units are required to evacuate;
    iii. rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident;
    iv. onsite property managers are formally trained in evacuation procedures.

Policy X.1.3 – Evacuation exemptions. Persons living in workforce-affordable housing who are exempt from evacuation requirements of **Policy X.1.2.i.1** include all first responders, correction officers, health care professionals, or other first-response workers required to remain during an emergency, provided the person claiming exemption under this policy has faithfully certified their status with property management.

Policy X.1.4 – ADA Compliance. All workforce-affordable housing developments must demonstrate compliance with all applicable federal standards for accessibility for persons with disabilities.

Policy X.1.4 -Evaluation and Report. Monroe County shall Local governments participating in the program shall provide to the state land planning agency an Annual Report by July 1 (or January 1???) of each year indicating the number of workforce-affordable units built, occupancy rates, and compliance with the requirement to evacuate the units in the Phase I evacuation.

Exhibit 3

MONROE COUNTY
THE FLORIDA KEYS AREA OF CRITICAL STATE CONCERN

PRIVATE PROPERTY RIGHTS PROTECTION CHALLENGES

The Florida Keys are designated as an Area of Critical State Concern (ACSC) by the State Legislature, *pursuant to* F.S. 380.05. This designation gives the State oversight authority over development in the Florida Keys and limits the number of residential housing permits that Monroe County and its municipalities may issue each year.

The State imposes these growth restrictions in order to provide for the safety of residents in the event of a hurricane evacuation and to protect the significant natural resources.

As a direct result of State's legislative and administrative growth restriction mandates, the County and municipalities have adopted local ordinances such as Rate of Growth Ordinance (ROGO) to fairly and competitively allocate the limited number of permits.

The most recent hurricane modeling completed in 2012 by the Department of Economic Opportunity (DEO), *pursuant to Rule 28-20.140, F.A.C.*, found that no more than 10 more years' worth of building permits (a maximum of 3,550 permits) shall be issued for the Florida Keys without exceeding the statutory maximum allowed 24-hour evacuation clearance. In March 2013, the Governor and Cabinet, sitting as the State Administration Commission, approved the recommendation to allocate no more than 3,550 building permits.

To date, a total 2,129 permits of the 3,550 permits have been allocated, and 1,421 remain to be allocated. The Florida Keys are fast approaching "buildout," at which point additional permits may not be allocated by the State.

The State of Florida and the local governments of the Florida Keys may face significant liability because the number of undeveloped, privately-owned parcels in the Florida Keys ACSC far exceeds the remaining permit allocations, leaving property owners without rights to build on their properties, as demonstrated in Table 1.

Table 1: 2018 Inventory of Privately-Owned,Vacant Parcels in Florida Keys and Approximate Land Value

AREA	2018 NUMBER OF VACANT PARCELS	2018 AVERAGE PARCEL VALUE	2018 APPROXIMATE LAND VALUE*
Key West ACSC	133	$397,235	$ 52,832,202
Unincorporated MC	7,033	$ 85,858	$603,840,749
Marathon	1,349	$100,481	$135,548,863
Layton	24	$123,928	$ 2,974,267
Key Colony Beach	81	$347,988	$ 28,187,020
Islamorada	1,070	$158,061	$169,125,630
TOTAL PARCELS	**9,690**	**$102,426**	**$992,508,731**
TOTAL REMAINING ALLOCATIONS	**1,421**		
PARCELS TO PURCHASE AFTER ALLOCATIONS	**8,269**	**$102,426**	**$846,961,269**

** Using December 2018 Monroe County Property Appraiser data*

REQUEST/NEED:

TO PROTECT PRIVATE PROPERTY RIGHTS AND REDUCE LIABILITY:

1) SUPPORT HB 587/SB 748 'TAKINGS CLAIMS IN AREAS OF CRITICAL STATE CONCERN'

and

2) SUPPORT STATE FUNDING FOR LAND ACQUISITION IN FLORIDA KEYS

($5M a year from Florida Forever, as authorized in the Florida Keys Stewardship Act)

TAKINGS CASES, JOINT DEFENSE AND LIABILITY
and the need for
THE FLORIDA KEYS PROPERTY RIGHTS PROTECTION ACT

The State-imposed growth limits have already prompted a number of inverse condemnation and other property rights related suits when those property owners have been unable to obtain permits to build on undeveloped lots.

Since 2005, Monroe County and the State of Florida have been jointly defending multiple takings cases. The State and the City of Marathon operated under a similar partnership in the two cases where that City was named as a defendant along with the State. This partnership provides for mutual litigation support and cooperation in exchange for an understanding that each entity would bear half of any liability imposed.

The alternative to the joint defense of these cases would be for the State and the local governments to both expend public resource litigating against each other over the issue of apportionment, which would cause both unnecessary expense to the taxpayer and delay the property owner's receipt of full compensation. Such litigation between the State and County would severely undermine the cooperative approach taken to date which has resulted in successful defenses in twenty-six (26) of the twenty-eight (28) claims.

In the two cases where liability was found, the joint defense partnership resulted in much lower damage awards than the property owners were seeking. In both cases, the Trial Court imposed the liability **jointly and severally** against both the State and the County, leaving both entities responsible for the full payment of the judgment.

With joint and several liability and given the State's lengthy appropriations process, Florida Keys' property owners who obtain inverse condemnation and other property-rights related compensation awards may not have their awards timely paid due to delays in the State's lengthy and onerous appropriations process. For local governments, this might mean an undue burden of being sued for the entirety of the judgment, or having to pay accruing interest.

The Florida Keys Property Rights Protection Act will:

- Provide the property owner whose property a Court has determined has been taken as a result of the State-imposed growth limits with a more expedient and certain process for recovering the compensation guaranteed under the U.S. and Florida Constitutions against both the local government and the State.

- Clarify that the State and the local government that share joint and several liability are separately obligated to pay half of such judgments, including interest, attorneys' fees and costs.

- Permit a local government found liable with the State as a result of claims based upon the State-imposed growth limits to satisfy the local government's 50% share of that liability to the property owner pursuant to its own budgetary procedures and cycle.

- Protect the financial interests of the the local government (and its local taxpayers) that shares joint and several liability with the State from the being sued for the entirety of the judgment, or being negatively impacted by accruing interest on such judgments due to delays in the State's appropriation process.

- Provide for an efficient and expedient method for the State to reimburse the local government for the State's half of any money paid by that local government for property rights claims brought in federal court.

- Have a funding source: the 2014 voter-approved Florida Water and Land Conservation Initiative (Amendment 1) will generate an estimated $648 million to $1 billion a year for 20 years to fund the Land Acquisition Trust Fund, which could be used as a source of funding to pay inverse condemnation awards against the State.

LAND ACQUISITION STRATEGIES TO REDUCE TAKINGS LIABILITY

1) STATE LAND ACQUISITION EFFORTS (via Florida Keys Stewardship Act and Florida Forever):

Land acquisition is a key strategy to reduce the future takings liability. Recognizing this, the State legislature passed the Florida Keys Stewardship Act in 2016 authorizing $5M a year (for 10 years for a total of $50M) for land acquisition in the Florida Keys under the State's primary land buying program, the Florida Forever Program.

Since 2016, with the passage of the Stewardship Act, Florida DEP/DSL has spent/encumbered **$3.28M, retiring 68.82 development rights**. **State DSL should aggressively pursue land acquisition in the Florida Keys because:**

OVER 3,500 PRIVATELY-OWNED VACANT, UNDEVELOPED PARCELS LIE WITHIN THE FLORIDA FOREVER PROJECT BOUNDARIES *(Table 2)*

Table 2: Analysis of Privately-Owned,Vacant Parcels Within Florida Forever Projects in the Florida Keys

	WITHIN THE FLORIDA FOREVER BOUNDARY			NOT WITHIN THE FLORIDA FOREVER			TOTAL COMBINED	
AREA	NO. OF PARCELS	2018 AVERAGE PARCEL VALUE	2018 APPROX TOTAL LAND VALUE	NO. OF PARCELS	2018 AVERAGE PARCEL VALUE	2018 APPROX TOTAL LAND VALUE	NO. OF PARCELS	2018 APPROX TOTAL LAND VALUE
Key West	0	$0	$0	133	$397,235	$52,832,202	133	$52,832,202
Unincorp MC	3,039	$14,348	$43,603,716	3,994	$140,270	$560,237,033	7,033	$603,840,749
Marathon	414	$10,948	$4,532,519	935	$140,124	$131,016,344	1,349	$135,548,863
Layton	4	$98	$392	20	$148,694	$2,973,875	24	$2,974,267
Key Colony	0	$0	$0	81	$347,988	$28,187,020	81	$28,187,020
Islamorada	77	$202,710	$15,608,696	993	$154,599	$153,516,934	1,070	$169,125,630
	3,534	**$18,038**	**$63,745,323**	**6,156**	**$150,871**	**$928,763,408**	**9,690**	**$992,508,731**
Allocations to be applied							**1,421**	
After allocations							**8,269**	**$846,961,269**

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2) COUNTY LAND ACQUISITION STRATEGIES AND COMMITMENT:

A) Local Land Acquisition Program: Monroe County Board of County Commissioners implemented a land acquisition program to supplement the long standing efforts of the Monroe County Land Authority and those of the State of Florida.

Since passage of the Stewardship Act, Monroe County and the Monroe County Land Authority and have **budgeted over $19.5M** for land acquisition and spent/encumbered to date **$10.2M, retiring 203.76 development rights.** (County budgeted funds from its infrastructure sales tax fund.)

B) Two willing seller programs to retire development rights have been implemented by Monroe County:

- **Density Reduction Lot** acquisition program: Residential property owners sell parcels with development rights to the County. Density Reduction Lots may later be offered for sale with a deed restriction to prohibit the development of the property with new housing units. The revenue derived from the sale of these deed restricted properties can help replenish the funds necessary to retire more development rights.
- **Less Than Fee** acquisition program: Residential property owners that own an adjacent vacant property may sell the development right on that vacant property to the County in exchange for legally allowed accessory uses on the adjacent parcel such as a pool, open yard or garage (and they retain ownership.) There are about 700 parcels in this category.

C) **County policies** that help transition land into public ownership and incentivize development that eliminates privately owned vacant parcels:

- Incentivize Dedication of Land – County adopted an amendment to encourage additional land dedication by providing additional points in ROGO/NROGO.
- Discouragement Policy – County adopted an amendment to discourage private applications for FLUM amendments that increase density and intensity, as required by Rule 28-20.140, F.A.C., unless mitigated by providing land (acreage or Improved Subdivision [IS] parcels) to the County.
- Created Commercial FLUM category (no residential component) - County adopted an amendment to provide options to re-designate property for other nonresidential uses (Provides alternative uses of property).
- Revised NROGO to make the process simpler and encourage nonresidential redevelopment and development. Created the NROGO banks of untilized floor area to make NROGO easier to award.
- Revised Lot Aggregation to encourage additional aggregation by increasing points awarded in ROGO.
- Revised Land Dedication in ROGO to provide additional points and options for dedicating land to the County.
- Revised transfer procedure for ROGO exemptions to provide the ability to transfer a market rate unit from one location to another with the provision of affordable housing.
- Adopted an Interim Development Ordinance limiting the transfer of market rate ROGO exemptions to single-family residential legally platted lots (dispersing development rights and not grouping multiple development rights on a single property).
- Adopted land acquisition priorities (Policy 102.4.2) to balance growth management, habitat protection, retirement of development rights, reduction of density & intensity, future build-out of the Florida Keys, climate change, sea level rise, affordable housing, etc.

Contacts:

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- *Bob Shillinger, County Attorney, 305-292-3470, shillinger-bob@monrocounty-fl.gov*
- *Christine Hurley, Assistant County Administrator, 305-289-2517, hurley-christine@monrocounty-fl.gov*
- *Lisa Tennyson, Legislative Affairs Director, 305-292-4444, tennyson-lisa@monrocounty-fl.gov*

Exhibit 4

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CECELIA MATTINO,

Petitioner,

vs. Case No. 18-6250GM

CITY OF MARATHON, FLORIDA,

Respondent.
_____/

NAJA GIRARD,

Petitioner,

vs. Case No. 19-1526GM

CITY OF KEY WEST, FLORIDA,

Respondent.
_____/

CATHERINE BOSWORTH,

Petitioner,

vs. Case No. 19-1839GM

ISLAMORADA, VILLAGE OF ISLANDS,
FLORIDA,

Respondent.
_____/

RECOMMENDED ORDER

A duly-noticed final hearing was held in this matter in Marathon, Florida, on December 9 through 13, 2019, before Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioners: Richard J. Grosso, Esquire
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For Respondents City of Marathon; and Islamorada, Village of Islands, Florida :

Nicole Pappas, Esquire
Barton Smith, Esquire
Smith Hawks, PL
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For Respondent, City of Key West:

George Wallace, Esquire
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STATEMENT OF THE ISSUE

Whether City of Marathon ("Marathon") Comprehensive Plan Amendment 2018-01, adopted on October 23, 2018 (the "Marathon Plan Amendment"); City of Key West ("Key West") Comprehensive Plan Amendment 19-06, adopted on April 4, 2019 (the "Key West Plan Amendment"); and Islamorada, Village of Islands ("Islamorada") Comprehensive Plan Amendment 19-03, adopted on March 5, 2019 (the "Islamorada Plan Amendment") (collectively,

the "Plan Amendments"), are "in compliance," as that term is defined in section 163.3184(1)(b), Florida Statutes (2019).[1]

PRELIMINARY STATEMENT

On November 26, 2018, Petitioner, Cecilia Mattino, filed a Petition with the Division of Administrative Hearings ("Division") challenging the Marathon Plan Amendment as not based on relevant and appropriate data and analysis and internally inconsistent with the City of Marathon Comprehensive Plan (the "Marathon Plan"), among other allegations, in violation of the Community Planning Act, chapter 163, part II, Florida Statutes ("the Act"). Ms. Mattino's petition was assigned to the undersigned as Case No. 18-6250.

On March 1, 2019, Petitioner, Naja Girard, filed a Petition with the Division challenging the Key West Plan Amendment as violative of the Act on many of the same grounds. Ms. Girard's Petition was assigned to the undersigned as Case No. 19-1526.

On April 9, 2019, Petitioner, Catherine Bosworth, filed a Petition with the Division challenging the Islamorada Plan Amendment as violative of the Act on many of the same grounds as the other Petitioners. Ms. Bosworth's Petition was assigned to Administrative Law Judge Francine Ffolkes as Case No. 19-1839. That case was transferred to the undersigned on April 22, 2019.

Petitioners filed an Amended Joint Motion to Consolidate ("the Motion") the three cases, to which Respondents, Marathon and Islamorada, filed responses in opposition. Following a telephonic hearing on the Motion, the undersigned entered an Order of Consolidation on May 10, 2019.

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[1] Except as otherwise noted, all references to the Florida Statutes are to the 2018 version, which was in effect when the Plan Amendments were adopted.

The consolidated cases were scheduled for final hearing on October 7 through 11, 2019; however, due to the undersigned's family medical emergency, the final hearing was continued and rescheduled to December 9 through 13, 2019.

The final hearing commenced as rescheduled in Marathon, Florida. Petitioners testified on their own behalves, and offered the testimony of: Rebecca Jetton, accepted as an expert in comprehensive planning and planning in the Florida Keys; Martin Senterfitt, the Monroe County Director of Emergency Management; and Richard F. Ogburn, accepted as an expert in comprehensive planning. Petitioners introduced the following Exhibits which were admitted in evidence: 2, 5, 6, 8, 10, 11, 34, 39, 47, 48, 54, 55, 60, 70, 71, 73 through 77, 83, 86 through 91, 94, 97, 100 through 102, 105, 106, 108, 117, 118, 127 through 129, 131, 139 (appendix 1C), 140, 147, 151, 158, 188, 189, 221, 223, and 228. Petitioners proffered Exhibit 111, which was not admitted in evidence, but travels with the record of this proceeding.

Respondents offered the testimony of: George Garrett, Marathon's planning director; Ty Harris, Islamorada's planning director; and Patrick Wright, Key West's former planning director; each of whom is accepted as an expert in comprehensive planning; Michael Alfieri, accepted as an expert in hydrogeology and karstology; William Precht, accepted as an expert in marine ecology; and Joaquin Vargas, accepted as an expert in transportation planning.

Respondents introduced Exhibits 1 through 17, 20 through 66, 68 through 83, 85 through 131, 133, and 135 through 153, which were admitted in evidence.

The parties received the five-volume Transcript of the final hearing on February 3, 2020,[2] and on February 6, 2020, Petitioners requested an extension of time to file proposed recommended orders by March 13, 2020, which was granted. The parties' Proposed Recommended Orders were timely filed and have been carefully considered by the undersigned in the preparation of this Recommended Order.

Evidentiary Considerations

Petitioners sought to introduce the deposition testimony of two additional witnesses: Kathleen McKee and Donald Maynard. While the deposition transcripts were admitted, they constitute hearsay for which no exception under either section 90.803 or 90.804, Florida Statutes, applies. Section 90.803(22), which provides an exception from hearsay for former testimony given in a deposition taken in the course of the same proceeding, if the party against whom the deposition is offered had the same motive to develop the testimony, has been declared unconstitutional. *See Grabau v. Dep't of Health*, 816 So. 2d 701, 709 (Fla. 1st DCA 2002). Further, Petitioners were unable to make the required showing of unavailability in order to introduce the former testimony of the two witnesses under the hearsay exception provided in section 90.804(2). Petitioners offered no non-hearsay evidence to corroborate the hearsay depositions of Ms. McKee and Mr. Maynard.

Respondents objected to the introduction of a number of exhibits relied upon by Petitioners' expert planning witness, Ms. Jetton, in formulating her opinions regarding whether shallow injection wells contribute to nearshore water pollution. The articles were written by marine scientists, biologists, microbiologists, chemists, and other experts, and published in a variety of scientific journals. An expert may rely upon facts or data of which the expert

[2] The official Transcript was not filed with the Division until March 16, 2020, although the parties provided the undersigned with a copy prior to that date.

does not have personal knowledge, if the facts and data are the type reasonably relied upon by experts in the particular field to support the opinion. § 90.704, Fla. Stat. The expert may even rely upon inadmissible evidence (i.e., hearsay) if the evidence is of a type "reasonably relied upon by experts in the subject to support the opinions expressed[.]" *Id*. In this case, Respondents' objections are well-taken. Ms. Jetton is an expert in comprehensive planning, very experienced and well-versed in the planning history of the Keys, particularly as a former employee of the state agency with oversight over planning and development in the Keys. However, Ms. Jetton is not a biologist, chemist, marine scientist, or other scientific expert who would typically rely upon the studies and publications in scientific journals for formulating an opinion on, for example, "the fate and transport of sewage in the subsurface environment and the potential for contamination of marine surface waters[.]"[3]

The documents on which Ms. Jetton relied in formulating her expert planning opinions were admitted, but those documents remain uncorroborated hearsay. The undersigned has given the appropriate weight to Ms. Jetton's testimony on these issues.

FINDINGS OF FACT

The Parties and Standing

1. Ms. Mattino resides in Marathon with her daughter and her fiancé. She submitted written objections to Marathon regarding the Marathon Plan Amendment prior to the October 23, 2018 public hearing at which Marathon adopted the Plan Amendment.

[3] John H. Paul, *Viral Tracer Studies Indicate Contamination of Marine Waters by Sewage Disposal Practices in Key Largo, Florida*, Applied and Envtl. Microbiology, 2230-34 (June 1995).

2. Ms. Mattino's daughter is severely disabled, requires specialized equipment (including a specialized wheelchair), and requires full-time care, for which Ms. Mattino relies upon a variety of caretakers. Her daughter has to be transported in a specially-equipped vehicle to accommodate the wheelchair and other equipment.

3. In the event Ms. Mattino is required to evacuate for a hurricane, she will need to bring an additional vehicle to transport her daughter's medical equipment, which requires additional personnel.

4. Prolonged car rides are dangerous for Ms. Mattino's daughter because she has a seizure disorder that worsens when she is aggravated or stressed. Prolonged car rides are also stressful for Ms. Mattino, who has high blood pressure and has had several heart attacks.

5. Ms. Mattino evacuated for Hurricane Irma and testified that she encountered heavy traffic, which was made more stressful by the need to stop approximately every two hours to attend to her daughter's medical needs.

6. Ms. Mattino claims that if the Plan Amendments increase the amount of time it takes her to evacuate the Florida Keys before a hurricane, it would cause additional stress and would put her and her daughter's health at risk. Ms. Mattino maintains these concerns are unique to her and her family and that emergency evacuation is more difficult and dangerous for her and her family than it is for the general public.

7. Ms. Bosworth resides in Islamorada with her daughter, son-in-law, and their two children. She submitted written objections to the Islamorada Plan Amendment prior to the April 4, 2019 public hearing at which Islamorada adopted the Plan Amendment.

8. Ms. Bosworth previously evacuated for Hurricanes Andrew and Irma, which required preparation time to gather her pets, pack pet supplies, and secure her boat, as well as secure her outdoor belongings and put up her hurricane shutters. Securing her boat and putting up her shutters requires the assistance of her son-in-law. Ms. Bosworth believes her circumstances are

unique because her son-in-law is a fire fighter and paramedic in Parkland, Florida, and is not always available to help her prepare her property for a hurricane.

9. Ms. Bosworth claims that if traffic congestion increases or worsens as a result of the Plan Amendments, it would affect her and her family because she would be concerned that she would get stuck on the highway while trying to evacuate for a hurricane. Further, Ms. Bosworth testified that she and her family enjoy going out on the boat and snorkeling and that if Islamorada's nearshore water quality became degraded or impaired it would affect her quality of life.

10. Ms. Girard is a resident of Key West. She submitted oral or written objections to the Key West Plan Amendment prior to the March 5, 2019 public hearing at which Key West adopted the Plan Amendment.

11. Ms. Girard testified that, due to her and husband's marine-based business and residential tenants, she and her husband would wait until the very last minute to evacuate regardless of when an evacuation advisory was issued by the Monroe County Emergency Management Office.

12. Ms. Girard did not evacuate for Hurricane Irma or any other hurricane since moving to a site-built home in Key West in 2007.[4]

13. Marathon, Islamorada, and Key West, are all municipalities with the duty and authority to adopt a comprehensive plan, pursuant to section 163.3167, Florida Statutes (2019).

Background

14. In 1972, the Florida Legislature enacted the Environmental Land and Water Management Act, which provided the basis for state designation of Areas of Critical State Concern ("ACSC").[5] The statute provides criteria for

[4] Ms. Girard previously lived on vessels in the Key West area.

[5] The Environmental Land and Water Management Act was enacted prior to the 1985 Growth Management Act, chapter 163, part II, when most local governments did not have programs and personnel to guide development in a manner that would ensure protection of natural resources.

designating an ACSC, which is generally "[a]n area containing … environmental or natural resources of regional or statewide importance," such as wildlife refuges, aquatic preserves, and state environmentally endangered lands. § 380.05(2), Fla. Stat. (2019).[6]

15. In 1974, the Florida Keys (Monroe County and its municipalities) were designated an ACSC due to the area's environmental sensitivity and mounting development pressures.

16. The designation was effectuated by the adoption in 1979 of section 380.0552, Florida Statutes, the "Florida Keys Area Protection Act." The Act establishes the legislative intent to establish a land use management system that, among other things, "protects the natural environment," "conserves and promotes the community character," "promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services," and "promotes and supports a diverse and sound economic base" in the Keys. § 380.0552(2), Fla. Stat. (2019).

17. The ACSC designation transferred all local Keys planning and development review and approval rights to the state land-planning agency, the Florida Department of Community Affairs ("DCA").[7] While the Keys local governments can adopt and amend their plan and land development regulations, those provisions do not take effect until approved by administrative rule. *See* § 380.0552(9), Fla. Stat.

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[6] The statute contains additional specific criteria for designation, including the economic and ecological value of the area; presence of critical habitat of any state or federally designated threatened or endangered plant or animal species; inherent susceptibility to substantial development due to its geographical location or natural aesthetics; and the anticipated effect of development on the environmental or natural resources of regional or statewide importance. § 380.05(2), Fla. Stat. (2019).

[7] The 2011 Legislature transferred the DCA Division of Community Planning, via Type II transfer, to the Department of Economic Opportunity. *See* ch. 2011-142, § 3, Laws of Fla.

18. In 1986, Monroe County updated its comprehensive plan to be consistent with the 1985 Growth Management Act.[8] Several administrative challenges followed, initiated by both DCA and private entities and individuals.

19. Monroe County revised its comprehensive plan in 1993 to resolve many of the issues raised in the litigation, but those amendments were again challenged in administrative proceedings.

20. The second challenge culminated in a final order of the Administration Commission in 1995 finding the 1993 Monroe County Plan not "in compliance," with the Act and the Principles for Guiding Development in the Keys ACSC ("the Principles"), which are adopted by rule of the Administration Commission. The Final Order found that "the environment of the … Keys is the very essence of Monroe County's economic base. The uniqueness of the environment … and the current condition of the environment must be addressed in any growth management decision[]." *DCA v. Monroe Cty.*, 1995 Fla. ENV LEXIS 129 (Fla. ACC 1995).

21. The litigation highlighted aspects of the Florida Keys ecosystem as having limited capacity to sustain additional impacts from development. Of particular concern was the declining water quality of the nearshore environment due to lack of central sewer facilities, the loss of habitat for state and federally-listed species, public safety in the event of hurricanes, and a deficit of affordable housing. Relevant to Petitioner's challenge, the Final Order found that the ability of the nearshore waters of the Keys to withstand additional degradation from sewage and stormwater discharges "has already been reached or even exceeded," and that development of the Keys "is degrading the nearshore waters at or over carrying capacity."

[8] The Growth Management Act was significantly amended and renamed the "Community Planning Act," by chapter 2011-142, Laws of Florida.

22. The 1995 Final Order required Monroe County to undertake certain "remedial actions" in order to bring the Plan into compliance with both the Act and the Principles, which are adopted in section 380.0552.

23. Among the remedial actions was the requirement that Monroe County establish a Permit Allocation System ("PAS") for new residential development. The Administration Commission explained, as follows:

> The [PAS] shall limit the number of permits issued for new residential development … provided that the hurricane evacuation clearance time does not exceed 24 hours …. The County shall adjust the allocation based upon environmental and hurricane evacuation constraints and … to account for permits and vested units in … the Keys.

24. Monroe County amended its plan in 1996 to implement the PAS and other remedial actions, and adopted a "carrying capacity approach" to planning in the ACSC.

25. The amended comprehensive plan was approved by rule of the Administration Commission—Florida Administrative Code Rule 28-20, which also established a comprehensive work program designed to improve the Keys' water quality and protect the habitat of threatened and endangered species.

26. The rule was subject to another administrative challenge, and the Division issued a final order upholding the rule in 1997. *See Abbott v. Admin. Comm'n*, Case No. 96-2027RP (Fla. DOAH May 21, 1997).

<u>The Carrying Capacity Study</u>

27. The work program adopted by the rule included the requirement to conduct a "carrying capacity analysis" for the Florida Keys. Florida Administrative Code Rule 28-20.100 provided, "The carrying capacity analysis shall be designed to determine the ability of the Florida Keys ecosystem, and the various segments thereof, to withstand impacts of additional land development activities." The rule established that the

analysis should be based on the findings adopted by the Administration Commission on December 12, 1995, "or more recent data that may become available in the course of the study," and upon the benchmarks of, and all adverse impacts to, the Keys natural land and water systems, in addition to the impacts of nutrients on marine resources.

28. The study was undertaken beginning in 1996 and was sponsored jointly by DCA and the Army Corps of Engineers ("the Corps") and involved 38 separate state and federal agencies. The study modeled a series of future development scenarios, as well as redevelopment and restoration scenarios.

29. The Final Report[9] of the Florida Keys Carrying Capacity Study ("FKCCS") was issued in September 2002. The major findings include the following:

> - Development suitability in the Florida Keys is extremely restricted, due to the following characteristics: Existing development has displaced nearly 50 percent of all upland habitats, and remaining uplands are distributed in patches of 10 or fewer acres; almost every native area is potential habitat for one or more endangered species; over 50 percent of all private lands are wetland parcels, and development suitability of remaining lands is low or marginal due to open space requirements, lack of infrastructure, and other factors.
>
> - Future growth is limited in the next 20 years—less than 10 percent growth in the number of dwelling units and population—due to infrastructure limitations. Permitted capacity of potable water withdrawals was exceeded in 1999 and 2000; improvement of hurricane evacuation clearance times is dependent on structural improvements to U.S. Highway 1, which will increase government costs, nutrient loading, and indirect impacts to wildlife and

[9] The document introduced in evidence is titled "Draft Final Report." According to the testimony of Rebecca Jetton, no other final report was issued by the study sponsors.

habitats; and residential capacity is limited to 6,000 units in order to maintain the state-mandated level of service for roadways.

- All six future scenarios would result in disproportionate increase in government expenditures with respect to increased population, which will require increased taxation on both local residents and tourists.

- The existing data "are insufficient to establish quantitative, predictive relationships between land use or development and the marine environment." The study documented human impacts to the marine ecosystem and species. The study underscores the benefits of wastewater treatment, "but other impacts are more related to resource management than to land development."

30. The study provides the following four major guidelines for future development in the Florida Keys:

> 1. Prevent encroachment into native habitat. A wealth of evidence shows that terrestrial habitats and species have been severely affected by development and further impacts would only exacerbate an already untenable condition.
>
> 2. Continue and intensify existing programs. Many initiatives to improve environmental conditions and quality of life exist in the Florida Keys. They include land acquisition programs, the wastewater and stormwater master plans, ongoing research and management activities in the Florida Keys National Marine Sanctuary, and restoration efforts throughout the Keys.
>
> 3. If further development is to occur, focus on redevelopment and infill. Opportunities for additional growth with small, potentially acceptable, additional environmental impacts may occur in areas ripe for redevelopment or already disturbed.

> 4. Increase efforts to manage the resources. Habitat management efforts in the Keys could increase to effectively preserve and improve the ecological values of remaining terrestrial ecosystems.

31. Rule 28-20.001 required the findings of the FKCCS to be implemented by "adoption of all necessary [comprehensive plan] amendments to establish a rate of growth and a set of development standards [to] ensure that any and all new development does not exceed the capacity of the county's environment and marine system to accommodate additional impacts." The study would provide the state and the Keys local governments with an analytical tool to support future comprehensive plan amendments and revisions of land development regulations.

24-Hour Hurricane Evacuation

32. In 2006, following the publication of the FKCCS, the Legislature amended section 380.0552 to require the local governments to adopt provisions in their comprehensive plans to "protect the public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours." § 380.0552(4)(e)2., Fla. Stat. (2007). The requirement remains in effect and is enforced by the state through review of local government plan amendments. *See* § 380.0552(9)(a)2., Fla. Stat.

ROGO and BPAS

33. Principle among the Monroe County amendments to implement the remedial actions ordered by the Administration Commission was the PAS, implemented in the County by a Rate of Growth Ordinance ("ROGO"). The current version of the administrative rule approving the County's comprehensive plan is rule 28-20.140, which also governs and approves ROGO. The rule provides the maximum number of permits for residential development that may be issued annually, with a split between affordable and market rate units. The current cap is 197 units per year, with a

minimum of 71 units allocated for affordable housing and a maximum of 126 market rate units. Any unused affordable housing units "roll over" for affordable housing units the following year. Other unused allocations may be rolled over and used for affordable housing units or "administrative relief."[10]

34. Islamorada and Marathon were not yet incorporated when the comprehensive plan litigation began and subsequent remedial measures were issued. Since their incorporation, each of the cities has been brought under the umbrella of the ACSC designation. The cities' respective comprehensive plans and land development regulations are subject to the same review and approval authority of the Administration Commission, and are subject to similar work plans to implement the remedial measures required by the commission. The applicable administrative rules are chapter 28-19 for Islamorada and chapter 28-18 for Marathon.

35. Marathon and Islamorada have permit allocation requirements similar to Monroe County, known as the Building Permit Allocation System ("BPAS"). Their respective administrative rules provide the annual maximum number of permits and the split between affordable and market rate units, as well as the rules governing rollover of unused allocations.[11]

36. BPAS is a competitive system. Permit applications are awarded points based on their alignment with specific development criteria, such as presence or absence of wetlands or protected habitat, and availability of public services. Those applications with the highest points are awarded available permits for the BPAS year.

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[10] Unused allocations may be provided to applicants who have been denied a permit, despite having met all the requirements of the land development regulations, if they have been in the allocation system for a significant number of years.

[11] Marathon's annual cap is 30 units and Islamorada's is 28 (22 market rate and 6 affordable housing).

Work Program

37. Each of the municipalities' governing rules includes a work program, broken down into the following categories: (1) carrying capacity implementation; (2) wastewater implementation; and (3) wastewater project implementation. Marathon's work program includes a fourth category—stormwater treatment facilities.

38. The specific activities of each work program differ somewhat. For example, with respect to environmentally-sensitive lands, Islamorada was required to apply for land acquisition funds, while Marathon was required to apply and adopt land development regulations limiting permit allocations in high quality habitats. Monroe County was required to adopt conservation planning mapping into its comprehensive plan.

39. The wastewater implementation and wastewater project implementation sections of the work programs are of high importance. The litigation highlighted the declining water quality of the nearshore environment due to a lack of central sewer facilities. The Keys' wastewater treatment "system" consisted of a hodgepodge of some 23,000 septic tanks, 2,800 cesspits, and at least 249 small package treatment plants.

40. The work program represents a monumental, long-term, and expensive[12] infrastructure project to build a central sewer system in the Keys, followed by a program to require existing developments to connect to the system, and land development regulations to direct new growth to areas served by central wastewater treatment facilities. Each local government work program includes specific target dates to obtain funding for, and construction of, each component of the sewer system, as well as specific target

[12] In both 2012 and 2016, the Florida Legislature authorized expenditure of Everglades restoration bond funds for Florida Keys wastewater and stormwater management projects; and, in 2016, appropriated $5 million in Florida Forever funds for said projects for the 2016/2017 year. More than $13 million was included in the general appropriations act for said projects in the 2017/2018 year.

dates for initiating and completing connections of existing development to the newly-constructed system.

41. Monroe County's work program also includes directives for funding stormwater improvement projects and deadlines for completing said projects.

ACSC Annual Reports

42. The local governments and the Department of Economic Opportunity ("DEO") are required to report to the Administration Commission annually documenting "the degree to which work program objectives for the work program year[[13]] have been achieved."

43. Achievement of work program objectives is directly tied to the BPAS and ROGO—if the Administration Commission finds that work program objectives have not been achieved, it can reduce the unit cap for residential development by 20 percent for the following year.[14] Additionally, through the BPAS and ROGO, the local governments are required to direct new growth to areas served by central sewer. Each application for building permit is awarded an additional four points[15] if the parcel is served by central sewer meeting statewide treatment standards.

44. In the 2017 ACSC annual report, the most recent report for which the parties requested official recognition, Islamorada reported it had connected 85 percent of potential customers (with another five percent in the application process), Marathon had connected 97 percent, and Monroe County had an overall connection rate of 86 percent (with higher percentages for specific individual treatment facilities).

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[13] The work program year runs from July of one year to June of the following year.

[14] The Islamorada rule does not contain this provision; however, it does provide that, if the Administration Commission determines progress has been made for the work program year, then the Commission "shall restore the unit cap" of 28 allocations for the following year. It is unclear whether Islamorada was already under penalty when the new rule was adopted or whether this is an oversight in the rule.

[15] In Islamorada, the award is two additional points.

City of Key West

45. Key West challenged its inclusion in the original ACSC designation, and, in 1984, was designated as a separate area of critical state concern ("the Key West ACSC"), effectuated by the adoption of Florida Administrative Code Chapter 28-36.

46. The Key West ACSC is subject to the same land planning and development regulation oversight as the Florida Keys ACSC, and the Key West comprehensive plan and land development regulations are approved by the state through Florida Administrative Code Chapters 28-37 and 9B-30.

47. Key West is subject to separate principles for guiding development than the Florida Keys ACSC, which are found in rule 28-36.003. Key West is served by central sewer and does not have work program tasks.

Hurricane Evacuation Clearance Time

48. The work program requires the local governments within the Florida Keys ACSC to enter into a Memorandum of Understanding ("MOU") with the DEO, the Division of Emergency Management, and each of the other Keys local governments, to stipulate to the input variables and assumptions for utilizing the Florida Keys Hurricane Model, or other models acceptable to DEO, to accurately depict hurricane evacuation clearance times for the population in the Keys. The work program required, by July 1, 2012, the local governments to run the model with the agreed upon variables from the MOU "to complete an analysis of the maximum build-out capacity for the ACSC, consistent with the requirement to maintain a 24-hour evacuation clearance time and the [FKCCS] constraints."

49. DEO appointed a Hurricane Evacuation Clearance Time Work Group (the "Work Group") including members of each of the six local governments and representatives from the tourism industry, chambers of commerce, and community organizations, as well as from state and federal agencies. The Work Group held a series of public workshops to consider hurricane model inputs—census data, behavioral studies, hurricane forecasting, military

evacuation procedures, traffic flow rates, and number and location of vacant platted lots.

50. The Work Group selected the Division of Emergency Management's Transportation Interface for Modeling Evacuations ("TIME") as the model to accurately depict evacuation clearance times for the population of the Keys ACSC and the Key West ACSC ("the Florida Keys ACSCs"). The Work Group agreed on 10 modeling assumptions, including the number of tourist units, and of those, the number occupied; the number of mobile home units and evacuation participation rates; and the number of site-built units, the occupancy rate, and participation rate of residents in those units, among other important variables. The inputs and assumptions were tested by modeling over 100 evacuation scenarios.

51. The Work Group presented its findings on June 8, 2012, and selected evacuation scenario M5, which provided for continuation of then-existing annual building permit allocations that were adopted by rule or comprehensive plan amendment (with the exception of Key Colony Beach and Key West). Scenario M5 produced an evacuation clearance time of 24 hours with a future allocation of 3,550 new residential building permits.

52. Notably, scenario M5 assumed that military, mobile home residents, and tourists would evacuate during Phase I of what DEO described as a two-phase evacuation plan. Further, M5 assumed that 15 percent of existing mobile homes would convert to site-built homes.

53. In the two-phase evacuation plan, tourists are ordered to evacuate 48 hours in advance of predicted tropical storm force winds, and residents of mobile homes are ordered to evacuate 36 hours in advance. The model predicted an evacuation clearance time of 16 hours and 30 minutes for Phase I using tourist occupancy rates for July, and 17 hours and 30 minutes using tourist occupancy rates for the Labor Day weekend.

54. Under Scenario M5, residents of site-built units are ordered to evacuate 30 hours in advance, giving those residents six hours of lead time to

secure property and make other preparations. Under scenario M5, all site-built residences were evacuated within 24 hours of predicted tropical storm force winds, including an additional 3,550 units. As such, the work group determined 3,550 units to be the maximum buildout of the Keys through 2023 to maintain the 24-hour hurricane evacuation mandate in section 380.0552.

55. The Work Program directed DEO to "apply the derived clearance time to assess and determine the remaining allocations for the [ACSC]" and recommend revisions to the allocation rates and distribution of allocations to the six local governments, as well as any recommended changes to the local government comprehensive plans. DEO completed that task, and determined that a maximum of 3,550 additional units could be distributed over the next ten years, beginning in July 2013.

56. On November 5, 2012, Monroe County, Marathon, Islamorada, Key Colony Beach, Key West, the City of Layton, the Division of Emergency Management, and DEO, entered into an MOU agreeing on the use of the TIME model, as well as the data, input variables, and assumptions to be utilized in model runs. The following "whereas" clause succinctly provides the results of the M5 scenario:

> WHEREAS, from among the scenarios provided by DEO at the June 8, 2012, Work Group meeting, Scenario M5 included the 2010 Census site-built units (43,760 units); the maximum number of residential building permits for new construction for all Local Governments per year for 10 years (annually, County 197, Marathon 30, Islamorada 28, Key West 90, Key Colony Beach 6, and Layton 3); 1,248 mobile home units projected to convert to site-built units; the exclusion of 870 dwelling units on the Naval Air Station; as well as two (2) functional evacuation lanes from MM 108-126. Further the work group recommended Scenario M5 with the provision that the City of Key West would transfer annually (by July 13th) any remaining or unused (90 allocations) allocations to the other

> Local Governments based upon the Local Governments' ratio of vacant land.

57. Technical corrections made after the June 8, 2012 meeting, the census-based number of site-built units was revised to 43,718 and the Key West allocation was revised to 91.

58. The MOU also memorializes the following staged evacuation procedure:

- Approximately 48 hours in advance of tropical storm winds, mandatory evacuation of non-residents, visitors, RVs, travel trailers, live-aboard vessels (transient and non-transient), and military personnel.
- Approximately 36 hours in advance, mandatory evacuation of mobile-home residents, special needs residents, and hospital and nursing home patients.
- Approximately 30 hours in advance, mandatory phased evacuation of permanent residents by evacuation zone.[16]

59. The phased evacuation procedure is also adopted in each of the local government comprehensive plans, except Key West, which adopted the procedure by resolution.

Affordable Housing

60. The need for additional affordable housing in the Keys is well documented, and the parties stipulated, generally, to the need.

61. Numerous factors contribute to the need for affordable housing, including, but not limited to, the high cost of living, higher construction costs, the high cost of land, as well as the limited supply and high demand for real estate and housing throughout the Florida Keys. The need for affordable housing was exacerbated by Hurricane Irma, which made landfall in the Florida Keys in September of 2017 and destroyed approximately 400 mobile

[16] There are five hurricane evacuation zones in the Keys designated by mile marker numbers along US 1.

homes, "permanent RV's," and ground-level single-family homes that served as affordable housing, many for members of the Keys workforce.

62. Most of the site-built homes destroyed were not built to current building code standards, but were "grandfathered" from code compliance. Those structures must be rebuilt to code, which will likely take them out of financial reach of members of the Keys workforce.

63. Provision of affordable housing is an important aspect of the regulatory framework for planning in the Keys.

64. The litigation over the Monroe County comprehensive plan highlighted a deficit of affordable housing in the Keys. Among the Principles is the requirement to "[make] available adequate affordable housing for all sectors of the population" of the Keys. § 380.0552(7)(*l*), Fla. Stat. When designating the ACSC, the Legislature expressed the intent to "[p]rovide affordable housing in close proximity to places of employment" in the Keys. § 380.0552(2)(d), Fla. Stat.

<u>The Keys Workforce Housing Initiative</u>

65. Shortly after Hurricane Irma, Marathon began discussions with DEO about the possibility of obtaining additional building permit allocations for workforce-affordable housing.

66. In November 2017, Marathon passed Resolution 2017-99 requesting the allocation of 300 affordable housing allocations from DEO with approval of the Administration Commission.

67. DEO determined there were not enough building permits available under the current regulatory structure to address the need for affordable housing in the Florida Keys. As a result, DEO developed the Keys Workforce Affordable Housing Initiative (the "Housing Initiative") to allow up to 1,300 new building permit allocations for workforce housing throughout the Florida Keys, with an initial allocation not to exceed 300 per local government.

68. Under the Housing Initiative, the additional units are to be deed-restricted for workforce affordable housing and required to evacuate in Phase I, along with tourists, visitors, mobile home residents, and military personnel.

69. The Administration Commission approved the Housing Initiative at the June 13, 2018 meeting. In support of the Housing Initiative, DEO staff made a presentation asserting that the Phase I evacuation (under the existing staged evacuation plan) can be accomplished in 17.5 hours, leaving additional capacity of 6.5 hours in Phase I. DEO concluded that the Housing Initiative "will not interfere with the 24-hour evacuation model and satisfies the statutory mandate to provide affordable housing."

70. Following approval by the Administration Commission, DEO worked with Marathon and other local governments to amend their comprehensive plans to implement the Housing Initiative.

<u>The Plan Amendments</u>

71. The Marathon Plan Amendment creates a new Future Land Use ("FLU") goal stating the intent to participate in the Housing Initiative approved by the Administration Commission. It further creates a new FLU Objective establishing a "new limited category" of building permit allocations known as "Affordable – Early Evacuation Pool" providing 300 workforce affordable building permit allocations in addition to the allocations identified in chapter 28-18. The Marathon Plan Amendment creates five new FLU policies. The first allows for distribution of the allocations "at any time" provided applicable Marathon public notice and hearing procedures are followed and the distribution is based on the BPAS ranking procedures in effect.

72. The second policy provides the following "Specific Standards and Requirements for Workforce Affordable Housing":

> Affordable-Early Evacuation residential units under this program shall:

a. be multifamily structures;

b. be rental units;

c. require, at a minimum, adherence to the latest edition of the Florida Building Code[];

d. not be placed in the V-Zone or within the Coastal Barrier Resource Systems;

e. require on-site property management;

f. comply with applicable habitat and other locational criteria and densities for multifamily affordable housing units;

g. shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, hardwood hammock, or fresh water wetlands (disturbed categories excepted);

h. incorporate sustainable and resilient design principles into the overall site design;

i. ensure accessibility to employment centers and amenities; and

j. require deed-restrictions ensuring:

(i) the property remains workforce-affordable housing in perpetuity;

(ii) tenants evacuate during the period in which transient units are required to evacuate;

(iii) rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident; and

(iv) on-site property managers are formally trained in evacuation procedures.

73. The third policy exempts from the early evacuation requirement all first responders, correctional officers, health care professionals, or other first-response workers required to remain during an emergency.

74. The fourth policy requires the workforce-affordable developments to comply with federal accessibility standards.

75. The last policy requires Marathon to provide DEO with an annual report on the implementation of the Housing Initiative, including documenting the number of workforce-affordable housing units built, occupancy rates, and compliance with the early evacuation requirement. The report is to be included in the DEO annual work program report to the Administration Commission.

76. Islamorada's plan amendment provides 300 workforce-affordable building permit allocations in addition to the allocations identified in chapter 28-19. In all other respects the amendment is identical to the Marathon Plan Amendment.

77. The Key West Plan Amendment approves the receipt of 300 workforce-affordable building permit allocations "as well as any additional allocations which may be authorized by the Florida Administration Commission or transferred to Key West that are not accepted by other Florida Keys municipalities or Monroe County." Rather than authorizing distribution of the allocation "at any time," Key West authorizes distribution "on a first-come first-served basis and at any time" following public notice and hearing procedures. Allocation of the Key West permits is not required to follow BPAS ranking unless the number of applications received exceeds the authorized allocation. There are also two minor differences in the "Standards and Requirement for Workforce-Affordable Housing" in the Key West Plan Amendment: it does not contain the paragraph prohibiting placement of units in buttonwood and hardwood hammock; and it does not require that property managers be trained in evacuation procedures. Otherwise, the Key West Plan

Amendment is virtually identical to that adopted by Marathon and Islamorada.

Petitioners' Challenges

78. Petitioners challenge the Plan Amendments, generally, as inconsistent with the FKCCS and the carrying capacity approach to planning in the Keys. The two main contentions are hurricane evacuation and environmental concerns.

Hurricane Evacuation

79. Petitioners posit that the Plan Amendments violate the Principles and the MOU[17], and render the local government comprehensive plans internally inconsistent, by exceeding the requirement to evacuate the Keys permanent population in no more than 24 hours. Petitioners also argue the plan amendments are not supported by adequate data, and a professionally-acceptable analysis thereof, on hurricane evacuation clearance times.

80. At first blush, Petitioners' argument has merit: the Plan Amendments allow up to 1,300 units to be built in the Keys beyond the previously-established maximum buildout of 3,550 units through the year 2023. That buildout number was derived directly from the Work Group after agreement on all assumptions and inputs for, and multiple runs of, the agreed-upon TIME model, and identification of the M5 scenario as the best model for evacuation of permanent population within 24 hours.

81. It is undisputed that the new residential units to be allocated under the Housing Initiative will house permanent residents. That fact alone is not in direct conflict with the 24-hour evacuation requirement because, as implemented, the evacuation plan requires some permanent residents—residents of mobile homes, "permanent RVs," live-aboard vessels, and military personnel—to evacuate in advance of the start of the 24-hour clock.

[17] As explained in the Conclusions of Law, Petitioners' contention that the Plan Amendments are inconsistent with the MOU is rejected. Inconsistency with the MOU is not a statutory compliance issue.

That requirement is incorporated into the local government comprehensive plans which have previously been found to be "in compliance"—meaning both internally consistent and consistent with the Principles.

82. Petitioners introduced the testimony of Richard Ogburn, a planning expert who has extensive experience with hurricane evacuation modeling in South Florida, including the Keys. Mr. Ogburn was directly involved in the Work Group hurricane evacuation modeling that culminated in the 2012 report and adoption of the MOUs. As Mr. Ogburn explained, Monroe County was the first local government in the state to update its hurricane evacuation modeling based on the 2010 census data. It was to be a pilot for updating the statewide regional evacuation plan utilizing the new census data.

83. Specifically, Mr. Ogburn, who was at the time employed by the South Florida Regional Planning Council, extracted demographic data from the 2010 census and created the demographic data base for use with the TIME model. Mr. Ogburn subsequently completed "validation runs" of the TIME model results generated by DEO staff during the Work Group process.[18]

84. In 2013, while Mr. Ogburn was working on the update to the statewide regional evacuation model, Mr. Ogburn discovered some blank cells within the census block group data sets in the original spreadsheet he had created for DEO. The missing information was the number of vehicles identified within those specific census block groups. With respect to Monroe County, eight of the 76 block groups were missing vehicle data.

85. Mr. Ogburn found an alternative data source from which to derive the number of vehicles in the associated census block groups and reran the model for purposes of updating the statewide regional model. In 2014, Mr. Ogburn reported the census data errors to DEO, which requested he rerun scenario M5 after including the missing vehicles. The result was an increase of two-

[18] The validation process involved input of the data parameters into the model and repeating the same model run scenarios to ensure that the results from the initial runs were replicated.

and-a-half hours for evacuation of Phase II—a total clearance time of 26.5 hours.

86. Mr. Ogburn testified that, based on the best-available data on hurricane evacuation clearance times, the evacuation of site-built dwellings in the Keys already exceeds the 24-hour evacuation standard mandate by statute (and incorporated into Respondents' comprehensive plans). In his opinion, adding units authorized by the Housing Initiative would further exacerbate the problem.

87. Petitioners introduced other evidence aimed at tearing down the conclusion of the Work Group that the Keys could be safely evacuated in under 24 hours, based on the 2012 TIME model runs. For example, Mr. Ogburn questioned the vacancy rates utilized by the Work Group, which he described as "most likely" too high. Mr. Ogburn cast doubt on the 100% participation rate assumption, and the assumed 12-hour response curve, which he testified was unrealistic given that people will not leave at the same rate if the evacuation is ordered at midnight as they would if the order was given at 7:00 a.m. Petitioners likewise introduced evidence casting doubt on the ability of meteorologists to predict storms with accuracy 48 hours in advance of landfall.

88. The Keys local government comprehensive plans, as adopted with use of the TIME model, and all underlying assumptions and inputs, have previously been determined to be "in compliance." The question of whether those assumptions and model inputs are supported by data and analysis is not properly before the undersigned in this proceeding. The evidence was, for the most part, irrelevant.[19]

89. The Housing Initiative is grounded on the availability of evacuation time in Phase I of the agreed evacuation procedure, which is adopted in each of the local government comprehensive plans. Mr. Ogburn agreed on cross-

[19] Moreover, the evidence served to undercut Petitioners' argument that the best available data and analysis supports the 24-hour evacuation clearance time cap.

examination, that the TIME model was run separately for Phase I and Phase II, that the results from Phase I were not taken into consideration in the data for Phase II, and that if the units are presumed to evacuate in Phase I, it would have no effect on the analysis for Phase II.

90. Notably, when Mr. Ogburn was asked directly whether the additional 1,300 units added to permanent population would cause the Keys evacuation time to exceed 24 hours, Mr. Ogburn testified:

> If the evacuation takes place ahead of time, it's a different question and I don't have a clear answer for that because I have not had the opportunity to run the model to determine whether or not that would cause the clearance times in the original phase to increase significantly.[20]

91. The 2012 run of the TIME model demonstrated a clearance time in Phase I of 16 hours and 30 minutes, or 17 hours and 30 minutes, depending on the transient occupancy rate utilized.

92. Respondents introduced the testimony of Joaquin Vargas, a traffic engineering consultant who was accepted as an expert in transportation planning, including roadway capacity issues related to hurricane evacuation. Mr. Vargas participated in hurricane evacuation modeling in the Keys in the 1990s to determine potential roadway improvements that could reduce Keys evacuation clearance time. Mr. Vargas was the principal author of the "Miller Model," which was utilized in these studies.

93. Mr. Vargas' modeling was not based on a two-phased evacuation. Instead, the Miller Model assumed evacuation of all permanent population simultaneously in order to identify where roadway improvements would reduce the evacuation clearance time.

94. Mr. Vargas introduced the results of a model run of simultaneous evacuation of the Keys without units authorized under the Housing Initiative, and a second adding 300 units each for Marathon, Islamorada, and

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[20] T2:79;1-6.

Key West. The model run without the 900 combined units yielded an evacuation clearance time of 21 hours and 34 minutes. With the additional 900 units, the model yielded a clearance time of 21 hours and 42 minutes.

95. This evidence had little relevance because the models are not comparable, and because Mr. Vargas utilized inputs and assumptions that differed greatly from the TIME model runs underlying the carrying capacity analysis utilized by the Work Group. The Miller Model assumes the evacuation of all permanent residents (including mobile home residents) simultaneously, so it is useless as a comparator to the Phase II run of the TIME model. Additionally, Mr. Vargas utilized 2000 census data, rather than the more recent 2010 data, which Mr. Vargas admitted "w[ould] provide more accurate information," and included inaccurate data, such as non-existent lane segments which inflated capacity on some roadway segments. While Mr. Vargas expressed the opinion that the Miller Model is superior because it was designed expressly for the Keys, the fact remains that the existing "in compliance" comprehensive plans are based on use of the TIME model to determine maximum buildout in the Keys.

96. Mr. Ogburn completed a run of the TIME model in 2014 which included the previously-missing vehicles from the census block groups in Phase I. That rerun produced a clearance time of 19 hours. The best available data and analysis (the 2014 rerun) supports a finding that the clearance time for Phase I, without the additional units from the Housing Initiative, is 19 hours. Thus, the evidence does not support a finding that the evacuation of Phase I with the additional 1,300 units cannot be completed within the first 24 hours of a 48-hour evacuation scenario.

97. The preponderance of the evidence does not support a finding that the inclusion of the 1,300 units in Phase I will violate the requirement to evacuate Keys permanent residents in 24 hours or less.

98. On the theory that the addition of up to 1,300 residential units in the Keys will cause the hurricane evacuation clearance time to exceed 24 hours,

Petitioners alleged the Plan Amendments are inconsistent with the following provisions of Respondents' comprehensive plans:

Marathon:

- FLU Objective 1-2.1, which requires Marathon to "ensure the availability of adequate public facilities and services[.]"

- FLU Objective 1-2.2, requiring Marathon to "meet the required 24-hour hurricane evacuation time or other applicable state standard for hurricane evacuation."

- FLU Objective 1-3.5, requiring Marathon to "manage the rate of new development to ... support safe and timely evacuation prior to a hurricane."

- Conservation and Coastal Element Policy 4-1.21.2, requiring Marathon to coordinate with Monroe County in updating policy formulations regarding land use and emergency preparedness and to plan for future land use densities that will not adversely impact the efficiency of hurricane evacuations or increase evacuation times.

- Intergovernmental Coordination Element ("ICE") Objective 5-1.1, requiring Marathon to maintain coordination mechanisms with the comprehensive plans of Monroe County and adjacent municipalities.

- ICE Policy 5-1.1.2, requiring Marathon to coordinate with adjacent jurisdictions "for the development of joint strategies to address development, zoning, and land-use decisions that transcend jurisdictional boundaries."

- ICE Policy 5-1.1.10, requiring Marathon to establish a program to provide and review proposed plan amendments of adjacent local governments to ensure consistency.

- Policy 5-1.2.1(j), requiring Marathon to enter into interlocal agreements or develop joint resolutions in areas of mutual concern, including the coordination of hurricane evacuation plans.

Islamorada:

- FLU Goal 1-1, which provides that the comprehensive plan shall "[e]ncourage[] sustainability by limiting growth in order to establish and maintain acceptable levels of service for hurricane evacuation[.]"

- Transportation Element ("TE") Policy 2-1.2.8, which requires Islamorada to "address long-term strategies to reduce clearance time and coordinate permit allocations" by implementing specifically-listed programs with FDOT, FDCA, and other local governments in the Keys.

- TE Policy 2-1.2.9, which provides for the staged/phased evacuation procedure to maintain a 24-hour hurricane evacuation clearance time.

- TE Policy 2-1.2.10, which requires Islamorada to "support state funding for the update of the hurricane evacuation model that considers the impact of Miami-Dade County on evacuees[.]"

- TE Policy 2-1.6.3, by which Islamorada "adopts 24 hours as the maximum allowable hurricane evacuation clearance time standard," and provides that "[t]he Village shall reduce and maintain hurricane evacuation clearance time at or below 24 hours by … limiting the annual allocation of permits … as determined by interlocal agreement with the affected local governments in the Keys and the [DEO]."

- Coastal Management Element ("CME") Objective 5-1.9, requiring Islamorada to "avoid population concentrations in the coastal high hazard area."

- CME Policy 5-1.10.2, requiring Islamorada to "coordinate with Monroe County in emergency preparedness."

- CME Objective 5-1.15, requiring Islamorada to "ensure intergovernmental coordination within the coastal area."

- ICE Objective 8-1.1, requiring Islamorada to "ensure intergovernmental coordination."

- ICE Policy 8-1.2.1, titled "Coordinate Development and Growth Management Issues."

- ICE Policy 8-1.2.8, titled "Implement Intergovernmental Coordination."

Key West:

- FLU Objective 1-1.16, requiring Key West to "regulate the rate of population growth commensurate with planned increases in evacuation capacity in order to maintain and improve hurricane evacuation clearance times[,]" and "in concert with Monroe County, its municipalities, and the State of Florida, [Key West] shall manage the rate of growth in order to maintain an evacuation clearance time of 24 hours for permanent residents."

- CME Goal 5-1, "Protect human life and limit public expenditures in areas subject to destruction by natural disasters[.]"

- CME Objective 5-1.6, requiring Key West to "coordinate with the State, the South Florida Regional Planning Council, [Monroe] County, and other local governments in order to regulate population growth and stage evacuations in a manner that maintains hurricane evacuation clearance times in accordance with the executed [MOU][.]"

- ICE Policy 8-1.1.3, which reads, in pertinent part, as follows:

> Considering the growth and development limitations in Monroe County as a whole resulting from hurricane evacuation requirements … and considering the impact that growth and development in the City of Key West will have on the rest of Monroe County, [Key West] shall coordinate with Monroe County and the Cities … regarding the allocation of additional development.
>
> * * *
>
> The City shall pursue resolution of development and growth management issues with impacts transcending the [Key West's] political jurisdiction. Issues of regional and state significance shall be coordinated with the [SFRPC], the [SFWMD], and/or State agencies having jurisdictional authority. Issues to be pursued include but are not limited to the following: [Key West] shall implement the hurricane and transportation conclusions and policies relative to residential units' allocation which are adopted by Monroe County and all municipalities as described in the [MOU] dated July 14, 2012.

99. Petitioners did not prove that the Marathon Plan Amendment is internally inconsistent with Objectives 1-2.1, 1-2.2, 1-3.5, and 5-1.1; and Policies 4-1.21.2, 5-1.1.(2), 5-1.1.10, and 5-1.2.1.j.

100. Petitioners did not prove the Islamorada Plan Amendment is inconsistent with Islamorada Comprehensive Plan Goal 1-1; Policies 2-1.2.8, 2-1.2.9, 2-1.2.10, and 2-1.6.3; Objective 5-1.9 and Policy 5-1.10.2; Objective 5-1.15; and Objective 8-1.1 and Policies 8-1.2.1 and 8-1.2.8.

101. Petitioners did not prove the Key West Plan Amendment is internally inconsistent with Key West Comprehensive Plan Objectives 1-1.16, 5-1.6, Goal 5-1, and Policy 8-1.1.3.

102. Based on the foregoing Findings of Fact, Petitioners did not prove that the Marathon and Islamorada Plan Amendments are inconsistent with

section 380.0552(9)(a)2., which requires the local governments in the ACSC to adopt goals, objectives, and policies to "maintain a hurricane evacuation clearance time for permanent residents of no more than 24 hours."

Environmental Concerns

103. Petitioners next contend the Plan Amendments are not supported by data and analysis demonstrating that the environmental carrying capacity of the Keys can support development of an additional 1,300 residential units. Petitioners' concerns fall into two categories which were the focus of the FKCCS: nearshore water quality and ecological impacts.

Nearshore Water Quality of the Florida Keys

104. Petitioners claim that the nearshore water quality of the Keys was determined over 25 years ago to have exceeded its capacity to assimilate additional nutrients, that it remains nutrient-impaired today, and that the additional development authorized under the Plan Amendments will further increase nutrient pollution from additional wastewater and stormwater associated with development.

105. In 1990, Congress created the Florida Keys National Marine Sanctuary ("FKNMS"), and required development of a Water Quality Protection Program ("WQPP"), establishing comprehensive, long-term monitoring of water quality in the FKNMS. Under the Water Quality Monitoring Project ("WQMP"), water quality has been monitored quarterly at approximately 150 sampling stations since 1995.

106. In 1997, the Governor and Cabinet approved the FKNMS Management Plan for implementation in state waters, and required annual reports from the FKNMS.

107. The 2011 FKNMS annual report stated that, "in general, water quality is good Sanctuary-wide but documentation of elevated nitrate in the inshore waters of the Keys has been evident since" sampling began in 1995. The report notes, "Observance of this type … implies an inshore source which is diluted by low nutrient ocean waters," and that "[a]nalysis of monitoring

data from 1995 through 2008 indicates a statistically significant improvement in some parameters, such as dissolved inorganic nitrogen …" The report concludes that "this trend will be watched closely in the future, particularly with regard to any potential effect attributable to … water treatment infrastructure improvements." The report further cited "[e]xcessive nutrients from inadequately treated wastewater" as the "primary contributor to water quality degradation in near shore waters."

108. In 2008, the Environmental Protection Agency ("EPA") developed Strategic Targets for the WQMP, setting limits for DIN (dissolved inorganic nitrogen) at $\leq$ 0.010 parts per million ("ppm"), and TP (total phosphorous) at $\leq$ 0.0077 ppm, among other nutrients, which are considered the values "essential to promote coral growth and overall health." Future sampling was compared to the "baseline" from the 1995-2005 timeframe (e.g., the baseline for DIN was 76.3 percent—the average percentage the samples complied with the target of $\leq$ 0.010 ppm). In 2011, FKNMS added 10 sampling stations, located within 500 meters of the shore in the Keys, referred to in the reports as the SHORE stations.

109. In 2015, FKNMS reported that an average of all stations (excluding SHORE stations) met or exceeded the target value for DIN in 2008 through 2011, but fell short of the target in 2012 through 2015. The stations reported meeting or exceeding the target for TP in 2011 through 2015, while falling short in 2008 and 2010. The 2017 annual report showed the stations meeting or exceeding the DIN target in 2017, but not 2016; and meeting or exceeding the TP target in both 2016 and 2017. The 2017 study reported that "the FKNMS exhibited very good water quality with median concentrations of" TP at .0058, well below the target of .008. In 2018, FKNMS reported the stations meeting or exceeding the target for both nutrients. Again, in 2018, FKNMS reported "very good water quality with median concentrations of" TP at .0051, lower than the 2017 level, and again well below the EPA target.

110. In summary, the reports demonstrate the stations fell below the target for TP in 2008 and 2010, but met or exceeded the target every year since 2010. The samples fell below the target for DIN in 2012 through 2016, but met or exceeded the target value in subsequent years.

111. Petitioners emphasize that the EPA's Strategic Targets for nutrients in the FKNMS are not consistently being met. But the reports do show a trend of improvement, at least with respect to DIN and TP.

112. The 2014 report documented elevated nutrient concentrations of DIN and TP in waters close to shore along the Keys, attributable to "human impact."

113. The 2015, 2017, and 2018 reports exclude the data from the SHORE stations for purposes of demonstrating compliance with target values because they "introduce a bias to the dataset which results in a reporting problem[.]"[21]

114. The 2017 report does include an analysis of the geographic differences between testing stations. The report indicates a significant difference between the median levels of nutrients sampled in SHORE stations when compared with the "alongshore," "channel," and "reef" stations. However, the median levels of many of the nutrients are still at or below the EPA targets, even measured at SHORE stations. For example, the median level of TP, which the report recognizes as one of the most important determinants of local ecosystem health, at the SHORE stations was just below .007, compared to the EPA target of .008.

115. More importantly, Petitioners focus on the SHORE station data was inconsistent with their challenge that the *nearshore water quality* remains impaired. Petitioners' planning expert, Ms. Jetton, defined nearshore as approximately 12,000 meters from shore, not merely within 500 meters of

[21] Petitioners sought to introduce raw sample data from SHORE stations and an analysis of said data by Kathleen McKee. That evidence was admitted as hearsay only, and was not corroborated by any non-hearsay evidence.

shore. The 2017 report breaks out the "alongshore" stations as well as the SHORE stations. That data shows the median value of TP at the alongshore stations is approximately .0055, well below the target of .008. Notably, 75 percent of the alongshore stations sampled TP below the target .008. With respect to DIN, the median of alongshore station samples is below the target of .01; and 75 percent fall below .015.

116. In 2018, FKNMS reported a trend of increased DO (dissolved oxygen) in both surface and bottom waters throughout the Keys, and declining turbidity in the surface waters, for the 24-year period from 1995 through 2018. Increased DO is beneficial for animal life. Declining turbidity means the water is becoming clearer. The 2014 report showed no significant trends in TP, but the 2018 report noted small, but significant, declining trends in TP values in most surface waters.[22]

117. In 1995, the EPA and the Department of Environmental Protection ("DEP") listed the Keys waters as "impaired," pursuant to the Clean Water Act.[23] DEP is required to establish Total Maximum Daily Loads ("TMDLs") for impaired water bodies, which define the maximum pollutant loading that can be discharged to those water bodies while still achieving water quality targets. An alternative mechanism, a Reasonable Assurance Document ("RAD") can be developed in lieu of TMDLs when, as in the Keys, local management activities are planned to achieve water quality targets.

118. The Florida Keys RADs ("FKRADs") were developed in 2008, and each of the affected local governments became a signatory to a Stakeholder's Agreement to implement the FKRADs. The FKRADs established two sets of nutrient targets: (1) an insignificant increase in concentration above natural background within the HALO zone, which is 500 meters of shore, not including canals; and (2) the average of values measured at the nearshore

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[22] The 2018 report does not contain the same detailed comparison of SHORE station samples with the other stations, as did the 2017 report.

[23] 33 U.S.C. § 1251 *et seq*.

(500 meters to 12,100 meters from the shoreline). The FKRADs identify 23 impaired estuarine water body identifications ("WBIDs"). The WBIDs are Class III water bodies, defined by the Clean Water Act as "used for recreation, propagation, and maintenance of a healthy, well-balanced population of fish and wildlife." The FKRAD identifies specific restoration projects to be completed by 2020 to improve each WBID, designates the government stakeholder responsible for each project, and sets water quality targets to be achieved by each project.

119. The FKRAD focuses on TN (total nitrogen) and TP, and establishes different water quality target values than the FKNMS. For the HALO Zone the target is an "as insignificant increase above natural background for each nutrient." "Insignificant" is defined as less than ten micrograms per liter (<10 μg/l) of TN, and < 2μg/l for TP.

120. Petitioner's planning expert, Ms. Jetton, testified that the 2018 Update to the FKRAD "tells me that the surface water still isn't able to assimilate all the nutrients that are going into it because … we're not meeting the strategic targets[.]" Ms. Jetton concluded, based on the 2018 Update to the FKRAD, that "there should be no more development added to [the Keys] until the [WBIDs] can consistently meet their strategic targets." She further testified that the RAD documents identify the Keys' waters as not meeting the DEP necessary levels of nutrients for healthy waters and that the RADs reflect "current water quality as it's been affected by the wastewater facilities that have been upgraded in the Keys to date."

121. That testimony is unreliable. The purpose of the 2018 Update is plainly set forth in the document itself: to document actions taken by stakeholders since 2011 and to address the DO impairment identified by DEP is some water segments; to include a revised approach to monitoring and reporting results; and to identify a schedule to meet water quality targets and restoration goals.

122. The 2018 Update to the FKRAD contains neither data on samples of TN and TP in the HALO zone waters, nor any analysis of whether the target—insignificant increases above natural background—has been achieved. The 2018 Update provides that "water quality data *will be compared to* the FKRAD water quality targets … to evaluate achievement of targets," and that "[m]onitoring for success *will include*, among other data sets, "decrease in nearshore nutrient concentrations in comparison to water quality targets and OFW background concentrations."

Injection Wells and Nearshore Water Quality

123. Absent concrete evidence to support Petitioners' claim that the nearshore waters have not recovered from their 1995 impaired designation such that they can assimilate pollutants from additional development, Petitioners argue that the existing "improved" wastewater and stormwater treatment infrastructure in the Keys does not adequately protect marine and coastal resources of the Keys, and that the addition of new development will exacerbate the problem. Specifically, Petitioners posit that shallow wastewater injection wells degrade nearshore water quality.

124. Marathon injects treated wastewater effluent into shallow injection wells, which are drilled to a depth of at least 90 feet and cased to a minimum depth of 60 feet.

125. Marathon's five injection wells are permitted to, and currently operate at, a permitted capacity of .200 million gallons per day ("MGD"), .400 MGD, .200 MGD, .500 MGD, and .450 MGD, respectively. Marathon's injection wells are designed and permitted to exceed full build out.

126. Key West injects its treated wastewater effluent into deep injection wells, which are 3,000 feet deep and are cased to a minimum depth of 2,000 feet.[24]

[24] Petitioners concede that deep injection wells have no quantified impact on the water quality of the nearshore waters of Key West or the Florida Keys.

127. Key West's injection wells are permitted at a capacity of 10 MGD, and Key West currently uses approximately 50 percent or less of the total permitted capacity for its injection wells.

128. Islamorada does not have its own municipal wastewater effluent injection wells or wastewater treatment plant. Islamorada's wastewater is transmitted to the Key Largo Regional Wastewater Treatment Facility ("Key Largo Wastewater Treatment Facility"), which treats and injects effluent into a deep injection well that is cased to a minimum depth of 2,000 feet.

129. The Key Largo Wastewater Treatment Facility is permitted by DEP and operates at a permitted capacity of 2 MGD. The injection wells at the Key Largo Wastewater Treatment facility are designed and permitted to exceed full build out.

130. Ms. Jetton testified that, based on reports she has reviewed, when you inject effluent into shallow injection wells, that water will reach the surface water "within a few hours or a few days." She referenced numerous scientific reports which were admitted in evidence as sources on which she based her opinions. She further referred to findings in the Administration Commission's 1995 Final Order that deep water injection wells are a better form of treatment than shallow injections wells. Finally, Ms. Jetton pointed to the 2014 and 2017 FKNMS reports as evidence that shallow well injections may contribute to nutrients in nearshore waters.

131. The excerpt of the 2014 report introduced in evidence contains no reference to a relationship between shallow injection wells and the water quality of nearshore waters. The 2017 report mentions there *may* be a connection.

132. Respondents introduced the testimony of Michael C. Alfieri, who is a licensed professional geologist, certified by the National Groundwater Association as a ground water professional, and certified by the American Institute of Hydrology as a professional registered hydrogeologist.

Mr. Alfieri's main practice in Florida is in karst hydrogeology, and he is one of the authors of the definitive text in Florida on karstology.

133. Mr. Alfieri testified that the subsurface conditions in Marathon, as shown in the core samples and boring logs he personally reviewed, indicate the presence of aquitards[25] and semi-confining materials, including calcite calcrete with clay silt, which would significantly inhibit vertical migration of injectate into surface water adjacent to Marathon's shallow injection wells.[26]

134. Based on his knowledge and experience, Mr. Alfieri testified that treated wastewater or stormwater injected down a shallow injection well does not rise to the surface in the nearshore waters surrounding the Keys. He further explained that once treated effluent is injected into either a deep or shallow well, it undergoes geochemical reactions as it interacts with, and is absorbed by, the surrounding rock, which reduces nutrient concentration.

135. Mr. Alfieri testified that based on the advanced wastewater treatment facilities and injection wells used by Respondents, the depths of the injection wells and their current level of usage, as well as the surrounding geological features, including the confining layers, which are horizontally transmissive, the additional residential units authorized by the Plan Amendments would have no impact on nearshore waters of the Florida Keys.

136. The undersigned finds Mr. Alfieri's testimony more persuasive and reliable than Ms. Jetton's recounting of studies undertaken by other professionals.

137. On the theory that injected treated effluent contaminates the nearshore waters of the Keys, Petitioners allege the Plan Amendments

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[25] Aquitards are materials that have a low potential to transmit water. Clay is the best material to serve as an aquitard given that it has high porosity and low permeability which makes it difficult for water to move through.

[26] The parties stipulated that deep injection wells "do not have a quantified impact on the water quality of the nearshore waters of Key West or the Florida Keys."

render Respondents' comprehensive plans internally inconsistent with the following policies, respectively:

Marathon

- Infrastructure Element ("IE") Goal 3-1: "[E]nsure availability of needed public facilities associated with wastewater disposal … in a manner that is environmentally sound and protects marine environments, including sea grass beds and nearshore waters[.]"

- IE Goal 3-2: "[Marathon] shall provide for environmentally … sound treatment and disposal of sewage, which meets the needs of … residents, while ensuring the protection of public health and the maintenance and protection of ground, nearshore and offshore, water quality[.]"

- IE Objective 3-2.2: "[Marathon] shall regulate land use and development to … protect the functions of natural drainage features and groundwater from the impacts of wastewater systems."

Islamorada

- FLU Goal 1-1, which provides in pertinent part, as follows:

> The comprehensive Plan shall provide a growth management framework that … encourages sustainability by limiting growth in order to establish and maintain acceptable levels of service for … wastewater services … and … reclaim and preserve the quality of [Islamorada's] natural resources … [r]elies on ecological constraints to establish limits for growth … to ensure that human induced activities do not diminish assets of our unique coastal environment; and provides a sound basis for developing land use controls that … protect coastal resources, including nearshore waters, wetlands, grassbed flats, mangroves… and establish a basis for managing … water quality[.]

- CE Goal 6-1: "Islamorada … shall conserve, manage, use and protect the natural and environmental resources … based on their carrying capacity limitations to ensure continued resource availability and environmental quality."

- CE Objective 6-1.9: "Islamorada … shall provide requirements designed to protect fisheries, wildlife and wildlife habitat from the adverse impacts of development by regulating the location, density and intensity of those activities that cause the adverse impact."

Key West

- FLU Goal 1-1: "Minimize Threats To Health, Safety, And Welfare Which May Be Caused By Incompatible Land Uses, Environmental Degradation[.]"[27]

- CME Goal 5-1: "Coastal Management. Restrict development activities that would damage or destroy coastal resources. Protect human life and limit public expenditures in areas subject to destruction by natural disasters[.]"

- CME Objective 5-1.1: "Protect Coastal Resources, Wetlands, Estuarine Salt Pond Environmental Quality, Living Marine Resources, And Wildlife Habitats. … (1) Preventing potentially adverse impacts of development and redevelopment on wetlands, estuaries, water resources, living marine resources, and other natural resources; (2) Maintaining or improving coastal environmental quality by improving stormwater management[.]"

[27] Petitioners inaccurately cite the monitoring measure attributable to Objective 1-1.16 as if it relates to Goal 1-1. The Monitoring Measure attributable to Objective 1-1.16 is "Number of building permits allocated annually in accordance with the implementing policies."

- CME Policy 5-1.1.4: "Protect Living Marine Resources, Coastal Marsh, and Seagrass Beds … [Key West] shall seek to enhance seagrass beds and coastal nontidal wetland habitats[.]"

- CME Policy 5-1.2.2: "[Key West] shall continue to limit the specific and cumulative impacts of development and redevelopment upon water quality and quantity, wildlife habitat, and living marine resources by enforcing performance standards cited herein. Wastewater system improvements shall also be carried out to reduce potential adverse impacts on the coral reef. In amending its land development regulations, the City shall consider the establishment of additional protective policies for coral."

- CME Policy 5-1.4.1: "Public Investments in Coastal High-Hazard Area. Publicly funded facilities shall not be built in the Coastal High-Hazard Area, unless the facility is for the protection of the public health and safety."

- CE Objective 6-1.2: "Detrimental water quality impacts, including adverse impacts to the coral reef system shall continue to be combated by public facility improvements identified in the Public Facilities Element …. Monitoring Measure: Achievement of water quality … standards."

138. Respondents' wastewater treatment plants are in compliance with their DEP wastewater treatment plant and injection well permits.

139. Furthermore, there have been no violations of the permits for Respondents' wastewater treatment facilities that could potentially impair nearshore water quality.

140. As a condition precedent to issuing permits for Respondents' injection wells, DEP required Respondents to provide reasonable assurance that the

operation of the wells will not cause or contribute to a violation of surface water quality standards and will not harm environmental resources.

141. Petitioners did not prove that the Marathon Plan Amendment is internally inconsistent with the Marathon Comprehensive Plan Goal 3-1, Goal 3-2, and Objective 3.2.2.

142. Petitioners did not prove the Islamorada Plan Amendment is internally inconsistent with Islamorada Comprehensive Plan Goal 1-1, Goal 6-1, and Objective 6-1.9.

143. Petitioners did not prove the Key West Plan Amendment is internally inconsistent with Key West Comprehensive Plan Goals 1-1 and 5-1; Objective 5-1.1 and Policies 5-1.1.4, 5-1.2.2, and 5-1.4.1; and Objective 6-1.2.

Ecological Impacts

144. Petitioners maintain the Plan Amendments are not supported by the best available data on the ecological carrying capacity of the Keys with regard to habitat protection.

145. The FKCCS recommended four guidelines for future development in the Keys: (1) prevent encroachment into native habitat; (2) continue and intensify existing programs (e.g., land acquisition, wastewater treatment); (3) focus future growth on redevelopment and infill; and (4) increase efforts to manage the resources.

146. Since the FKCCS was published in 2002, the local governments in the ACSC have completed numerous work programs designed to implement the recommendations, including updating habitat mapping, maximizing grant funding for land acquisition, and acquiring environmentally-sensitive lands to remove them from potential development.

147. Furthermore, the BPAS system integrates environmental concerns when scoring applications for the units allocated. In Marathon, Policy 1-3.5.4 affords the greatest weight to applications for development of scarified and infill lots with existing paved roads, water, and electric service. The Plan affords the least weight to applications on lots containing sensitive areas as

identified on the vegetation and species maps. Further, the Marathon plan provides that, "in no case shall more than one (1) BPAS allocation per year be issued for properties which in part or whole designated as Hardwood Hammock, Palm Hammock, Cactus Hammock, or Beach/Berm."

148. The Key West comprehensive plan mandates that new development preserve, at a minimum, "all wetlands and ninety (90) percent of hardwood hammocks." The Key West plan does not allow development in any wetlands "except where State and/or federal agencies having jurisdiction provide for development rights."

149. The Islamorada comprehensive plan mandates that new development preserve "all undisturbed wetlands" and 90 percent of high quality tropical hardwood hammocks on the parcel being developed. The Islamorada comprehensive plan also discourages development of lots containing both disturbed and undisturbed habitats by applying the most stringent open space requirements to development sites containing the highest quality habitats. For example, the minimum open space requirement for high quality hammock is .90; while for undisturbed saltmarsh and buttonwood wetlands, as well as undisturbed mangrove and freshwater wetlands, the ratio is 1.0. The plan requires an open space ratio of .90 for disturbed saltmarsh and buttonwood wetlands, as well as disturbed mangrove and freshwater wetlands.

150. Nevertheless, Petitioners argue that the Plan Amendments allow new units to be built in disturbed hammock, which constitutes additional encroachment into hammock, contrary to the FKCCS. Petitioners point to the provision of the Plan Amendments which provides that the workforce affordable units "shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, hardwood hammock,[28] or fresh water wetlands (disturbed categories excepted)[.]"

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[28] The Islamorada Plan Amendment refers to "tropical" hardwood hammock.

151. The provisions of the Plan Amendments must be read together with existing comprehensive plan provisions. When read together, the Marathon comprehensive plan may not allow any of the affordable-early evacuation units to be built on any hammock habitat because it only allows one BPAS permit per year be allocated to any parcel containing designated hardwood hammock. Since the Plan Amendment requires the units be built as multifamily, thereby utilizing multiple allocations for one application, it is impossible to permit the new affordable units on any lot designated hardwood hammock.

152. Further, the Marathon BPAS weighting system will apply to the new allocations,[29] which will continue to direct development to scarified lots, and those lots with maximum disturbed areas. The Islamorada plan open space requirements will apply to disincentivize development of parcels with high quality hammock, buttonwood wetlands, and freshwater wetlands, by requiring the most stringent open space ratios.

153. Petitioners did not prove the Plan Amendments are not based on data and analysis of the ecological carrying capacity of the Keys.

154. Petitioners allege that the Plan Amendments are internally inconsistent with the following provisions of the Marathon and Islamorada plans relating to ecological concerns:

Islamorada:

- *GOAL 1-1: IMPLEMENT FUTURE LAND USE VISION*, which reads, in pertinent part, as follows:

> [Islamorada was] incorporated to create a Comprehensive Plan to reclaim the Keys by conserving, preserving, and retaining our remarkable assets—our waters and natural environment—and our quality of life; Encourages sustainability by limiting growth in order to … reclaim and preserve the quality of our natural

[29] Only the Key West Plan Amendment exempts the allocation of the affordable-early evacuation units from the BPAS.

> resources; Relies on ecological constraints to establish limits for growth and create standards and criteria to ensure that human induced activities do not diminish assets of our unique coastal environment[.]

- Policy 2-1.9.3: Participate in the Florida Keys Carrying Capacity Study. … "[Islamorada] shall continue to support the technical undertakings of this study, and the establishment of carrying capacity limitations for the Florida Keys."

- Goal 6-1: "Islamorada … shall conserve, manage, use and protect the natural and environmental resources … based on their carrying capacity limitations to ensure continued resource availability and environmental quality."

- Policy 6-1.4.4: "Islamorada … shall use the best available technical criteria and information to formulate regulations and ordinances which shall ensure that future development is compatible with the functioning and carrying capacity of existing natural systems and resources conservation."

  Marathon

- Objective 1-2.1: which calls for adequate public facilities and services for future growth "to … protect valuable natural resources…."

155. Petitioners did not prove the Marathon Plan Amendment is internally inconsistent with Objective 1-2.1.

156. Petitioners did not prove the Islamorada Plan Amendment is internally inconsistent with Goal 1-1, Policy 2-1.9.3, Goal 6-1, and Policy 6-1.4.4.

Other Contentions

157. Petitioners alleged the Plan Amendments violate section 163.3177(6)(a)2., which reads, in pertinent part, as follows:

> 2. [P]lan amendments shall be based upon surveys, studies, and data regarding the area, *as applicable*, including:
>
> a. The amount of land required to accommodate anticipated growth.
> b. The projected permanent population of the area.
>
> c. The character of undeveloped land.
>
> d. The availability of water supplies, public facilities, and services.
>
> e. The need for redevelopment, including renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community.
>
> f. The compatibility of uses on lands adjacent to or closely proximate to military installations.
>
> g. The compatibility of uses on lands adjacent to an airport[.]
>
> h. The discouragement of urban sprawl.
>
> i. The need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.
>
> j. The need to modify land uses and development patterns with antiquated subdivisions.
> (emphasis added).

158. Many of the listed criteria are not applicable to the Plan Amendments because the Plan Amendments do not propose a specific type of development at a specific location, do not implicate antiquated subdivisions, and do not specifically implicate redevelopment of blighted areas.

159. Respondents considered the availability of water supplies and other public services, such as the capacity of wastewater treatment facilities, during plan review and adoption. Respondents also considered the need of

the service sector of the economy—including retail and restaurant services, as well as public school and first-responder services—during plan review and adoption.

160. Petitioners did not prove the Plan Amendments are not based upon applicable surveys, studies, and data as required by section 163.3177(6)(a)2.

CONCLUSIONS OF LAW

161. The Division of Administrative Hearings has jurisdiction over the subject matter and parties hereto pursuant to sections 120.569, 120.57(1), and 163.3184(5), Florida Statutes (2019).

162. To have standing to challenge or support a plan amendment, a person must be an "affected person," as defined in section 163.3184(1)(a).

163. Petitioners are all "affected persons" with standing to bring this action pursuant to 163.3184(1)(a).

164. "In compliance" means "consistent with the requirements of §§ 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, with the appropriate strategic regional policy plan, and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable." § 163.3184(1)(b), Fla. Stat.

165. Respondents' determinations that the Plan Amendments are "in compliance" are presumed to be correct and must be sustained if the determinations of compliance are fairly debatable. *See* § 163.3184(5)(c), Fla. Stat.

166. "The 'fairly debatable' rule is a rule of reasonableness; it answers the question of whether, upon the evidence presented to the [government] body, the [government's] action was reasonably-based." *Lee Cty. v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1002 (Fla. 2d DCA 1993) (citing *Town of Indialantic v. Nance*, 400 So. 2d 37, 39 (Fla. 5th DCA 1981)).

167. The mere existence of contravening evidence is not sufficient to establish that a land planning decision is "fairly debatable." It is firmly established that:

> [E]ven though there was expert testimony adduced in support of the City's case, that in and of itself does not mean the issue is fairly debatable. If it did, every zoning case would be fairly debatable and the City would prevail simply by submitting an expert who testified favorably to the City's position. Of course that is not the case. The trial judge still must determine the weight and credibility factors to be attributed to the experts. Here the final judgment shows that the judge did not assign much weight or credibility to the City's witnesses.

Boca Raton v. Boca Villas Corp., 371 So. 2d 154, 159 (Fla. 4th DCA 1979).

168. The standard of proof to establish a finding of fact is preponderance of the evidence. *See* § 120.57(1)(j), Fla. Stat.

<u>The MOU</u>

169. Petitioners allege, as grounds for finding the Plan Amendments not "in compliance," that the Plan Amendments are inconsistent with the MOU. Petitioners' allegations of inconsistency with the MOU are not well taken. Only those specific items listed in the statutory definition of "in compliance" may form the basis for finding the Plan Amendments not "in compliance." *See Consol. Citrus v. Martin Cty.*, Case No. 13-3393 (Fla. DOAH Jan. 23, 2013, Order on Respondent's Mot. in Lim. or in the Alter. Mot. to Strike) (whether plan amendment is consistent with sections 163.3162, 193.461, 823.14, Florida Statutes, and Florida Administrative Code Rules 62B-33 and 40E-8 are not compliance issues); *Cemex Constr. Materials Fla. v. Lee Cty.*, Case No. 10-2988 (Fla. DOAH Feb. 21, 2012; Fla. DCA Apr. 10, 2012) (whether plan amendment is consistent with section 337.0261(3), Florida Statutes, is not a compliance criterion); *Monkus v. City of Miami*, Case No. 04-1080 (Fla. DOAH Sept. 3, 2004; Fla. DCA Oct. 26, 2004) (consistency with land development regulations is not a compliance issue); *Emerald Lakes Residents'*

Ass'n v. Collier Cty., Case No. 02-3090 (Fla. DOAH Feb. 10, 2003; Fla. DCA May 8, 2003) (whether plan amendment was adopted in conformity with procedural requirements of section 163.3185(15)(c) is not a compliance issue); *Current v. Town of Jupiter*, Case No. 03-0718 (Fla. DOAH Oct. 24, 2003; Fla. DCA Apr. 9, 2004) (whether plan amendment conflicts with local government resolution is not a compliance issue); *Durham Park Neighborhood v. City of Miami*, Case No. 06-0759 (Fla. DOAH May 24, 2006 Order Granting Leave to Amend but Striking Portions of Amended Pet.) (striking Petitioners' claims that plan amendment is not consistent with Florida Administrative Code Rule 9J-11 because the provisions are not compliance criteria); and *Pyle v. City of St. Pete Beach*, Case No. 08-4772 (Fla. DOAH Jan. 28, 2009, Order on Mot. to Strike) (requirement to submit a "complete" plan amendment package pursuant to section 163.32456 is not a compliance issue).

170. If the MOU was adopted by reference in Respondents' comprehensive plans, Petitioners' argument might have had merit. However, none of the comprehensive plans adopts the MOU by reference. The MOU is a separate stand-alone document which may be amended by agreement of the parties, outside of the statutory plan amendment process.

Internal Inconsistences

171. Section 163.3177(2) mandates "the several elements of the comprehensive plan shall be consistent."

172. Petitioners did not prove, beyond fair debate, that the Plan Amendments are inconsistent with specifically-identified provisions of Respondent's plans relating to hurricane evacuation clearance times, quality of nearshore waters, wastewater treatment, or habitat protection.

173. Petitioners did not prove beyond fair debate that the Plan Amendments are inconsistent with section 163.3177(2).

Data and Analysis

174. Section 163.3177(1)(f) requires plan amendments to be "based upon relevant and appropriate data and analysis" by the local government, and

includes "surveys, studies, community goals and vision, and other data available at the time of adoption."

175. To be based on data "means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan amendment." § 163.3177(1)(f), Fla. Stat.

176. Based upon the foregoing Findings of Fact, Petitioners did not prove the Plan Amendments are not supported by adequate data and analysis, or fail to react to professionally-acceptable data in an appropriate way.

177. Petitioners did not prove beyond fair debate that the Plan Amendments are inconsistent with section 163.3177(1)(f).

Principles for Guiding Development

178. "In compliance" is defined to include consistency with the Principles, which apply to both Marathon and Islamorada.[30] Petitioners alleged the Plan Amendments are inconsistent with section 380.005(9), which requires plan amendments comply with the requirement to "maintain[] a hurricane evacuation clearance time for permanent residents of no more than 24 hours." Based on the foregoing Findings of Fact, it is at least fairly debatable that the Plan Amendments will not cause evacuation clearance time of the ACSC to exceed the 24-hour evacuation clearance time.

179. Furthermore, the Principles "may not be construed or applied in isolation," but must be "construed as a whole." § 380.0552(7), Fla. Stat. The undersigned is required to balance the Principles as applied to Petitioners' challenges. One of the other major Principles implicated by the Marathon and Islamorada Plan Amendments is to "[m]ake[] available adequate affordable housing for all sectors of the population of the Florida Keys." § 380.0552(7)(l), Fla. Stat. The parties stipulated to the need for affordable housing, which has a documented impact on the Keys' economy. The need to

[30] The Principles for Guiding Development in the Key West ACSC make no reference to hurricane evacuation clearance times. *See* Fla. Admin. Code R. 28-36.003.

house the workforce for the service sector of the Keys' economy implicates another Principle: to ensure "the maximum well-being of the Florida Keys and its citizens through sound economic development." § 380.0552(7)(d), Fla. Stat.

180. With regard to Key West, Petitioners urge the Plan Amendment is inconsistent with Florida Administrative Code Rule 28-36.003(1)(a), (h), and (2)(a)7., which require plan amendments to "[s]trengthen local government capabilities for managing land use and development"; "[p]rotect … the public health, safety, welfare, and economy of the City of Key West, and [maintain] Key West as a unique Florida Resource"; and adopt an "evacuation plan consistent with regional and [Monroe] County plans … which provides an opportunity for residents and visitors to evacuate to a place of safety during a natural disaster," respectively.

181. Based upon the foregoing Findings of Fact, Petitioners did not prove beyond fair debate that the Key West Plan Amendment is inconsistent with the listed Principles.

Other Contentions

182. Petitioners raised additional arguments, which were likewise not proven beyond fair debate.

183. Petitioners alleged the Plan Amendments violate section 163.3177(6)(a)2., which requires consideration of specifically-listed types of data and analysis for adoption of plan amendments. Respondents considered the availability of water supplies and other public services during plan review and adoption. Respondents also considered the need of the service sector of the economy—including retail and restaurant services, as well as public school and first-responder services—during plan review and adoption.

184. Based on the foregoing Findings of Fact, Petitioners did not prove, beyond fair debate, that the Plan Amendments are inconsistent with section 163.3177(6)(a)2.

185. Petitioners contend the Plan Amendments were inconsistent with section 163.3177(6)(a)8., which requires, as follows:

> 8. Future land use *map amendments* shall be based upon the following analysis:
>
> a. An analysis of the availability of facilities and services.
>
> b. An analysis of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site. (emphasis added).

186. The cited statutory section is inapplicable to the Plan Amendments because they are not future land use map amendments.

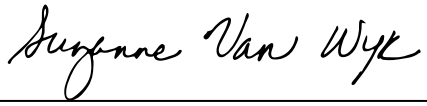
Conclusion

187. For the reasons stated above, Petitioners have not proven beyond fair debate that the Plan Amendment is not "in compliance," as that term is defined in section 163.3184(1)(a).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Economic Opportunity enter a final order determining the City of Marathon Comprehensive Plan Amendment 2018-01, adopted on October 23, 2018; City of Key West Comprehensive Plan Amendment 19-06, adopted on April 4, 2019; and Islamorada, Village of Islands, Comprehensive Plan Amendment 19-03, adopted on March 5, 2019; are "in compliance," as that term is defined in section 163.3184(1)(b).

DONE AND ENTERED this 24th day of April, 2020, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

CECILIA MATTINO,

Petitioner,

vs.

DOAH CASE NO.: 18-6250GM

CITY OF MARATHON, FLORIDA,

Respondent,

_____/

NAJA GIRARD,

Petitioner,

vs.

DOAH CASE NO.: 19-1526GM

CITY OF KEY WEST, FLORIDA,

Respondent,

_____/

CATHERINE BOSWORTH,

Petitioner,

vs.

DOAH CASE NO.: 19-1839GM

ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA,

Respondent,

_____/

ORDER REMANDING CASE TO
DIVISION OF ADMINISTRATIVE HEARINGS

THIS CAUSE came before the Department of Economic Opportunity (DEO) for consideration of a Recommended Order, which recommends the DEO enter a Final Order finding

the comprehensive plan amendments subject to challenge in the above-styled actions in compliance.

After reviewing the record, including admitted exhibits, considering the applicable law, and otherwise being fully apprised on all material premises, this matter is hereby REMANDED to the Division of Administrative Hearings for the following reasons:

1. The Recommended Order fails to include Findings of Facts and Conclusions of Law as to a dispositive issue of whether the plan amendments establish meaningful and predictable standards for the use and development of land as required by section 163.3177(1), Florida Statutes.

2. Amongst other issues raised in their Exceptions, the petitioners have taken exception to the Recommended Order's failure to include Findings of Facts and Conclusions of Law on this issue. (Exception No. 17) The petitioners have asserted, and the DEO, upon review of the record concurs, that the issue was: (1) raised in the petitions for administrative review, (2) identified in the parties' Amended Joint Pre-Hearing Stipulation as an issue remaining for determination, (3) discussed during the five-day hearing, and (4) addressed by the parties in their proposed recommended orders.

3. The DEO does not have the authority to make findings *ab initio*. *See Cohn v. Dep't of Prof'l Regulation*, 477 So.2d 1039,1047 (Fla. 3d DCA 1985). The DEO's role is not to make independent determinations of disputed issues of fact in a review proceeding, it may only consider whether findings actually made are sustained by the evidence. *Id.* As the court in *Cohn* held "the appropriate remedy is not for the agency (or the court of appeal) to reach its own conclusion, but rather to remand for the officer to do so." *Id. See also, Borges v. Dep't of Health*, 143 So.3d 1185 (Fla. 3d DCA 2014) ("the recommended order should address the factual controversies that were

the subject of the hearing to the extent they are relevant to the recommended disposition or, however briefly, indicate why the testimony was not pertinent.")

WHEREFORE, it is ordered that:

A) These cases are REMANDED to the Division of Administrative Hearings for the limited purposes of issuing Findings of Facts and Conclusions of Law on a dispositive issue of whether the plan amendments establish meaningful and predictable standards as required by section 163.3177(1), Florida Statutes.

B) Rulings on all pending Exceptions to the Recommended Order, not ruled on above, and the pending motions filed by the petitioners are deferred until, if applicable, a Recommended Order on Remand is submitted to DEO. No additional Exceptions objecting to the Recommended Order submitted on April 24, 2020, will be accepted.

C) No final ruling will be made on the ALJ's ultimate recommendation until after a Recommended Order on Remand is submitted to DEO, if applicable.

D) Exceptions to any additional Findings of Fact and Conclusions of Law included in a subsequent Recommended Order on Remand shall be filed and served within the time periods prescribed in Rule 28-106.217, F.A.C.

DONE and ORDERED this 21st day of August, 2020

Mark Buckles, Interim General Counsel
Department of Economic Opportunity

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Order Remaining Case to Division of Administrative Hearing has been filed with the undersigned Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicted this 21st day of August, 2020.

Janay Lovett
Agency Clerk
Florida Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail

The Honorable Suzanne Van Wyk
Administrative Law Judge
Division of Administrative Hearings
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CECELIA MATTINO,

Petitioner,

vs. Case No. 18-6250GM

CITY OF MARATHON, FLORIDA,

Respondent.
_____/

NAJA GIRARD,

Petitioner,

vs. Case No. 19-1526GM

CITY OF MARATHON, FLORIDA,

Respondent.
_____/

CATHERINE BOSWORTH,

Petitioner,

vs. Case No. 19-1839GM

CITY OF MARATHON, FLORIDA,

Respondent.
_____/

RECOMMENDED ORDER ON REMAND

A duly-noticed final hearing was held in this matter in Marathon, Florida, on December 9 through 13, 2019, before Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether City of Marathon ("Marathon") Comprehensive Plan Amendment 2018-01, adopted on October 23, 2018 (the "Marathon Plan Amendment"); City of Key West ("Key West") Comprehensive Plan Amendment 19-06, adopted on April 4, 2019 (the "Key West Plan Amendment"); and Islamorada, Village of Islands ("Islamorada") Comprehensive Plan Amendment 19-03, adopted on March 5, 2019 (the "Islamorada Plan Amendment") (collectively,

the "Plan Amendments"), are "in compliance," as that term is defined in section 163.3184(1)(b), Florida Statutes (2019).[1]

PRELIMINARY STATEMENT

On November 26, 2018, Petitioner, Cecilia Mattino, filed a Petition with the Division of Administrative Hearings ("Division") challenging the Marathon Plan Amendment as not based on relevant and appropriate data and analysis and internally inconsistent with the City of Marathon Comprehensive Plan (the "Marathon Plan"), among other allegations, in violation of the Community Planning Act, chapter 163, part II, Florida Statutes ("the Act"). Ms. Mattino's petition was assigned to the undersigned as Case No. 18-6250.

On March 1, 2019, Petitioner, Naja Girard, filed a Petition with the Division challenging the Key West Plan Amendment as violative of the Act on many of the same grounds. Ms. Girard's Petition was assigned to the undersigned as Case No. 19-1526.

On April 9, 2019, Petitioner, Catherine Bosworth, filed a Petition with the Division challenging the Islamorada Plan Amendment as violative of the Act on many of the same grounds as the other Petitioners. Ms. Bosworth's Petition was assigned to Administrative Law Judge Francine Ffolkes as Case No. 19-1839. That case was transferred to the undersigned on April 22, 2019.

Petitioners filed an Amended Joint Motion to Consolidate ("the Motion") the three cases, to which Respondents, Marathon and Islamorada, filed responses in opposition. Following a telephonic hearing on the Motion, the undersigned entered an Order of Consolidation on May 10, 2019.

---

[1] Except as otherwise noted, all references to the Florida Statutes are to the 2018 version, which was in effect when the Plan Amendments were adopted.

The consolidated cases were scheduled for final hearing on October 7 through 11, 2019; however, due to the undersigned's family medical emergency, the final hearing was continued and rescheduled to December 9 through 13, 2019.

The final hearing commenced as rescheduled in Marathon, Florida. Petitioners testified on their own behalves, and offered the testimony of: Rebecca Jetton, accepted as an expert in comprehensive planning and planning in the Florida Keys; Martin Senterfitt, the Monroe County Director of Emergency Management; and Richard F. Ogburn, accepted as an expert in comprehensive planning. Petitioners introduced the following Exhibits which were admitted in evidence: 2, 5, 6, 8, 10, 11, 34, 39, 47, 48, 54, 55, 60, 70, 71, 73 through 77, 83, 86 through 91, 94, 97, 100 through 102, 105, 106, 108, 117, 118, 127 through 129, 131, 139 (appendix 1C), 140, 147, 151, 158, 188, 189, 221, 223, and 228. Petitioners proffered Exhibit 111, which was not admitted in evidence, but travels with the record of this proceeding.

Respondents offered the testimony of: George Garrett, Marathon's planning director; Ty Harris, Islamorada's planning director; and Patrick Wright, Key West's former planning director; each of whom is accepted as an expert in comprehensive planning; Michael Alfieri, accepted as an expert in hydrogeology and karstology; William Precht, accepted as an expert in marine ecology; and Joaquin Vargas, accepted as an expert in transportation planning.

Respondents introduced Exhibits 1 through 17, 20 through 66, 68 through 83, 85 through 131, 133, and 135 through 153, which were admitted in evidence.

The parties received the five-volume Transcript of the final hearing on February 3, 2020,[2] and on February 6, 2020, Petitioners requested an extension of time to file proposed recommended orders by March 13, 2020, which was granted. The parties' Proposed Recommended Orders were timely filed and have been carefully considered by the undersigned in the preparation of this Recommended Order.

Evidentiary Considerations

Petitioners sought to introduce the deposition testimony of two additional witnesses: Kathleen McKee and Donald Maynard. While the deposition transcripts were admitted, they constitute hearsay for which no exception under either section 90.803 or 90.804, Florida Statutes, applies. Section 90.803(22), which provides an exception from hearsay for former testimony given in a deposition taken in the course of the same proceeding, if the party against whom the deposition is offered had the same motive to develop the testimony, has been declared unconstitutional. *See Grabau v. Dep't of Health*, 816 So. 2d 701, 709 (Fla. 1st DCA 2002). Further, Petitioners were unable to make the required showing of unavailability in order to introduce the former testimony of the two witnesses under the hearsay exception provided in section 90.804(2). Petitioners offered no non-hearsay evidence to corroborate the hearsay depositions of Ms. McKee and Mr. Maynard.

Respondents objected to the introduction of a number of exhibits relied upon by Petitioners' expert planning witness, Ms. Jetton, in formulating her opinions regarding whether shallow injection wells contribute to nearshore water pollution. The articles were written by marine scientists, biologists, microbiologists, chemists, and other experts, and published in a variety of scientific journals. An expert may rely upon facts or data of which the expert

[2] The official Transcript was not filed with the Division until March 16, 2020, although the parties provided the undersigned with a copy prior to that date.

does not have personal knowledge, if the facts and data are the type reasonably relied upon by experts in the particular field to support the opinion. *See* § 90.704, Fla. Stat. The expert may even rely upon inadmissible evidence (i.e., hearsay) if the evidence is of a type "reasonably relied upon by experts in the subject to support the opinions expressed[.]" *Id*. In this case, Respondents' objections are well-taken. Ms. Jetton is an expert in comprehensive planning, very experienced and well-versed in the planning history of the Keys, particularly as a former employee of the state agency with oversight over planning and development in the Keys. However, Ms. Jetton is not a biologist, chemist, marine scientist, or other scientific expert who would typically rely upon the studies and publications in scientific journals for formulating an opinion on, for example, "the fate and transport of sewage in the subsurface environment and the potential for contamination of marine surface waters[.]"[3]

The documents on which Ms. Jetton relied in formulating her expert planning opinions were admitted, but those documents remain uncorroborated hearsay. The undersigned has given the appropriate weight to Ms. Jetton's testimony on these issues.

Remand

The undersigned's Recommended Order was entered on April 24, 2020, and forwarded to the Department of Economic Opportunity ("DEO") for issuance of a final order. Following the consideration of the parties' Exceptions to the Recommended Order, DEO remanded these cases to the undersigned for the "limited purposes of issuing Findings of Fact and Conclusions of Law" on the issue of "whether the plan amendments establish

[3] John H. Paul, *Viral Tracer Studies Indicate Contamination of Marine Waters by Sewage Disposal Practices in Key Largo, Florida*, Applied and Envtl. Microbiology, 2230-34 (June 1995).

meaningful and predictable standards as required by section 163.3177(1), Florida Statutes."

FINDINGS OF FACT

The Parties and Standing

1. Ms. Mattino resides in Marathon with her daughter and her fiancé. She submitted written objections to Marathon regarding the Marathon Plan Amendment prior to the October 23, 2018 public hearing at which Marathon adopted the Plan Amendment.

2. Ms. Mattino's daughter is severely disabled, requires specialized equipment (including a specialized wheelchair), and requires full-time care, for which Ms. Mattino relies upon a variety of caretakers. Her daughter has to be transported in a specially-equipped vehicle to accommodate the wheelchair and other equipment.

3. In the event Ms. Mattino is required to evacuate for a hurricane, she will need to bring an additional vehicle to transport her daughter's medical equipment, which requires additional personnel.

4. Prolonged car rides are dangerous for Ms. Mattino's daughter because she has a seizure disorder that worsens when she is aggravated or stressed. Prolonged car rides are also stressful for Ms. Mattino, who has high blood pressure and has had several heart attacks.

5. Ms. Mattino evacuated for Hurricane Irma and testified that she encountered heavy traffic, which was made more stressful by the need to stop approximately every two hours to attend to her daughter's medical needs.

6. Ms. Mattino claims that if the Plan Amendments increase the amount of time it takes her to evacuate the Florida Keys before a hurricane, it would cause additional stress and would put her and her daughter's health at risk. Ms. Mattino maintains these concerns are unique to her and her family and that emergency evacuation is more difficult and dangerous for her and her family than it is for the general public.

7. Ms. Bosworth resides in Islamorada with her daughter, son-in-law, and their two children. She submitted written objections to the Islamorada Plan Amendment prior to the April 4, 2019 public hearing at which Islamorada adopted the Plan Amendment.

8. Ms. Bosworth previously evacuated for Hurricanes Andrew and Irma, which required preparation time to gather her pets, pack pet supplies, and secure her boat, as well as secure her outdoor belongings and put up her hurricane shutters. Securing her boat and putting up her shutters requires the assistance of her son-in-law. Ms. Bosworth believes her circumstances are unique because her son-in-law is a fire fighter and paramedic in Parkland, Florida, and is not always available to help her prepare her property for a hurricane.

9. Ms. Bosworth claims that if traffic congestion increases or worsens as a result of the Plan Amendments, it would affect her and her family because she would be concerned that she would get stuck on the highway while trying to evacuate for a hurricane. Further, Ms. Bosworth testified that she and her family enjoy going out on the boat and snorkeling and that if Islamorada's nearshore water quality became degraded or impaired it would affect her quality of life.

10. Ms. Girard is a resident of Key West. She submitted oral or written objections to the Key West Plan Amendment prior to the March 5, 2019 public hearing at which Key West adopted the Plan Amendment.

11. Ms. Girard testified that, due to her and husband's marine-based business and residential tenants, she and her husband would wait until the very last minute to evacuate regardless of when an evacuation advisory was issued by the Monroe County Emergency Management Office.

12. Ms. Girard did not evacuate for Hurricane Irma or any other hurricane since moving to a site-built home in Key West in 2007.[4]

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[4] Ms. Girard previously lived on vessels in the Key West area.

13. Marathon, Islamorada, and Key West, are all municipalities with the duty and authority to adopt a comprehensive plan, pursuant to section 163.3167, Florida Statutes (2019).

Background

14. In 1972, the Florida Legislature enacted the Environmental Land and Water Management Act, which provided the basis for state designation of Areas of Critical State Concern ("ACSC").[5] The statute provides criteria for designating an ACSC, which is generally "[a]n area containing … environmental or natural resources of regional or statewide importance," such as wildlife refuges, aquatic preserves, and state environmentally endangered lands. § 380.05(2), Fla. Stat. (2019).[6]

15. In 1974, the Florida Keys (Monroe County and its municipalities) were designated an ACSC due to the area's environmental sensitivity and mounting development pressures.

16. The designation was effectuated by the adoption in 1979 of section 380.0552, Florida Statutes, the "Florida Keys Area Protection Act." The Act establishes the legislative intent to establish a land use management system that, among other things, "protects the natural environment," "conserves and promotes the community character," "promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services," and "promotes and supports a diverse and sound economic base" in the Keys. § 380.0552(2), Fla. Stat. (2019).

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[5] The Environmental Land and Water Management Act was enacted prior to the 1985 Growth Management Act, chapter 163, part II, when most local governments did not have programs and personnel to guide development in a manner that would ensure protection of natural resources.

[6] The statute contains additional specific criteria for designation, including the economic and ecological value of the area; presence of critical habitat of any state or federally designated threatened or endangered plant or animal species; inherent susceptibility to substantial development due to its geographical location or natural aesthetics; and the anticipated effect of development on the environmental or natural resources of regional or statewide importance. § 380.05(2), Fla. Stat. (2019).

17. The ACSC designation transferred all local Keys planning and development review and approval rights to the state land-planning agency, the Florida Department of Community Affairs ("DCA").[7] While the Keys local governments can adopt and amend their plan and land development regulations, those provisions do not take effect until approved by administrative rule. *See* § 380.0552(9), Fla. Stat.

18. In 1986, Monroe County updated its comprehensive plan to be consistent with the 1985 Growth Management Act.[8] Several administrative challenges followed, initiated by both DCA and private entities and individuals.

19. Monroe County revised its comprehensive plan in 1993 to resolve many of the issues raised in the litigation, but those amendments were again challenged in administrative proceedings.

20. The second challenge culminated in a final order of the Administration Commission in 1995 finding the 1993 Monroe County Plan not "in compliance," with the Act and the Principles for Guiding Development in the Keys ACSC ("the Principles"), which are adopted by rule of the Administration Commission. The Final Order found that "the environment of the … Keys is the very essence of Monroe County's economic base. The uniqueness of the environment … and the current condition of the environment must be addressed in any growth management decision[]." *DCA v. Monroe Cty*., 1995 Fla. ENV LEXIS 129 (Fla. ACC 1995).

21. The litigation highlighted aspects of the Florida Keys ecosystem as having limited capacity to sustain additional impacts from development. Of particular concern was the declining water quality of the nearshore environment due to lack of central sewer facilities, the loss of habitat for

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[7] The 2011 Legislature transferred the DCA Division of Community Planning, via Type II transfer, to the Department of Economic Opportunity. *See* ch. 2011-142, § 3, Laws of Fla.

[8] The Growth Management Act was significantly amended and renamed the "Community Planning Act," by chapter 2011-142, Laws of Florida.

state and federally-listed species, public safety in the event of hurricanes, and a deficit of affordable housing. Relevant to Petitioner's challenge, the Final Order found that the ability of the nearshore waters of the Keys to withstand additional degradation from sewage and stormwater discharges "has already been reached or even exceeded," and that development of the Keys "is degrading the nearshore waters at or over carrying capacity."

22. The 1995 Final Order required Monroe County to undertake certain "remedial actions" in order to bring the Plan into compliance with both the Act and the Principles, which are adopted in section 380.0552.

23. Among the remedial actions was the requirement that Monroe County establish a Permit Allocation System ("PAS") for new residential development. The Administration Commission explained, as follows:

> The [PAS] shall limit the number of permits issued for new residential development … provided that the hurricane evacuation clearance time does not exceed 24 hours …. The County shall adjust the allocation based upon environmental and hurricane evacuation constraints and … to account for permits and vested units in … the Keys.

24. Monroe County amended its plan in 1996 to implement the PAS and other remedial actions, and adopted a "carrying capacity approach" to planning in the ACSC.

25. The amended comprehensive plan was approved by rule of the Administration Commission—Florida Administrative Code Rule 28-20, which also established a comprehensive work program designed to improve the Keys' water quality and protect the habitat of threatened and endangered species.

26. The rule was subject to another administrative challenge, and the Division issued a final order upholding the rule in 1997. *See Abbott v. Admin. Comm'n*, Case No. 96-2027RP (Fla. DOAH May 21, 1997).

The Carrying Capacity Study

27. The work program adopted by the rule included the requirement to conduct a "carrying capacity analysis" for the Florida Keys. Florida Administrative Code Rule 28-20.100 provided, "The carrying capacity analysis shall be designed to determine the ability of the Florida Keys ecosystem, and the various segments thereof, to withstand impacts of additional land development activities." The rule established that the analysis should be based on the findings adopted by the Administration Commission on December 12, 1995, "or more recent data that may become available in the course of the study," and upon the benchmarks of, and all adverse impacts to, the Keys natural land and water systems, in addition to the impacts of nutrients on marine resources.

28. The study was undertaken beginning in 1996 and was sponsored jointly by DCA and the Army Corps of Engineers ("the Corps") and involved 38 separate state and federal agencies. The study modeled a series of future development scenarios, as well as redevelopment and restoration scenarios.

29. The Final Report[9] of the Florida Keys Carrying Capacity Study ("FKCCS") was issued in September 2002. The major findings include the following:

> - Development suitability in the Florida Keys is extremely restricted, due to the following characteristics: Existing development has displaced nearly 50 percent of all upland habitats, and remaining uplands are distributed in patches of 10 or fewer acres; almost every native area is potential habitat for one or more endangered species; over 50 percent of all private lands are wetland parcels, and development suitability of remaining lands is low or marginal due to open space requirements, lack of infrastructure, and other factors.

[9] The document introduced in evidence is titled "Draft Final Report." According to the testimony of Rebecca Jetton, no other final report was issued by the study sponsors.

- Future growth is limited in the next 20 years—less than 10 percent growth in the number of dwelling units and population—due to infrastructure limitations. Permitted capacity of potable water withdrawals was exceeded in 1999 and 2000; improvement of hurricane evacuation clearance times is dependent on structural improvements to U.S. Highway 1, which will increase government costs, nutrient loading, and indirect impacts to wildlife and habitats; and residential capacity is limited to 6,000 units in order to maintain the state-mandated level of service for roadways.

- All six future scenarios would result in disproportionate increase in government expenditures with respect to increased population, which will require increased taxation on both local residents and tourists.

- The existing data "are insufficient to establish quantitative, predictive relationships between land use or development and the marine environment." The study documented human impacts to the marine ecosystem and species. The study underscores the benefits of wastewater treatment, "but other impacts are more related to resource management than to land development."

30. The study provides the following four major guidelines for future development in the Florida Keys:

> 1. Prevent encroachment into native habitat. A wealth of evidence shows that terrestrial habitats and species have been severely affected by development and further impacts would only exacerbate an already untenable condition.
>
> 2. Continue and intensify existing programs. Many initiatives to improve environmental conditions and quality of life exist in the Florida Keys. They include land acquisition programs, the wastewater and stormwater master plans, ongoing research

> and management activities in the Florida Keys National Marine Sanctuary, and restoration efforts throughout the Keys.
>
> 3. If further development is to occur, focus on redevelopment and infill. Opportunities for additional growth with small, potentially acceptable, additional environmental impacts may occur in areas ripe for redevelopment or already disturbed.
> 4. Increase efforts to manage the resources. Habitat management efforts in the Keys could increase to effectively preserve and improve the ecological values of remaining terrestrial ecosystems.

31. Rule 28-20.001 required the findings of the FKCCS to be implemented by "adoption of all necessary [comprehensive plan] amendments to establish a rate of growth and a set of development standards [to] ensure that any and all new development does not exceed the capacity of the county's environment and marine system to accommodate additional impacts." The study would provide the state and the Keys local governments with an analytical tool to support future comprehensive plan amendments and revisions of land development regulations.

<u>24-Hour Hurricane Evacuation</u>

32. In 2006, following the publication of the FKCCS, the Legislature amended section 380.0552 to require the local governments to adopt provisions in their comprehensive plans to "protect the public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours." § 380.0552(4)(e)2., Fla. Stat. (2007). The requirement remains in effect and is enforced by the state through review of local government plan amendments. *See* § 380.0552(9)(a)2., Fla. Stat.

<u>ROGO and BPAS</u>

33. Principle among the Monroe County amendments to implement the remedial actions ordered by the Administration Commission was the PAS,

implemented in the County by a Rate of Growth Ordinance ("ROGO"). The current version of the administrative rule approving the County's comprehensive plan is rule 28-20.140, which also governs and approves ROGO. The rule provides the maximum number of permits for residential development that may be issued annually, with a split between affordable and market rate units. The current cap is 197 units per year, with a minimum of 71 units allocated for affordable housing and a maximum of 126 market rate units. Any unused affordable housing units "roll over" for affordable housing units the following year. Other unused allocations may be rolled over and used for affordable housing units or "administrative relief."[10]

34. Islamorada and Marathon were not yet incorporated when the comprehensive plan litigation began and subsequent remedial measures were issued. Since their incorporation, each of the cities has been brought under the umbrella of the ACSC designation. The cities' respective comprehensive plans and land development regulations are subject to the same review and approval authority of the Administration Commission, and are subject to similar work plans to implement the remedial measures required by the commission. The applicable administrative rules are chapter 28-19 for Islamorada and chapter 28-18 for Marathon.

35. Marathon and Islamorada have permit allocation requirements similar to Monroe County, known as the Building Permit Allocation System ("BPAS"). Their respective administrative rules provide the annual maximum number of permits and the split between affordable and market rate units, as well as the rules governing rollover of unused allocations.[11]

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[10] Unused allocations may be provided to applicants who have been denied a permit, despite having met all the requirements of the land development regulations, if they have been in the allocation system for a significant number of years.

[11] Marathon's annual cap is 30 units and Islamorada's is 28 (22 market rate and 6 affordable housing).

36. BPAS is a competitive system. Permit applications are awarded points based on their alignment with specific development criteria, such as presence or absence of wetlands or protected habitat, and availability of public services. Those applications with the highest points are awarded available permits for the BPAS year.

Work Program

37. Each of the municipalities' governing rules includes a work program, broken down into the following categories: (1) carrying capacity implementation; (2) wastewater implementation; and (3) wastewater project implementation. Marathon's work program includes a fourth category—stormwater treatment facilities.

38. The specific activities of each work program differ somewhat. For example, with respect to environmentally-sensitive lands, Islamorada was required to apply for land acquisition funds, while Marathon was required to apply and adopt land development regulations limiting permit allocations in high quality habitats. Monroe County was required to adopt conservation planning mapping into its comprehensive plan.

39. The wastewater implementation and wastewater project implementation sections of the work programs are of high importance. The litigation highlighted the declining water quality of the nearshore environment due to a lack of central sewer facilities. The Keys' wastewater treatment "system" consisted of a hodgepodge of some 23,000 septic tanks, 2,800 cesspits, and at least 249 small package treatment plants.

40. The work program represents a monumental, long-term, and expensive[12] infrastructure project to build a central sewer system in the Keys, followed by a program to require existing developments to connect to

[12] In both 2012 and 2016, the Florida Legislature authorized expenditure of Everglades restoration bond funds for Florida Keys wastewater and stormwater management projects; and, in 2016, appropriated $5 million in Florida Forever funds for said projects for the 2016/2017 year. More than $13 million was included in the general appropriations act for said projects in the 2017/2018 year.

the system, and land development regulations to direct new growth to areas served by central wastewater treatment facilities. Each local government work program includes specific target dates to obtain funding for, and construction of, each component of the sewer system, as well as specific target dates for initiating and completing connections of existing development to the newly-constructed system.

41. Monroe County's work program also includes directives for funding stormwater improvement projects and deadlines for completing said projects.

ACSC Annual Reports

42. The local governments and the Department of Economic Opportunity ("DEO") are required to report to the Administration Commission annually documenting "the degree to which work program objectives for the work program year[13] have been achieved."

43. Achievement of work program objectives is directly tied to the BPAS and ROGO—if the Administration Commission finds that work program objectives have not been achieved, it can reduce the unit cap for residential development by 20 percent for the following year.[14] Additionally, through the BPAS and ROGO, the local governments are required to direct new growth to areas served by central sewer. Each application for building permit is awarded an additional four points[15] if the parcel is served by central sewer meeting statewide treatment standards.

44. In the 2017 ACSC annual report, the most recent report for which the parties requested official recognition, Islamorada reported it had connected 85 percent of potential customers (with another five percent in the

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[13] The work program year runs from July of one year to June of the following year.

[14] The Islamorada rule does not contain this provision; however, it does provide that, if the Administration Commission determines progress has been made for the work program year, then the Commission "shall restore the unit cap" of 28 allocations for the following year. It is unclear whether Islamorada was already under penalty when the new rule was adopted or whether this is an oversight in the rule.

[15] In Islamorada, the award is two additional points.

application process), Marathon had connected 97 percent, and Monroe County had an overall connection rate of 86 percent (with higher percentages for specific individual treatment facilities).

City of Key West

45. Key West challenged its inclusion in the original ACSC designation, and, in 1984, was designated as a separate area of critical state concern ("the Key West ACSC"), effectuated by the adoption of Florida Administrative Code Chapter 28-36.

46. The Key West ACSC is subject to the same land planning and development regulation oversight as the Florida Keys ACSC, and the Key West comprehensive plan and land development regulations are approved by the state through Florida Administrative Code Chapters 28-37 and 9B-30.

47. Key West is subject to separate principles for guiding development than the Florida Keys ACSC, which are found in rule 28-36.003. Key West is served by central sewer and does not have work program tasks.

Hurricane Evacuation Clearance Time

48. The work program requires the local governments within the Florida Keys ACSC to enter into a Memorandum of Understanding ("MOU") with the DEO, the Division of Emergency Management, and each of the other Keys local governments, to stipulate to the input variables and assumptions for utilizing the Florida Keys Hurricane Model, or other models acceptable to DEO, to accurately depict hurricane evacuation clearance times for the population in the Keys. The work program required, by July 1, 2012, the local governments to run the model with the agreed upon variables from the MOU "to complete an analysis of the maximum build-out capacity for the ACSC, consistent with the requirement to maintain a 24-hour evacuation clearance time and the [FKCCS] constraints."

49. DEO appointed a Hurricane Evacuation Clearance Time Work Group (the "Work Group") including members of each of the six local governments and representatives from the tourism industry, chambers of commerce, and

community organizations, as well as from state and federal agencies. The Work Group held a series of public workshops to consider hurricane model inputs—census data, behavioral studies, hurricane forecasting, military evacuation procedures, traffic flow rates, and number and location of vacant platted lots.

50. The Work Group selected the Division of Emergency Management's Transportation Interface for Modeling Evacuations ("TIME") as the model to accurately depict evacuation clearance times for the population of the Keys ACSC and the Key West ACSC ("the Florida Keys ACSCs"). The Work Group agreed on 10 modeling assumptions, including the number of tourist units, and of those, the number occupied; the number of mobile home units and evacuation participation rates; and the number of site-built units, the occupancy rate, and participation rate of residents in those units, among other important variables. The inputs and assumptions were tested by modeling over 100 evacuation scenarios.

51. The Work Group presented its findings on June 8, 2012, and selected evacuation scenario M5, which provided for continuation of then-existing annual building permit allocations that were adopted by rule or comprehensive plan amendment (with the exception of Key Colony Beach and Key West). Scenario M5 produced an evacuation clearance time of 24 hours with a future allocation of 3,550 new residential building permits.

52. Notably, scenario M5 assumed that military, mobile home residents, and tourists would evacuate during Phase I of what DEO described as a two-phase evacuation plan. Further, M5 assumed that 15 percent of existing mobile homes would convert to site-built homes.

53. In the two-phase evacuation plan, tourists are ordered to evacuate 48 hours in advance of predicted tropical storm force winds, and residents of mobile homes are ordered to evacuate 36 hours in advance. The model predicted an evacuation clearance time of 16 hours and 30 minutes for

Phase I using tourist occupancy rates for July, and 17 hours and 30 minutes using tourist occupancy rates for the Labor Day weekend.

54. Under Scenario M5, residents of site-built units are ordered to evacuate 30 hours in advance, giving those residents six hours of lead time to secure property and make other preparations. Under scenario M5, all site-built residences were evacuated within 24 hours of predicted tropical storm force winds, including an additional 3,550 units. As such, the work group determined 3,550 units to be the maximum buildout of the Keys through 2023 to maintain the 24-hour hurricane evacuation mandate in section 380.0552.

55. The Work Program directed DEO to "apply the derived clearance time to assess and determine the remaining allocations for the [ACSC]" and recommend revisions to the allocation rates and distribution of allocations to the six local governments, as well as any recommended changes to the local government comprehensive plans. DEO completed that task, and determined that a maximum of 3,550 additional units could be distributed over the next ten years, beginning in July 2013.

56. On November 5, 2012, Monroe County, Marathon, Islamorada, Key Colony Beach, Key West, the City of Layton, the Division of Emergency Management, and DEO, entered into an MOU agreeing on the use of the TIME model, as well as the data, input variables, and assumptions to be utilized in model runs. The following "whereas" clause succinctly provides the results of the M5 scenario:

> WHEREAS, from among the scenarios provided by DEO at the June 8, 2012, Work Group meeting, Scenario M5 included the 2010 Census site-built units (43,760 units); the maximum number of residential building permits for new construction for all Local Governments per year for 10 years (annually, County 197, Marathon 30, Islamorada 28, Key West 90, Key Colony Beach 6, and Layton 3); 1,248 mobile home units projected to convert to site-built units; the exclusion of 870 dwelling units

> on the Naval Air Station; as well as two (2) functional evacuation lanes from MM 108-126. Further the work group recommended Scenario M5 with the provision that the City of Key West would transfer annually (by July 13th) any remaining or unused (90 allocations) allocations to the other Local Governments based upon the Local Governments' ratio of vacant land.

57. Technical corrections made after the June 8, 2012 meeting, the census-based number of site-built units was revised to 43,718 and the Key West allocation was revised to 91.

58. The MOU also memorializes the following staged evacuation procedure:

- Approximately 48 hours in advance of tropical storm winds, mandatory evacuation of non-residents, visitors, RVs, travel trailers, live-aboard vessels (transient and non-transient), and military personnel.
- Approximately 36 hours in advance, mandatory evacuation of mobile-home residents, special needs residents, and hospital and nursing home patients.
- Approximately 30 hours in advance, mandatory phased evacuation of permanent residents by evacuation zone.[16]

59. The phased evacuation procedure is also adopted in each of the local government comprehensive plans, except Key West, which adopted the procedure by resolution.

Affordable Housing

60. The need for additional affordable housing in the Keys is well documented, and the parties stipulated, generally, to the need.

[16] There are five hurricane evacuation zones in the Keys designated by mile marker numbers along US 1.

61. Numerous factors contribute to the need for affordable housing, including, but not limited to, the high cost of living, higher construction costs, the high cost of land, as well as the limited supply and high demand for real estate and housing throughout the Florida Keys. The need for affordable housing was exacerbated by Hurricane Irma, which made landfall in the Florida Keys in September of 2017 and destroyed approximately 400 mobile homes, "permanent RV's," and ground-level single-family homes that served as affordable housing, many for members of the Keys workforce.

62. Most of the site-built homes destroyed were not built to current building code standards, but were "grandfathered" from code compliance. Those structures must be rebuilt to code, which will likely take them out of financial reach of members of the Keys workforce.

63. Provision of affordable housing is an important aspect of the regulatory framework for planning in the Keys.

64. The litigation over the Monroe County comprehensive plan highlighted a deficit of affordable housing in the Keys. Among the Principles is the requirement to "[make] available adequate affordable housing for all sectors of the population" of the Keys. § 380.0552(7)(*l*), Fla. Stat. When designating the ACSC, the Legislature expressed the intent to "[p]rovide affordable housing in close proximity to places of employment" in the Keys. § 380.0552(2)(d), Fla. Stat.

<u>The Keys Workforce Housing Initiative</u>

65. Shortly after Hurricane Irma, Marathon began discussions with DEO about the possibility of obtaining additional building permit allocations for workforce-affordable housing.

66. In November 2017, Marathon passed Resolution 2017-99 requesting the allocation of 300 affordable housing allocations from DEO with approval of the Administration Commission.

67. DEO determined there were not enough building permits available under the current regulatory structure to address the need for affordable

housing in the Florida Keys. As a result, DEO developed the Keys Workforce Affordable Housing Initiative (the "Housing Initiative") to allow up to 1,300 new building permit allocations for workforce housing throughout the Florida Keys, with an initial allocation not to exceed 300 per local government.

68. Under the Housing Initiative, the additional units are to be deed-restricted for workforce affordable housing and required to evacuate in Phase I, along with tourists, visitors, mobile home residents, and military personnel.

69. The Administration Commission approved the Housing Initiative at the June 13, 2018 meeting. In support of the Housing Initiative, DEO staff made a presentation asserting that the Phase I evacuation (under the existing staged evacuation plan) can be accomplished in 17.5 hours, leaving additional capacity of 6.5 hours in Phase I. DEO concluded that the Housing Initiative "will not interfere with the 24-hour evacuation model and satisfies the statutory mandate to provide affordable housing."

70. Following approval by the Administration Commission, DEO worked with Marathon and other local governments to amend their comprehensive plans to implement the Housing Initiative.

<u>The Plan Amendments</u>

71. The Marathon Plan Amendment creates a new Future Land Use ("FLU") goal stating the intent to participate in the Housing Initiative approved by the Administration Commission. It further creates a new FLU Objective establishing a "new limited category" of building permit allocations known as "Affordable – Early Evacuation Pool" providing 300 workforce affordable building permit allocations in addition to the allocations identified in chapter 28-18. The Marathon Plan Amendment creates five new FLU policies. The first allows for distribution of the allocations "at any time" provided applicable Marathon public notice and hearing procedures are

followed and the distribution is based on the BPAS ranking procedures in effect.

72. The second policy provides the following "Specific Standards and Requirements for Workforce Affordable Housing":

> Affordable-Early Evacuation residential units under this program shall:
>
> a. be multifamily structures;
>
> b. be rental units;
>
> c. require, at a minimum, adherence to the latest edition of the Florida Building Code[];
>
> d. not be placed in the V-Zone or within the Coastal Barrier Resource Systems;
>
> e. require on-site property management;
>
> f. comply with applicable habitat and other locational criteria and densities for multifamily affordable housing units;
>
> g. shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, hardwood hammock, or fresh water wetlands (disturbed categories excepted);
>
> h. incorporate sustainable and resilient design principles into the overall site design;
>
> i. ensure accessibility to employment centers and amenities; and
>
> j. require deed-restrictions ensuring:
>
> (i) the property remains workforce-affordable housing in perpetuity;
>
> (ii) tenants evacuate during the period in which transient units are required to evacuate;

> (iii) rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident; and
>
> (iv) on-site property managers are formally trained in evacuation procedures.

73. The third policy exempts from the early evacuation requirement all first responders, correctional officers, health care professionals, or other first-response workers required to remain during an emergency.

74. The fourth policy requires the workforce-affordable developments to comply with federal accessibility standards.

75. The last policy requires Marathon to provide DEO with an annual report on the implementation of the Housing Initiative, including documenting the number of workforce-affordable housing units built, occupancy rates, and compliance with the early evacuation requirement. The report is to be included in the DEO annual work program report to the Administration Commission.

76. Islamorada's plan amendment provides 300 workforce-affordable building permit allocations in addition to the allocations identified in chapter 28-19. In all other respects the amendment is identical to the Marathon Plan Amendment.

77. The Key West Plan Amendment approves the receipt of 300 workforce-affordable building permit allocations "as well as any additional allocations which may be authorized by the Florida Administration Commission or transferred to Key West that are not accepted by other Florida Keys municipalities or Monroe County." Rather than authorizing distribution of the allocation "at any time," Key West authorizes distribution "on a first-come first-served basis and at any time" following public notice and hearing procedures. Allocation of the Key West permits is not required to follow BPAS ranking unless the number of applications received exceeds the authorized

allocation. There are also two minor differences in the "Standards and Requirement for Workforce-Affordable Housing" in the Key West Plan Amendment: it does not contain the paragraph prohibiting placement of units in buttonwood and hardwood hammock; and it does not require that property managers be trained in evacuation procedures. Otherwise, the Key West Plan Amendment is virtually identical to that adopted by Marathon and Islamorada.

Petitioners' Challenges

78. Petitioners challenge the Plan Amendments, generally, as inconsistent with the FKCCS and the carrying capacity approach to planning in the Keys. The two main contentions are hurricane evacuation and environmental concerns.

Hurricane Evacuation

79. Petitioners posit that the Plan Amendments violate the Principles and the MOU[17], and render the local government comprehensive plans internally inconsistent, by exceeding the requirement to evacuate the Keys permanent population in no more than 24 hours. Petitioners also argue the plan amendments are not supported by adequate data, and a professionally-acceptable analysis thereof, on hurricane evacuation clearance times.

80. At first blush, Petitioners' argument has merit: the Plan Amendments allow up to 1,300 units to be built in the Keys beyond the previously-established maximum buildout of 3,550 units through the year 2023. That buildout number was derived directly from the Work Group after agreement on all assumptions and inputs for, and multiple runs of, the agreed-upon TIME model, and identification of the M5 scenario as the best model for evacuation of permanent population within 24 hours.

[17] As explained in the Conclusions of Law, Petitioners' contention that the Plan Amendments are inconsistent with the MOU is rejected. Inconsistency with the MOU is not a statutory compliance issue.

81. It is undisputed that the new residential units to be allocated under the Housing Initiative will house permanent residents. That fact alone is not in direct conflict with the 24-hour evacuation requirement because, as implemented, the evacuation plan requires some permanent residents—residents of mobile homes, "permanent RVs," live-aboard vessels, and military personnel—to evacuate in advance of the start of the 24-hour clock. That requirement is incorporated into the local government comprehensive plans which have previously been found to be "in compliance"—meaning both internally consistent and consistent with the Principles.

82. Petitioners introduced the testimony of Richard Ogburn, a planning expert who has extensive experience with hurricane evacuation modeling in South Florida, including the Keys. Mr. Ogburn was directly involved in the Work Group hurricane evacuation modeling that culminated in the 2012 report and adoption of the MOUs. As Mr. Ogburn explained, Monroe County was the first local government in the state to update its hurricane evacuation modeling based on the 2010 census data. It was to be a pilot for updating the statewide regional evacuation plan utilizing the new census data.

83. Specifically, Mr. Ogburn, who was at the time employed by the South Florida Regional Planning Council, extracted demographic data from the 2010 census and created the demographic data base for use with the TIME model. Mr. Ogburn subsequently completed "validation runs" of the TIME model results generated by DEO staff during the Work Group process.[18]

84. In 2013, while Mr. Ogburn was working on the update to the statewide regional evacuation model, Mr. Ogburn discovered some blank cells within the census block group data sets in the original spreadsheet he had created for DEO. The missing information was the number of vehicles identified within those specific census block groups. With respect to Monroe County, eight of the 76 block groups were missing vehicle data.

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[18] The validation process involved input of the data parameters into the model and repeating the same model run scenarios to ensure that the results from the initial runs were replicated.

85. Mr. Ogburn found an alternative data source from which to derive the number of vehicles in the associated census block groups and reran the model for purposes of updating the statewide regional model. In 2014, Mr. Ogburn reported the census data errors to DEO, which requested he rerun scenario M5 after including the missing vehicles. The result was an increase of two-and-a-half hours for evacuation of Phase II—a total clearance time of 26.5 hours.

86. Mr. Ogburn testified that, based on the best-available data on hurricane evacuation clearance times, the evacuation of site-built dwellings in the Keys already exceeds the 24-hour evacuation standard mandate by statute (and incorporated into Respondents' comprehensive plans). In his opinion, adding units authorized by the Housing Initiative would further exacerbate the problem.

87. Petitioners introduced other evidence aimed at tearing down the conclusion of the Work Group that the Keys could be safely evacuated in under 24 hours, based on the 2012 TIME model runs. For example, Mr. Ogburn questioned the vacancy rates utilized by the Work Group, which he described as "most likely" too high. Mr. Ogburn cast doubt on the 100% participation rate assumption, and the assumed 12-hour response curve, which he testified was unrealistic given that people will not leave at the same rate if the evacuation is ordered at midnight as they would if the order was given at 7:00 a.m. Petitioners likewise introduced evidence casting doubt on the ability of meteorologists to predict storms with accuracy 48 hours in advance of landfall.

88. The Keys local government comprehensive plans, as adopted with use of the TIME model, and all underlying assumptions and inputs, have previously been determined to be "in compliance." The question of whether those assumptions and model inputs are supported by data and analysis is

not properly before the undersigned in this proceeding. The evidence was, for the most part, irrelevant.[19]

89. The Housing Initiative is grounded on the availability of evacuation time in Phase I of the agreed evacuation procedure, which is adopted in each of the local government comprehensive plans. Mr. Ogburn agreed on cross-examination, that the TIME model was run separately for Phase I and Phase II, that the results from Phase I were not taken into consideration in the data for Phase II, and that if the units are presumed to evacuate in Phase I, it would have no effect on the analysis for Phase II.

90. Notably, when Mr. Ogburn was asked directly whether the additional 1,300 units added to permanent population would cause the Keys evacuation time to exceed 24 hours, Mr. Ogburn testified:

> If the evacuation takes place ahead of time, it's a different question and I don't have a clear answer for that because I have not had the opportunity to run the model to determine whether or not that would cause the clearance times in the original phase to increase significantly.[20]

91. The 2012 run of the TIME model demonstrated a clearance time in Phase I of 16 hours and 30 minutes, or 17 hours and 30 minutes, depending on the transient occupancy rate utilized.

92. Respondents introduced the testimony of Joaquin Vargas, a traffic engineering consultant who was accepted as an expert in transportation planning, including roadway capacity issues related to hurricane evacuation. Mr. Vargas participated in hurricane evacuation modeling in the Keys in the 1990s to determine potential roadway improvements that could reduce Keys evacuation clearance time. Mr. Vargas was the principal author of the "Miller Model," which was utilized in these studies.

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[19] Moreover, the evidence served to undercut Petitioners' argument that the best available data and analysis supports the 24-hour evacuation clearance time cap.

[20] T2:79;1-6.

93. Mr. Vargas' modeling was not based on a two-phased evacuation. Instead, the Miller Model assumed evacuation of all permanent population simultaneously in order to identify where roadway improvements would reduce the evacuation clearance time.

94. Mr. Vargas introduced the results of a model run of simultaneous evacuation of the Keys without units authorized under the Housing Initiative, and a second adding 300 units each for Marathon, Islamorada, and Key West. The model run without the 900 combined units yielded an evacuation clearance time of 21 hours and 34 minutes. With the additional 900 units, the model yielded a clearance time of 21 hours and 42 minutes.

95. This evidence had little relevance because the models are not comparable, and because Mr. Vargas utilized inputs and assumptions that differed greatly from the TIME model runs underlying the carrying capacity analysis utilized by the Work Group. The Miller Model assumes the evacuation of all permanent residents (including mobile home residents) simultaneously, so it is useless as a comparator to the Phase II run of the TIME model. Additionally, Mr. Vargas utilized 2000 census data, rather than the more recent 2010 data, which Mr. Vargas admitted "w[ould] provide more accurate information," and included inaccurate data, such as non-existent lane segments which inflated capacity on some roadway segments. While Mr. Vargas expressed the opinion that the Miller Model is superior because it was designed expressly for the Keys, the fact remains that the existing "in compliance" comprehensive plans are based on use of the TIME model to determine maximum buildout in the Keys.

96. Mr. Ogburn completed a run of the TIME model in 2014 which included the previously-missing vehicles from the census block groups in Phase I. That rerun produced a clearance time of 19 hours. The best available data and analysis (the 2014 rerun) supports a finding that the clearance time for Phase I, without the additional units from the Housing Initiative, is 19 hours. Thus, the evidence does not support a finding that the evacuation of

Phase I with the additional 1,300 units cannot be completed within the first 24 hours of a 48-hour evacuation scenario.

97. The preponderance of the evidence does not support a finding that the inclusion of the 1,300 units in Phase I will violate the requirement to evacuate Keys permanent residents in 24 hours or less.

98. On the theory that the addition of up to 1,300 residential units in the Keys will cause the hurricane evacuation clearance time to exceed 24 hours, Petitioners alleged the Plan Amendments are inconsistent with the following provisions of Respondents' comprehensive plans:

Marathon:

- FLU Objective 1-2.1, which requires Marathon to "ensure the availability of adequate public facilities and services[.]"

- FLU Objective 1-2.2, requiring Marathon to "meet the required 24-hour hurricane evacuation time or other applicable state standard for hurricane evacuation."

- FLU Objective 1-3.5, requiring Marathon to "manage the rate of new development to ... support safe and timely evacuation prior to a hurricane."

- Conservation and Coastal Element Policy 4-1.21.2, requiring Marathon to coordinate with Monroe County in updating policy formulations regarding land use and emergency preparedness and to plan for future land use densities that will not adversely impact the efficiency of hurricane evacuations or increase evacuation times.

- Intergovernmental Coordination Element ("ICE") Objective 5-1.1, requiring Marathon to maintain coordination mechanisms with the comprehensive plans of Monroe County and adjacent municipalities.

- ICE Policy 5-1.1.2, requiring Marathon to coordinate with adjacent jurisdictions "for the development of joint strategies to address development, zoning, and land-use decisions that transcend jurisdictional boundaries."

- ICE Policy 5-1.1.10, requiring Marathon to establish a program to provide and review proposed plan amendments of adjacent local governments to ensure consistency.

- Policy 5-1.2.1(j), requiring Marathon to enter into interlocal agreements or develop joint resolutions in areas of mutual concern, including the coordination of hurricane evacuation plans.

Islamorada:

- FLU Goal 1-1, which provides that the comprehensive plan shall "[e]ncourage[] sustainability by limiting growth in order to establish and maintain acceptable levels of service for hurricane evacuation[.]"

- Transportation Element ("TE") Policy 2-1.2.8, which requires Islamorada to "address long-term strategies to reduce clearance time and coordinate permit allocations" by implementing specifically-listed programs with FDOT, FDCA, and other local governments in the Keys.

- TE Policy 2-1.2.9, which provides for the staged/phased evacuation procedure to maintain a 24-hour hurricane evacuation clearance time.

- TE Policy 2-1.2.10, which requires Islamorada to "support state funding for the update of the hurricane evacuation model that considers the impact of Miami-Dade County on evacuees[.]"

- TE Policy 2-1.6.3, by which Islamorada "adopts 24 hours as the maximum allowable hurricane evacuation clearance time standard," and provides that "[t]he Village shall reduce and maintain hurricane

evacuation clearance time at or below 24 hours by … limiting the annual allocation of permits … as determined by interlocal agreement with the affected local governments in the Keys and the [DEO]."

- Coastal Management Element ("CME") Objective 5-1.9, requiring Islamorada to "avoid population concentrations in the coastal high hazard area."

- CME Policy 5-1.10.2, requiring Islamorada to "coordinate with Monroe County in emergency preparedness."

- CME Objective 5-1.15, requiring Islamorada to "ensure intergovernmental coordination within the coastal area."

- ICE Objective 8-1.1, requiring Islamorada to "ensure intergovernmental coordination."

- ICE Policy 8-1.2.1, titled "Coordinate Development and Growth Management Issues."

- ICE Policy 8-1.2.8, titled "Implement Intergovernmental Coordination."

<u>Key West</u>:

- FLU Objective 1-1.16, requiring Key West to "regulate the rate of population growth commensurate with planned increases in evacuation capacity in order to maintain and improve hurricane evacuation clearance times[,]" and "in concert with Monroe County, its municipalities, and the State of Florida, [Key West] shall manage the rate of growth in order to maintain an evacuation clearance time of 24 hours for permanent residents."

- CME Goal 5-1, "Protect human life and limit public expenditures in areas subject to destruction by natural disasters[.]"

- CME Objective 5-1.6, requiring Key West to "coordinate with the State, the South Florida Regional Planning Council, [Monroe] County, and other local governments in order to regulate population growth and stage evacuations in a manner that maintains hurricane evacuation clearance times in accordance with the executed [MOU][.]"

- ICE Policy 8-1.1.3, which reads, in pertinent part, as follows:

> Considering the growth and development limitations in Monroe County as a whole resulting from hurricane evacuation requirements … and considering the impact that growth and development in the City of Key West will have on the rest of Monroe County, [Key West] shall coordinate with Monroe County and the Cities … regarding the allocation of additional development.
>
> * * *
>
> The City shall pursue resolution of development and growth management issues with impacts transcending the [Key West's] political jurisdiction. Issues of regional and state significance shall be coordinated with the [SFRPC], the [SFWMD], and/or State agencies having jurisdictional authority. Issues to be pursued include but are not limited to the following: [Key West] shall implement the hurricane and transportation conclusions and policies relative to residential units' allocation which are adopted by Monroe County and all municipalities as described in the [MOU] dated July 14, 2012.

99. Petitioners did not prove that the Marathon Plan Amendment is internally inconsistent with Objectives 1-2.1, 1-2.2, 1-3.5, and 5-1.1; and Policies 4-1.21.2, 5-1.1.(2), 5-1.1.10, and 5-1.2.1.j.

100. Petitioners did not prove the Islamorada Plan Amendment is inconsistent with Islamorada Comprehensive Plan Goal 1-1; Policies 2-1.2.8, 2-1.2.9, 2-1.2.10, and 2-1.6.3; Objective 5-1.9 and Policy 5-1.10.2; Objective 5-1.15; and Objective 8-1.1 and Policies 8-1.2.1 and 8-1.2.8.

101. Petitioners did not prove the Key West Plan Amendment is internally inconsistent with Key West Comprehensive Plan Objectives 1-1.16, 5-1.6, Goal 5-1, and Policy 8-1.1.3.

102. Based on the foregoing Findings of Fact, Petitioners did not prove that the Marathon and Islamorada Plan Amendments are inconsistent with section 380.0552(9)(a)2., which requires the local governments in the ACSC to adopt goals, objectives, and policies to "maintain a hurricane evacuation clearance time for permanent residents of no more than 24 hours."

Environmental Concerns

103. Petitioners next contend the Plan Amendments are not supported by data and analysis demonstrating that the environmental carrying capacity of the Keys can support development of an additional 1,300 residential units. Petitioners' concerns fall into two categories which were the focus of the FKCCS: nearshore water quality and ecological impacts.

Nearshore Water Quality of the Florida Keys

104. Petitioners claim that the nearshore water quality of the Keys was determined over 25 years ago to have exceeded its capacity to assimilate additional nutrients, that it remains nutrient-impaired today, and that the additional development authorized under the Plan Amendments will further increase nutrient pollution from additional wastewater and stormwater associated with development.

105. In 1990, Congress created the Florida Keys National Marine Sanctuary ("FKNMS"), and required development of a Water Quality Protection Program ("WQPP"), establishing comprehensive, long-term monitoring of water quality in the FKNMS. Under the Water Quality

Monitoring Project ("WQMP"), water quality has been monitored quarterly at approximately 150 sampling stations since 1995.

106. In 1997, the Governor and Cabinet approved the FKNMS Management Plan for implementation in state waters, and required annual reports from the FKNMS.

107. The 2011 FKNMS annual report stated that, "in general, water quality is good Sanctuary-wide but documentation of elevated nitrate in the inshore waters of the Keys has been evident since" sampling began in 1995. The report notes, "Observance of this type … implies an inshore source which is diluted by low nutrient ocean waters," and that "[a]nalysis of monitoring data from 1995 through 2008 indicates a statistically significant improvement in some parameters, such as dissolved inorganic nitrogen …" The report concludes that "this trend will be watched closely in the future, particularly with regard to any potential effect attributable to … water treatment infrastructure improvements." The report further cited "[e]xcessive nutrients from inadequately treated wastewater" as the "primary contributor to water quality degradation in near shore waters."

108. In 2008, the Environmental Protection Agency ("EPA") developed Strategic Targets for the WQMP, setting limits for DIN (dissolved inorganic nitrogen) at $\leq$ 0.010 parts per million ("ppm"), and TP (total phosphorous) at $\leq$ 0.0077 ppm, among other nutrients, which are considered the values "essential to promote coral growth and overall health." Future sampling was compared to the "baseline" from the 1995-2005 timeframe (e.g., the baseline for DIN was 76.3 percent—the average percentage the samples complied with the target of $\leq$ 0.010 ppm). In 2011, FKNMS added 10 sampling stations, located within 500 meters of the shore in the Keys, referred to in the reports as the SHORE stations.

109. In 2015, FKNMS reported that an average of all stations (excluding SHORE stations) met or exceeded the target value for DIN in 2008 through 2011, but fell short of the target in 2012 through 2015. The stations reported

meeting or exceeding the target for TP in 2011 through 2015, while falling short in 2008 and 2010. The 2017 annual report showed the stations meeting or exceeding the DIN target in 2017, but not 2016; and meeting or exceeding the TP target in both 2016 and 2017. The 2017 study reported that "the FKNMS exhibited very good water quality with median concentrations of" TP at .0058, well below the target of .008. In 2018, FKNMS reported the stations meeting or exceeding the target for both nutrients. Again, in 2018, FKNMS reported "very good water quality with median concentrations of" TP at .0051, lower than the 2017 level, and again well below the EPA target.

110. In summary, the reports demonstrate the stations fell below the target for TP in 2008 and 2010, but met or exceeded the target every year since 2010. The samples fell below the target for DIN in 2012 through 2016, but met or exceeded the target value in subsequent years.

111. Petitioners emphasize that the EPA's Strategic Targets for nutrients in the FKNMS are not consistently being met. But the reports do show a trend of improvement, at least with respect to DIN and TP.

112. The 2014 report documented elevated nutrient concentrations of DIN and TP in waters close to shore along the Keys, attributable to "human impact."

113. The 2015, 2017, and 2018 reports exclude the data from the SHORE stations for purposes of demonstrating compliance with target values because they "introduce a bias to the dataset which results in a reporting problem[.]"[21]

114. The 2017 report does include an analysis of the geographic differences between testing stations. The report indicates a significant difference between the median levels of nutrients sampled in SHORE stations when compared with the "alongshore," "channel," and "reef" stations.

[21] Petitioners sought to introduce raw sample data from SHORE stations and an analysis of said data by Kathleen McKee. That evidence was admitted as hearsay only, and was not corroborated by any non-hearsay evidence.

However, the median levels of many of the nutrients are still at or below the EPA targets, even measured at SHORE stations. For example, the median level of TP, which the report recognizes as one of the most important determinants of local ecosystem health, at the SHORE stations was just below .007, compared to the EPA target of .008.

115. More importantly, Petitioners focus on the SHORE station data was inconsistent with their challenge that the *nearshore water quality* remains impaired. Petitioners' planning expert, Ms. Jetton, defined nearshore as approximately 12,000 meters from shore, not merely within 500 meters of shore. The 2017 report breaks out the "alongshore" stations as well as the SHORE stations. That data shows the median value of TP at the alongshore stations is approximately .0055, well below the target of .008. Notably, 75 percent of the alongshore stations sampled TP below the target .008. With respect to DIN, the median of alongshore station samples is below the target of .01; and 75 percent fall below .015.

116. In 2018, FKNMS reported a trend of increased DO (dissolved oxygen) in both surface and bottom waters throughout the Keys, and declining turbidity in the surface waters, for the 24-year period from 1995 through 2018. Increased DO is beneficial for animal life. Declining turbidity means the water is becoming clearer. The 2014 report showed no significant trends in TP, but the 2018 report noted small, but significant, declining trends in TP values in most surface waters.[22]

117. In 1995, the EPA and the Department of Environmental Protection ("DEP") listed the Keys waters as "impaired," pursuant to the Clean Water Act.[23] DEP is required to establish Total Maximum Daily Loads ("TMDLs") for impaired water bodies, which define the maximum pollutant loading that can be discharged to those water bodies while still achieving water quality

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[22] The 2018 report does not contain the same detailed comparison of SHORE station samples with the other stations, as did the 2017 report.

[23] 33 U.S.C. § 1251 *et seq*.

targets. An alternative mechanism, a Reasonable Assurance Document ("RAD") can be developed in lieu of TMDLs when, as in the Keys, local management activities are planned to achieve water quality targets.

118. The Florida Keys RADs ("FKRADs") were developed in 2008, and each of the affected local governments became a signatory to a Stakeholder's Agreement to implement the FKRADs. The FKRADs established two sets of nutrient targets: (1) an insignificant increase in concentration above natural background within the HALO zone, which is 500 meters of shore, not including canals; and (2) the average of values measured at the nearshore (500 meters to 12,100 meters from the shoreline). The FKRADs identify 23 impaired estuarine water body identifications ("WBIDs"). The WBIDs are Class III water bodies, defined by the Clean Water Act as "used for recreation, propagation, and maintenance of a healthy, well-balanced population of fish and wildlife." The FKRAD identifies specific restoration projects to be completed by 2020 to improve each WBID, designates the government stakeholder responsible for each project, and sets water quality targets to be achieved by each project.

119. The FKRAD focuses on TN (total nitrogen) and TP, and establishes different water quality target values than the FKNMS. For the HALO Zone the target is an "as insignificant increase above natural background for each nutrient." "Insignificant" is defined as less than ten micrograms per liter (<10 μg/l) of TN, and < 2μg/l for TP.

120. Petitioner's planning expert, Ms. Jetton, testified that the 2018 Update to the FKRAD "tells me that the surface water still isn't able to assimilate all the nutrients that are going into it because … we're not meeting the strategic targets[.]" Ms. Jetton concluded, based on the 2018 Update to the FKRAD, that "there should be no more development added to [the Keys] until the [WBIDs] can consistently meet their strategic targets." She further testified that the RAD documents identify the Keys' waters as not meeting the DEP necessary levels of nutrients for healthy waters and

that the RADs reflect "current water quality as it's been affected by the wastewater facilities that have been upgraded in the Keys to date."

121. That testimony is unreliable. The purpose of the 2018 Update is plainly set forth in the document itself: to document actions taken by stakeholders since 2011 and to address the DO impairment identified by DEP is some water segments; to include a revised approach to monitoring and reporting results; and to identify a schedule to meet water quality targets and restoration goals.

122. The 2018 Update to the FKRAD contains neither data on samples of TN and TP in the HALO zone waters, nor any analysis of whether the target—insignificant increases above natural background—has been achieved. The 2018 Update provides that "water quality data *will be compared to* the FKRAD water quality targets … to evaluate achievement of targets," and that "[m]onitoring for success *will include*, among other data sets, "decrease in nearshore nutrient concentrations in comparison to water quality targets and OFW background concentrations."

Injection Wells and Nearshore Water Quality

123. Absent concrete evidence to support Petitioners' claim that the nearshore waters have not recovered from their 1995 impaired designation such that they can assimilate pollutants from additional development, Petitioners argue that the existing "improved" wastewater and stormwater treatment infrastructure in the Keys does not adequately protect marine and coastal resources of the Keys, and that the addition of new development will exacerbate the problem. Specifically, Petitioners posit that shallow wastewater injection wells degrade nearshore water quality.

124. Marathon injects treated wastewater effluent into shallow injection wells, which are drilled to a depth of at least 90 feet and cased to a minimum depth of 60 feet.

125. Marathon's five injection wells are permitted to, and currently operate at, a permitted capacity of .200 million gallons per day ("MGD"),

.400 MGD, .200 MGD, .500 MGD, and .450 MGD, respectively. Marathon's injection wells are designed and permitted to exceed full build out.

126. Key West injects its treated wastewater effluent into deep injection wells, which are 3,000 feet deep and are cased to a minimum depth of 2,000 feet.[24]

127. Key West's injection wells are permitted at a capacity of 10 MGD, and Key West currently uses approximately 50 percent or less of the total permitted capacity for its injection wells.

128. Islamorada does not have its own municipal wastewater effluent injection wells or wastewater treatment plant. Islamorada's wastewater is transmitted to the Key Largo Regional Wastewater Treatment Facility ("Key Largo Wastewater Treatment Facility"), which treats and injects effluent into a deep injection well that is cased to a minimum depth of 2,000 feet.

129. The Key Largo Wastewater Treatment Facility is permitted by DEP and operates at a permitted capacity of 2 MGD. The injection wells at the Key Largo Wastewater Treatment facility are designed and permitted to exceed full build out.

130. Ms. Jetton testified that, based on reports she has reviewed, when you inject effluent into shallow injection wells, that water will reach the surface water "within a few hours or a few days." She referenced numerous scientific reports which were admitted in evidence as sources on which she based her opinions. She further referred to findings in the Administration Commission's 1995 Final Order that deep water injection wells are a better form of treatment than shallow injections wells. Finally, Ms. Jetton pointed to the 2014 and 2017 FKNMS reports as evidence that shallow well injections may contribute to nutrients in nearshore waters.

131. The excerpt of the 2014 report introduced in evidence contains no reference to a relationship between shallow injection wells and the water

[24] Petitioners concede that deep injection wells have no quantified impact on the water quality of the nearshore waters of Key West or the Florida Keys.

quality of nearshore waters. The 2017 report mentions there *may* be a connection.

132. Respondents introduced the testimony of Michael C. Alfieri, who is a licensed professional geologist, certified by the National Groundwater Association as a ground water professional, and certified by the American Institute of Hydrology as a professional registered hydrogeologist. Mr. Alfieri's main practice in Florida is in karst hydrogeology, and he is one of the authors of the definitive text in Florida on karstology.

133. Mr. Alfieri testified that the subsurface conditions in Marathon, as shown in the core samples and boring logs he personally reviewed, indicate the presence of aquitards[25] and semi-confining materials, including calcite calcrete with clay silt, which would significantly inhibit vertical migration of injectate into surface water adjacent to Marathon's shallow injection wells.[26]

134. Based on his knowledge and experience, Mr. Alfieri testified that treated wastewater or stormwater injected down a shallow injection well does not rise to the surface in the nearshore waters surrounding the Keys. He further explained that once treated effluent is injected into either a deep or shallow well, it undergoes geochemical reactions as it interacts with, and is absorbed by, the surrounding rock, which reduces nutrient concentration.

135. Mr. Alfieri testified that based on the advanced wastewater treatment facilities and injection wells used by Respondents, the depths of the injection wells and their current level of usage, as well as the surrounding geological features, including the confining layers, which are horizontally transmissive, the additional residential units authorized by the Plan Amendments would have no impact on nearshore waters of the Florida Keys.

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[25] Aquitards are materials that have a low potential to transmit water. Clay is the best material to serve as an aquitard given that it has high porosity and low permeability which makes it difficult for water to move through.

[26] The parties stipulated that deep injection wells "do not have a quantified impact on the water quality of the nearshore waters of Key West or the Florida Keys."

136. The undersigned finds Mr. Alfieri's testimony more persuasive and reliable than Ms. Jetton's recounting of studies undertaken by other professionals.

137. On the theory that injected treated effluent contaminates the nearshore waters of the Keys, Petitioners allege the Plan Amendments render Respondents' comprehensive plans internally inconsistent with the following policies, respectively:

Marathon

- Infrastructure Element ("IE") Goal 3-1: "[E]nsure availability of needed public facilities associated with wastewater disposal … in a manner that is environmentally sound and protects marine environments, including sea grass beds and nearshore waters[.]"

- IE Goal 3-2: "[Marathon] shall provide for environmentally … sound treatment and disposal of sewage, which meets the needs of … residents, while ensuring the protection of public health and the maintenance and protection of ground, nearshore and offshore, water quality[.]"

- IE Objective 3-2.2: "[Marathon] shall regulate land use and development to … protect the functions of natural drainage features and groundwater from the impacts of wastewater systems."

Islamorada

- FLU Goal 1-1, which provides in pertinent part, as follows:

> The comprehensive Plan shall provide a growth management framework that … encourages sustainability by limiting growth in order to establish and maintain acceptable levels of service for … wastewater services … and … reclaim and preserve the quality of [Islamorada's] natural resources … [r]elies on ecological constraints to establish limits for growth … to ensure that human induced activities do not diminish assets of our

> unique coastal environment; and provides a sound basis for developing land use controls that … protect coastal resources, including nearshore waters, wetlands, grassbed flats, mangroves… and establish a basis for managing … water quality[.]

- CE Goal 6-1: "Islamorada … shall conserve, manage, use and protect the natural and environmental resources … based on their carrying capacity limitations to ensure continued resource availability and environmental quality."

- CE Objective 6-1.9: "Islamorada … shall provide requirements designed to protect fisheries, wildlife and wildlife habitat from the adverse impacts of development by regulating the location, density and intensity of those activities that cause the adverse impact."

<u>Key West</u>

- FLU Goal 1-1: "Minimize Threats To Health, Safety, And Welfare Which May Be Caused By Incompatible Land Uses, Environmental Degradation[.]"[27]

- CME Goal 5-1: "Coastal Management. Restrict development activities that would damage or destroy coastal resources. Protect human life and limit public expenditures in areas subject to destruction by natural disasters[.]"

- CME Objective 5-1.1: "Protect Coastal Resources, Wetlands, Estuarine Salt Pond Environmental Quality, Living Marine Resources, And Wildlife Habitats. … (1) Preventing potentially adverse impacts of development and redevelopment on wetlands, estuaries, water

[27] Petitioners inaccurately cite the monitoring measure attributable to Objective 1-1.16 as if it relates to Goal 1-1. The Monitoring Measure attributable to Objective 1-1.16 is "Number of building permits allocated annually in accordance with the implementing policies."

resources, living marine resources, and other natural resources; (2) Maintaining or improving coastal environmental quality by improving stormwater management[.]"

- CME Policy 5-1.1.4: "Protect Living Marine Resources, Coastal Marsh, and Seagrass Beds … [Key West] shall seek to enhance seagrass beds and coastal nontidal wetland habitats[.]"

- CME Policy 5-1.2.2: "[Key West] shall continue to limit the specific and cumulative impacts of development and redevelopment upon water quality and quantity, wildlife habitat, and living marine resources by enforcing performance standards cited herein. Wastewater system improvements shall also be carried out to reduce potential adverse impacts on the coral reef. In amending its land development regulations, the City shall consider the establishment of additional protective policies for coral."

- CME Policy 5-1.4.1: "Public Investments in Coastal High-Hazard Area. Publicly funded facilities shall not be built in the Coastal High-Hazard Area, unless the facility is for the protection of the public health and safety."

- CE Objective 6-1.2: "Detrimental water quality impacts, including adverse impacts to the coral reef system shall continue to be combated by public facility improvements identified in the Public Facilities Element …. Monitoring Measure: Achievement of water quality … standards."

138. Respondents' wastewater treatment plants are in compliance with their DEP wastewater treatment plant and injection well permits.

139. Furthermore, there have been no violations of the permits for Respondents' wastewater treatment facilities that could potentially impair nearshore water quality.

140. As a condition precedent to issuing permits for Respondents' injection wells, DEP required Respondents to provide reasonable assurance that the operation of the wells will not cause or contribute to a violation of surface water quality standards and will not harm environmental resources.

141. Petitioners did not prove that the Marathon Plan Amendment is internally inconsistent with the Marathon Comprehensive Plan Goal 3-1, Goal 3-2, and Objective 3.2.2.

142. Petitioners did not prove the Islamorada Plan Amendment is internally inconsistent with Islamorada Comprehensive Plan Goal 1-1, Goal 6-1, and Objective 6-1.9.

143. Petitioners did not prove the Key West Plan Amendment is internally inconsistent with Key West Comprehensive Plan Goals 1-1 and 5-1; Objective 5-1.1 and Policies 5-1.1.4, 5-1.2.2, and 5-1.4.1; and Objective 6-1.2.

Ecological Impacts

144. Petitioners maintain the Plan Amendments are not supported by the best available data on the ecological carrying capacity of the Keys with regard to habitat protection.

145. The FKCCS recommended four guidelines for future development in the Keys: (1) prevent encroachment into native habitat; (2) continue and intensify existing programs (e.g., land acquisition, wastewater treatment); (3) focus future growth on redevelopment and infill; and (4) increase efforts to manage the resources.

146. Since the FKCCS was published in 2002, the local governments in the ACSC have completed numerous work programs designed to implement the recommendations, including updating habitat mapping, maximizing grant funding for land acquisition, and acquiring environmentally-sensitive lands to remove them from potential development.

147. Furthermore, the BPAS system integrates environmental concerns when scoring applications for the units allocated. In Marathon, Policy 1-3.5.4 affords the greatest weight to applications for development of scarified and infill lots with existing paved roads, water, and electric service. The Plan affords the least weight to applications on lots containing sensitive areas as identified on the vegetation and species maps. Further, the Marathon plan provides that, "in no case shall more than one (1) BPAS allocation per year be issued for properties which in part or whole designated as Hardwood Hammock, Palm Hammock, Cactus Hammock, or Beach/Berm."

148. The Key West comprehensive plan mandates that new development preserve, at a minimum, "all wetlands and ninety (90) percent of hardwood hammocks." The Key West plan does not allow development in any wetlands "except where State and/or federal agencies having jurisdiction provide for development rights."

149. The Islamorada comprehensive plan mandates that new development preserve "all undisturbed wetlands" and 90 percent of high quality tropical hardwood hammocks on the parcel being developed. The Islamorada comprehensive plan also discourages development of lots containing both disturbed and undisturbed habitats by applying the most stringent open space requirements to development sites containing the highest quality habitats. For example, the minimum open space requirement for high quality hammock is .90; while for undisturbed saltmarsh and buttonwood wetlands, as well as undisturbed mangrove and freshwater wetlands, the ratio is 1.0. The plan requires an open space ratio of .90 for disturbed saltmarsh and buttonwood wetlands, as well as disturbed mangrove and freshwater wetlands.

150. Nevertheless, Petitioners argue that the Plan Amendments allow new units to be built in disturbed hammock, which constitutes additional encroachment into hammock, contrary to the FKCCS. Petitioners point to the provision of the Plan Amendments which provides that the workforce

affordable units "shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, hardwood hammock,[28] or fresh water wetlands (disturbed categories excepted)[.]"

151. The provisions of the Plan Amendments must be read together with existing comprehensive plan provisions. When read together, the Marathon comprehensive plan may not allow any of the affordable-early evacuation units to be built on any hammock habitat because it only allows one BPAS permit per year be allocated to any parcel containing designated hardwood hammock. Since the Plan Amendment requires the units be built as multifamily, thereby utilizing multiple allocations for one application, it is impossible to permit the new affordable units on any lot designated hardwood hammock.

152. Further, the Marathon BPAS weighting system will apply to the new allocations,[29] which will continue to direct development to scarified lots, and those lots with maximum disturbed areas. The Islamorada plan open space requirements will apply to disincentivize development of parcels with high quality hammock, buttonwood wetlands, and freshwater wetlands, by requiring the most stringent open space ratios.

153. Petitioners did not prove the Plan Amendments are not based on data and analysis of the ecological carrying capacity of the Keys.

154. Petitioners allege that the Plan Amendments are internally inconsistent with the following provisions of the Marathon and Islamorada plans relating to ecological concerns:

<u>Islamorada</u>:

- *GOAL 1-1: IMPLEMENT FUTURE LAND USE VISION*, which reads, in pertinent part, as follows:

---

[28] The Islamorada Plan Amendment refers to "tropical" hardwood hammock.

[29] Only the Key West Plan Amendment exempts the allocation of the affordable-early evacuation units from the BPAS.

> [Islamorada was] incorporated to create a Comprehensive Plan to reclaim the Keys by conserving, preserving, and retaining our remarkable assets—our waters and natural environment—and our quality of life; Encourages sustainability by limiting growth in order to … reclaim and preserve the quality of our natural resources; Relies on ecological constraints to establish limits for growth and create standards and criteria to ensure that human induced activities do not diminish assets of our unique coastal environment[.]

- Policy 2-1.9.3: Participate in the Florida Keys Carrying Capacity Study. … "[Islamorada] shall continue to support the technical undertakings of this study, and the establishment of carrying capacity limitations for the Florida Keys."

- Goal 6-1: "Islamorada … shall conserve, manage, use and protect the natural and environmental resources … based on their carrying capacity limitations to ensure continued resource availability and environmental quality."

- Policy 6-1.4.4: "Islamorada … shall use the best available technical criteria and information to formulate regulations and ordinances which shall ensure that future development is compatible with the functioning and carrying capacity of existing natural systems and resources conservation."

  <u>Marathon</u>

- Objective 1-2.1: which calls for adequate public facilities and services for future growth "to … protect valuable natural resources…."

155. Petitioners did not prove the Marathon Plan Amendment is internally inconsistent with Objective 1-2.1.

156. Petitioners did not prove the Islamorada Plan Amendment is internally inconsistent with Goal 1-1, Policy 2-1.9.3, Goal 6-1, and Policy 6-1.4.4.

Other Contentions

Surveys, Studies, and Data

157. Petitioners alleged the Plan Amendments violate section 163.3177(6)(a)2., which reads, in pertinent part, as follows:

> 2. [P]lan amendments shall be based upon surveys, studies, and data regarding the area, *as applicable*, including:
>
> a. The amount of land required to accommodate anticipated growth.
>
> b. The projected permanent population of the area.
>
> c. The character of undeveloped land.
>
> d. The availability of water supplies, public facilities, and services.
>
> e. The need for redevelopment, including renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community.
>
> f. The compatibility of uses on lands adjacent to or closely proximate to military installations.
>
> g. The compatibility of uses on lands adjacent to an airport[.]
>
> h. The discouragement of urban sprawl.
>
> i. The need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.
>
> j. The need to modify land uses and development patterns with antiquated subdivisions.
> (emphasis added).

158. Many of the listed criteria are not applicable to the Plan Amendments because the Plan Amendments do not propose a specific type of development at a specific location, do not implicate antiquated subdivisions, and do not specifically implicate redevelopment of blighted areas.

159. Respondents considered the availability of water supplies and other public services, such as the capacity of wastewater treatment facilities, during plan review and adoption. Respondents also considered the need of the service sector of the economy—including retail and restaurant services, as well as public school and first-responder services—during plan review and adoption.

160. Petitioners did not prove the Plan Amendments are not based upon applicable surveys, studies, and data as required by section 163.3177(6)(a)2.

Meaningful and Predictable Standards

161. Petitioners allege the Plan Amendments violate section 163.3177(1), which requires, among other things, that "the plan shall establish meaningful and predictable standards for the use and development of land[.]"

162. First, Petitioners focus on the language of the Plan Amendments which requires location of the workforce-affordable housing to "ensure accessibility to employment centers and amenities." Petitioners argue that, because none of the Plan Amendments define either "employment center" or "amenity," these standards are not meaningful to identify those sites which would qualify for development under the Plan Amendments.

163. Lack of definition alone does not render the terms meaningless. If so, all of the terms in both the Marathon and Islamorada plans, which do not contain a definition section, would be rendered meaningless. That simply cannot be the case.

164. Both the Key West and the Islamorada comprehensive plans employ the same phrasing in other parts of the existing plan as used in the Plan Amendments. In Policy 3-1.5.2, Islamorada provides that "sites for affordable housing … shall be approved only if such sites [are] … [a]ccesible to

employment centers[.]" The Key West comprehensive plan uses the same exact language in Policy 3-1.1.7 for siting affordable housing generally, and in Policy 3-1.1.11 for siting housing for low- and moderate-income households particularly. Clearly, determining whether the housing provided for in the Plan Amendments is "accessible to employment centers" will not be a novel undertaking, at least not for planners in Key West and Islamorada where that same standard has been successfully applied to siting affordable housing prior to the Plan Amendments.

165. The Marathon comprehensive plan does not employ the same terms. Yet, Mr. Garrett had no difficulty identifying Old Town as an employment center in Marathon. In fact, Mr. Garrett identified all the City's employment centers as being located generally between Coco Plum and the Seven Mile Bridge. As for determining whether the housing authorized under the Plan Amendment will be "accessible" to an employment center, Petitioners complain that there is "no spatial or temporal requirement whatsoever." To be fair, accessibility, as used in this context, is a subjective term. However, Mr. Garrett explained that accessibility is not limited to distance alone. As an example, he testified that housing located a mile-and-a-half from an employment center in Marathon is accessible by bus routes that run throughout the day.

166. Petitioners contend that the language is not meaningful because the term "amenities" is also not defined in the Plans. In their Proposed Recommended Order, Petitioners state, "It is unknown whether this term means anything over and above required concurrency facilities."

167. When a legislative term is not specifically defined, it must be given its plain and ordinary meaning. *See Greenfield v. Daniels*, 51 So. 3d 421, 426 (Fla. 2010) (*citing Sch. Bd. of Palm Beach Cty. v. Survivors Charter Schs., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009) (*quoting Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hrgs.*, 686 So. 2d 1349, 1354 (Fla. 1997))). It is appropriate to refer to a dictionary definition to ascertain the

plain and ordinary meaning of legislative terms. *See Survivors Charter Schs.*, 3 So. 3d at 1233.

168. The definition of "amenity" is "something that helps provide comfort, convenience, or enjoyment." *Merriam-Webster.com*, at www.merriam-webster.com/dictionary/amenity (accessed Sept. 15, 2020). In context, then, an employment center amenity is a use that provides comfort or convenience to those employed in the area, as well as patrons of those businesses. Common sense examples are gas stations, convenience stores, and banks.

169. Petitioners did not prove that the phrase "ensure accessibility to employment centers and amenities" fails to provide meaningful and predictable standards for the use and development of land under the Plan Amendments.

170. Next, Petitioners contend that the requirement to "incorporate sustainable and resilient design principles into the overall site design" of the workforce-affordable housing is meaningless. In support of this contention, Petitioners introduced the brief, conclusory statement by Ms. Jetton that those terms are meaningless because they are undefined. As stated above, lack of a definition alone does not render the terms meaningless, and it is found that they are not.

171. Petitioners did not prove that the Plan Amendments' direction to "incorporate sustainable and resilient design principles" fails to provide meaningful and predictable standards for the use and development of land under the Plan Amendments.

172. Finally, Petitioners make a variety of arguments to establish that the Plan Amendments do not provide meaningful standards to ensure enforcement of (1) use of the units for workforce-affordable housing, and (2) early evacuation of those units.

173. Petitioners allege that the Plan Amendments "do not require the units or the residents to meet any affordable housing criteria, or adopt by reference any such requirements." Ms. Jetton testified that, because the Plan

Amendments do not include, or otherwise adopt, HUD income guidelines, they will not produce affordable housing.

174. The Plan Amendments require the use of deed restrictions to ensure:

> (i) the property remains workforce-affordable housing in perpetuity;
>
> (ii) tenants evacuate during the period in which transient units are required to evacuate;
>
> (iii) rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident; and
>
> (iv) on-site property managers are formally trained in evacuation procedures.[30]

175. Petitioners allege that because the term "workforce-affordable housing" is undefined, there is no mechanism to ensure that the housing built pursuant to the Plan Amendments will be reserved for persons with particular income limits.

176. As previously discussed, a term is not meaningless just because it is undefined in the Plan Amendment. The Key West comprehensive plan defines the term "affordable housing" according to HUD standards, as a unit for which "a household spends no more than 30 percent of its gross income on housing costs." While the term is not specifically defined in the Islamorada and Marathon plans, both jurisdictions implement affordable housing programs established in their plans through more specific land development regulations which establish income limitations for that housing. As those plans are already in compliance, they cannot be said to lack meaningful and predictable standards.

---

[30] The Key West Plan Amendment does not include this provision.

177. Mr. Garrett testified that the term workforce would be given its plain and ordinary meaning—persons employed within the County. Thus, workforce-affordable housing units are reserved for members of the workforce who meet the previously-established definitions of affordable housing used to implement the local governments' existing programs.

178. Petitioners' attack on the enforcement of the early evacuation requirement is, again, grounded in a lack of defined terms, as well as speculation that the provisions are unenforceable. Ms. Jetton speculated that most residents of this housing would be either unable or unwilling to evacuate early, and that the Plan Amendment language has no teeth to ensure early evacuation. She testified that the language is permissive—"failure to adhere to evacuation requirements *could* result in severe penalties"—meaning it may not be enforced at all. According to her, because the term "severe penalties" is also undefined, the entire provision is meaningless to enforce the early evacuation requirement.

179. Mr. Garrett testified that the enforcement of penalties would be the authority of the Code Compliance Department and that each case would be considered on its own individual facts.

180. In addition, the Plan Amendments include a process for evaluation of the effectiveness and enforcement of the "early-evacuation pool" established therein. The Plan Amendments require each local government to report to DEO annually documenting the number of workforce-affordable housing units built, the occupancy rates thereof, and compliance with the early evacuation requirement. Should there be any enforcement issues, the state can make refinements in the program. Further, data regarding either lack of enforcement of the units as "affordable," or required evacuation thereof, could support future Plan Amendments to address those issues.

181. Petitioners did not prove that the Plan Amendments lack meaningful and predictable standards for either the use of the workforce-affordable housing units or early evacuation thereof.

CONCLUSIONS OF LAW

182. The Division of Administrative Hearings has jurisdiction over the subject matter and parties hereto pursuant to sections 120.569, 120.57(1), and 163.3184(5), Florida Statutes (2019).

183. To have standing to challenge or support a plan amendment, a person must be an "affected person," as defined in section 163.3184(1)(a).

184. Petitioners are all "affected persons" with standing to bring this action pursuant to 163.3184(1)(a).

185. "In compliance" means "consistent with the requirements of §§ 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, with the appropriate strategic regional policy plan, and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable." § 163.3184(1)(b), Fla. Stat.

186. Respondents' determinations that the Plan Amendments are "in compliance" are presumed to be correct and must be sustained if the determinations of compliance are fairly debatable. *See* § 163.3184(5)(c), Fla. Stat.

187. "The 'fairly debatable' rule is a rule of reasonableness; it answers the question of whether, upon the evidence presented to the [government] body, the [government's] action was reasonably-based." *Lee Cty. v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1002 (Fla. 2d DCA 1993) (citing *Town of Indialantic v. Nance*, 400 So. 2d 37, 39 (Fla. 5th DCA 1981)).

188. The mere existence of contravening evidence is not sufficient to establish that a land planning decision is "fairly debatable." It is firmly established that:

> [E]ven though there was expert testimony adduced in support of the City's case, that in and of itself does not mean the issue is fairly debatable. If it did, every zoning case would be fairly debatable and the City would prevail simply by submitting an expert who testified favorably to the City's position. Of course that is not the case. The trial judge still

> must determine the weight and credibility factors to be attributed to the experts. Here the final judgment shows that the judge did not assign much weight or credibility to the City's witnesses.

Boca Raton v. Boca Villas Corp., 371 So. 2d 154, 159 (Fla. 4th DCA 1979).

189. The standard of proof to establish a finding of fact is preponderance of the evidence. *See* § 120.57(1)(j), Fla. Stat.

The MOU

190. Petitioners allege, as grounds for finding the Plan Amendments not "in compliance," that the Plan Amendments are inconsistent with the MOU. Petitioners' allegations of inconsistency with the MOU are not well taken. Only those specific items listed in the statutory definition of "in compliance" may form the basis for finding the Plan Amendments not "in compliance." *See Consol. Citrus v. Martin Cty.*, Case No. 13-3393 (Fla. DOAH Jan. 23, 2013, Order on Respondent's Mot. in Lim. or in the Alter. Mot. to Strike) (whether plan amendment is consistent with sections 163.3162, 193.461, 823.14, Florida Statutes, and Florida Administrative Code Rules 62B-33 and 40E-8 are not compliance issues); *Cemex Constr. Materials Fla. v. Lee Cty.*, Case No. 10-2988 (Fla. DOAH Feb. 21, 2012; Fla. DCA Apr. 10, 2012) (whether plan amendment is consistent with section 337.0261(3), Florida Statutes, is not a compliance criterion); *Monkus v. City of Miami*, Case No. 04-1080 (Fla. DOAH Sept. 3, 2004; Fla. DCA Oct. 26, 2004) (consistency with land development regulations is not a compliance issue); *Emerald Lakes Residents' Ass'n v. Collier Cty.*, Case No. 02-3090 (Fla. DOAH Feb. 10, 2003; Fla. DCA May 8, 2003) (whether plan amendment was adopted in conformity with procedural requirements of section 163.3185(15)(c) is not a compliance issue); *Current v. Town of Jupiter*, Case No. 03-0718 (Fla. DOAH Oct. 24, 2003; Fla. DCA Apr. 9, 2004) (whether plan amendment conflicts with local government resolution is not a compliance issue); *Durham Park Neighborhood v. City of Miami*, Case No. 06-0759 (Fla. DOAH May 24, 2006 Order Granting Leave to

Amend but Striking Portions of Amended Pet.) (striking Petitioners' claims that plan amendment is not consistent with Florida Administrative Code Rule 9J-11 because the provisions are not compliance criteria); and *Pyle v. City of St. Pete Beach*, Case No. 08-4772 (Fla. DOAH Jan. 28, 2009, Order on Mot. to Strike) (requirement to submit a "complete" plan amendment package pursuant to section 163.32456 is not a compliance issue).

191. If the MOU was adopted by reference in Respondents' comprehensive plans, Petitioners' argument might have had merit. However, none of the comprehensive plans adopts the MOU by reference. The MOU is a separate stand-alone document which may be amended by agreement of the parties, outside of the statutory plan amendment process.

Internal Inconsistences

192. Section 163.3177(2) mandates "the several elements of the comprehensive plan shall be consistent."

193. Petitioners did not prove, beyond fair debate, that the Plan Amendments are inconsistent with specifically-identified provisions of Respondent's plans relating to hurricane evacuation clearance times, quality of nearshore waters, wastewater treatment, or habitat protection.

194. Petitioners did not prove beyond fair debate that the Plan Amendments are inconsistent with section 163.3177(2).

Data and Analysis

195. Section 163.3177(1)(f) requires plan amendments to be "based upon relevant and appropriate data and analysis" by the local government, and includes "surveys, studies, community goals and vision, and other data available at the time of adoption."

196. To be based on data "means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan amendment." § 163.3177(1)(f), Fla. Stat.

197. Based upon the foregoing Findings of Fact, Petitioners did not prove the Plan Amendments are not supported by adequate data and analysis, or fail to react to professionally-acceptable data in an appropriate way.

198. Petitioners did not prove beyond fair debate that the Plan Amendments are inconsistent with section 163.3177(1)(f).

Principles for Guiding Development

199. "In compliance" is defined to include consistency with the Principles, which apply to both Marathon and Islamorada.[31] Petitioners alleged the Plan Amendments are inconsistent with section 380.005(9), which requires plan amendments comply with the requirement to "maintain[] a hurricane evacuation clearance time for permanent residents of no more than 24 hours." Based on the foregoing Findings of Fact, it is at least fairly debatable that the Plan Amendments will not cause evacuation clearance time of the ACSC to exceed the 24-hour evacuation clearance time.

200. Furthermore, the Principles "may not be construed or applied in isolation," but must be "construed as a whole." § 380.0552(7), Fla. Stat. The undersigned is required to balance the Principles as applied to Petitioners' challenges. One of the other major Principles implicated by the Marathon and Islamorada Plan Amendments is to "[m]ake[] available adequate affordable housing for all sectors of the population of the Florida Keys." § 380.0552(7)(l), Fla. Stat. The parties stipulated to the need for affordable housing, which has a documented impact on the Keys' economy. The need to house the workforce for the service sector of the Keys' economy implicates another Principle: to ensure "the maximum well-being of the Florida Keys and its citizens through sound economic development." § 380.0552(7)(d), Fla. Stat.

201. With regard to Key West, Petitioners urge the Plan Amendment is inconsistent with Florida Administrative Code Rule 28-36.003(1)(a), (h), and

[31] The Principles for Guiding Development in the Key West ACSC make no reference to hurricane evacuation clearance times. *See* Fla. Admin. Code R. 28-36.003.

(2)(a)7., which require plan amendments to "[s]trengthen local government capabilities for managing land use and development"; "[p]rotect … the public health, safety, welfare, and economy of the City of Key West, and [maintain] Key West as a unique Florida Resource"; and adopt an "evacuation plan consistent with regional and [Monroe] County plans … which provides an opportunity for residents and visitors to evacuate to a place of safety during a natural disaster," respectively.

202. Based upon the foregoing Findings of Fact, Petitioners did not prove beyond fair debate that the Key West Plan Amendment is inconsistent with the listed Principles.

Other Contentions

203. Petitioners raised additional arguments, which were likewise not proven beyond fair debate.

204. Petitioners alleged the Plan Amendments violate section 163.3177(6)(a)2., which requires consideration of specifically-listed types of data and analysis for adoption of plan amendments. Respondents considered the availability of water supplies and other public services during plan review and adoption. Respondents also considered the need of the service sector of the economy—including retail and restaurant services, as well as public school and first-responder services—during plan review and adoption.

205. Based on the foregoing Findings of Fact, Petitioners did not prove, beyond fair debate, that the Plan Amendments are inconsistent with section 163.3177(6)(a)2.

206. Petitioners contend the Plan Amendments were inconsistent with section 163.3177(6)(a)8., which requires, as follows:

> 8. Future land use *map amendments* shall be based upon the following analysis:
>
> a. An analysis of the availability of facilities and services.

> b. An analysis of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site. (emphasis added).

207. The cited statutory section is inapplicable to the Plan Amendments because they are not future land use map amendments.

208. Petitioners also contend the Plan Amendments were inconsistent with the requirement in section 163.3177(1) that local government comprehensive plans "shall establish meaningful and predictable standards for the use and development of land[.]" Based on the foregoing Findings of Fact, Petitioners did not carry their burden of proof with respect to that issue.

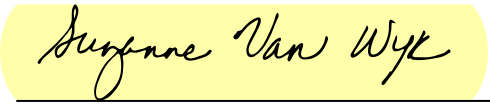
Conclusion

209. For the reasons stated above, Petitioners have not proven beyond fair debate that the Plan Amendment is not "in compliance," as that term is defined in section 163.3184(1)(a).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Economic Opportunity enter a final order determining the City of Marathon Comprehensive Plan Amendment 2018-01, adopted on October 23, 2018; City of Key West Comprehensive Plan Amendment 19-06, adopted on April 4, 2019; and Islamorada, Village of Islands, Comprehensive Plan Amendment 19-03, adopted on March 5, 2019; are "in compliance," as that term is defined in section 163.3184(1)(b).

DONE AND ENTERED this 25th day of September, 2020, in Tallahassee, Leon County, Florida.



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this 25th day of September, 2020.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

Exhibit 5

Islamorada, Village of Islands

SENT VIA EMAIL AND FED EX

April 10, 2019

Mr. Ray Eubanks, Plan Processing Administrator
Florida Department of Economic Opportunity
Caldwell Building
107 East Madison Street – MSC 160
Tallahassee, Florida 32399

RECEIVED
Bur. of Community Planning and Growth
APR 15 2019
Div. of Community Development
Dept. Economic Opportunity

RE: Compliance Review of Adopted Comprehensive Plan Amendments
Islamorada, Village of Islands, Submittal Package
State Land Planning Agency Amendment ID #: 19-01ACSC

Dear Mr. Eubanks:

Pursuant to Chapter 163, Part II, Florida Statutes, the Islamorada, Village of Islands Planning and Development Services Department, acting within the Florida Keys Area of Critical State Concern, hereby transmits three (3) copies of its adopted Plan Amendment Submittal Package 19-01 ACSC of the Islamorada, Village of Islands Comprehensive Plan and hereby requests that the Florida Department of Economic Opportunity review the adopted amendments. **The amendments are subject to State Coordinated Review process pursuant to Section 163.3184(4), Florida Statutes.** One (1) copy of each package is paper and two (2) copies are on CD-ROM in PDF format.

There is one (1) adopted ordinance in the package, summarized in the table below. The ordinance <u>does not</u> amend the future land use map. The adopted amendment affects Chapter 3: Housing Element of the Comprehensive Plan.

One copy of each plan amendment submittal package was transmitted concurrently to each of the following agencies and governments for their review and written response:

- South Florida Regional Planning Council
- Monroe County, Florida
- Florida Department of Environmental Protection
- Florida Department of Transportation
- South Florida Water Management District
- Florida Department of State
- Florida Department of Education

86800 Overseas Highway • Islamorada, Florida 33036-3162
Office 305-664-6400 • Fax 305-664-6467 • www.islamorada.fl.us

Summary of the Plan Amendment Submittal Package Content: Each plan amendment listed below includes the adopted text, copies of recommendations and support documents, including any required data and analysis.

Ord. No.	Amendment Name	Amendment Title	LPA Hearing Date	1st VC Hearing Date	2nd VC Hearing Date
n/a	ADOPTED TEXT AMENDMENT ESTABLISHING GOAL 3-2	AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 3 "HOUSING ELEMENT" AND ASSOCIATED OBJECTIVES AND POLICIES OF THE VILLAGE'S COMPREHENSIVE PLAN; ESTABLISHING GOAL 3-2 ENTITLED "WORKFORCE-AFFORDABLE HOUSING INITIATIVE" TO PROVIDE FOR AN ADDITIONAL 300 AFFORDABLE UNIT ALLOCATIONS TO BE IDENTIFIED AS THE "AFFORDABLEEARLY EVACUATION POOL"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY.	12/10/18	12/13/18	4/4/19

- The adopted amendment is related to the Florida Keys Area of Critical State Concern, pursuant to Section 380.05, Florida Statutes.
- The plan amendment is not within Orange, Lake or Seminole Counties and, therefore, the plan amendments do not apply to the Wekiva River Protection Area pursuant to Chapter 369, Part III, Florida Statutes.
- A copy of the complete amendment package including supporting data and analysis has been mailed to all of the required review agencies on the date of this letter.
- The amendment is not proposed to be adopted under a joint planning agreement pursuant to Section 163.3171, Florida Statutes.
- The amendment does not update the five-year schedule of Capital Improvements.
- There were no requests for citizen courtesy information.

The following person is familiar with the proposed amendments and is responsible for ensuring that the materials transmitted are complete:

Ty Harris, Esq.
Director of Planning
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036-3162
Phone 305.664.6422 Fax 305.664.6464
PlanningDirector@islamorada.fl.us

Thank you in advance for your timely review of these materials. Should you have any questions about the proposed amendments, please contact us.

Sincerely,

Ty Harris, Esq.
Director of Planning

Encl.

Cc:	Corey Aitken, Resiliency Planner & Economic Development, SFRPC	Sent Electronically
	Isabel Moreno, Administrative Assistant, SFRPC	Sent Electronically
	Emily Schemper, Asst. Director, Monroe County Planning and Environmental Resources	Sent Electronically
	Plan Reviewer, FDEP	Sent Electronically
	Shereen Yee Fong, Transportation Planner, FDOT District 6	Sent Electronically
	Terese Manning, Policy and Planning Analyst, SFWMD	Sent Electronically
	Deena Woodward, Historic Preservation Planner, FDOS	Sent Electronically
	Barbara Powell, Areas of Critical State Concern Administrator, DEO	Sent Electronically
	Kylene J. Casey, Growth Management & Legislative Liaison, FDOE	Sent Electronically
	Village Council (no enclosures)	Sent Electronically
	Seth Lawless, Village Manager (no enclosures)	Sent Electronically
	Roget. V. Bryan, Village Attorney (no enclosures)	Sent Electronically

ORDINANCE NO. 19-03

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 3 "HOUSING ELEMENT" AND ASSOCIATED OBJECTIVES AND POLICIES OF THE VILLAGE'S COMPREHENSIVE PLAN; ESTABLISHING GOAL 3-2 ENTITLED "WORKFORCE-AFFORDABLE HOUSING INITIATIVE" TO PROVIDE FOR AN ADDITIONAL 300 AFFORDABLE UNIT ALLOCATIONS TO BE IDENTIFIED AS THE "AFFORDABLE-EARLY EVACUATION POOL"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY

WHEREAS, in 2001, Islamorada, Village of Islands, Florida (the "Village") adopted the Village Comprehensive Plan Village Comprehensive Plan (the "Comprehensive Plan") which has been determined to be compliant by the State Department of Economic Opportunity ("DEO"), formally the Department of Community Affairs ("DCA"); and

WHEREAS, the Village is located within the Florida Keys Area of Critical State Concern (the "FKACSC") as established pursuant to Chapter 380, Florida Statutes; and

WHEREAS, Section 163.3184, F.S., establishes a process for adoption of comprehensive plans and Plan Amendments; and

WHEREAS, pursuant to Chapter 163, Part II, Chapter 166 and Chapter 380 Florida Statutes (F.S.), the Village proposes to amend Chapter 3 "Housing Element" of the Comprehensive

Plan by adding Goal 3-2 "Workforce-Affordable Housing Initiative" and associated Objectives and Policies; and

WHEREAS, the proposed amendments further the goals, objectives and policies of the Village Comprehensive Plan; and

WHEREAS, pursuant to Florida Statutes and the Village Code of Ordinances (the "Code") the Local Planning Agency (LPA) held a public hearing on January 9, 2017 to review the proposed text amendments to the Comprehensive Plan; and

WHEREAS, the Village Council held public hearings to review the proposed amendments to the Comprehensive Plan; and

WHEREAS, the Village Council finds that the proposed amendments to the Comprehensive Plan are consistent with the Village Comprehensive Plan, the Principles for Guiding Development in the Florida Keys Area of Critical State Concern and are in the best interests of the Village and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.

Section 2. **Amending Chapter 3 "Housing Element" to Establish Goal 3-2 "Workforce-Affordable Housing Initiative.** The amendment to the Comprehensive Plan is to amend Chapter 3 "Housing Element" to Establish Goal 3-2 "Workforce-Affordable Housing Initiative and related objectives and policies as follows:

Goal 3-2 – Workforce-Affordable Housing Initiative.
To support the Village of Islamorada's workforce by alleviating constraints on affordable housing, the Village shall participate in the Workforce-Affordable Housing Initiative, as approved by the Florida Administration Commission during its June 13, 2018 meeting. The Workforce-Affordable

Housing Initiative will require any participating new construction or repurposed structures to commit to evacuating renters within the 48 to 24-hour window of evacuation from the Village.

Objective 3-2.1 – Provide Workforce-Affordable Housing Building Permit Allocations.

Pursuant to Objective 3-1.1, the Village has worked with the State Department of Economic Opportunity to "provide alternative solutions to improve access to affordable housing." The Village therefore shall establish a new limited category to be known as the "Affordable-Early Evacuation Pool" for 300 workforce-affordable building permit allocations to participate in the Workforce-Affordable Housing Initiative. These allocations are in addition to the maximum allocations identified in Rules 28-19, Florida Administrative Code. The Village shall be responsible for the management, distribution, and enforcement of requirements associated with the POA allocations. The Village of Islamorada shall ensure adherence to these requirements through implementing the policies of this objective.

Policy 3-2.1.1 – Distribution of Workforce-Affordable Housing Allocations.

Workforce-affordable housing allocations shall be distributed at any time through adequate public notice and hearing procedures as set forth in Chapter 30 of the Village's Land Development Regulations and in accordance with the BPAS ranking procedures established in Chapter 30 Article 4, Division 11 "Building Permit Allocation System (BPAS).

Policy 3-2.1.2 - Specific Standards and Requirements for Workforce-Affordable Housing.

Workforce-affordable housing units built under this program shall:

a. be multifamily structures;
b. be rental units;
c. require, at a minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission;
d. not be placed in the V-Zone or within the Coastal Barrier Resource Systems;
e. require on-site property management;
f. comply with applicable habitat and other locational criteria and densities for multifamily affordable housing units;
g. shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, tropical hardwood hammock or fresh water wetlands (except for disturbed categories);
h. incorporate sustainable and resilient design principles into the overall site design;
i. ensure accessibility to employment centers and amenities;
j. require deed-restrictions ensuring that:
    i. the property remains workforce-affordable housing in perpetuity;
    ii. tenants evacuate during the period in which transient units are required to evacuate;

iii. rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident;

iv. onsite property managers are formally trained in evacuation procedures.

Policy 3-2.1.3 – Evacuation exemptions. Persons living in workforce-affordable housing who are exempt from evacuation requirements of Policy 2-1.2.9 includes all first responders, correction officers, health care professionals, or other first-response workers required to remain during an emergency, provided that the person claiming exemption under this policy has faithfully certified their status with property management.

Policy 3-2.1.4 – ADA Compliance. All workforce-affordable housing developments must demonstrate compliance with all applicable federal standards for accessibility for persons with disabilities.

Policy 3-2.1.4 -Evaluation and Report. The Village of Islamorada shall provide an Annual Report to the state land planning agency on the progress and implementation of the Workforce-Affordable Housing Initiative. Reported information for each year shall include documentation of the number of workforce-affordable units built, occupancy rates, and compliance with the requirement to evacuate the units within the Phase I evacuation. Such report shall be provided to the State in a timely manner such that the State may include the information in the required Annual Report to the Governor and Cabinet on the Village of Islamorada's progress toward completion of its Work Program pursuant to Rule 28-19 of the F.A.C.

*****

Section 4. **Transmittal.** Pursuant to Sections 163.3184 and 163.3187(6)(a), Florida Statutes, the Village Clerk is authorized to forward a copy of this Ordinance to the State Department of Economic Opportunity (the "DEO").

Section 5. **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. **Effective Date.** This Ordinance shall not be effective immediately upon adoption. However, the Amendment shall not take effect until the date the final order is issued by the Department of Economic Opportunity to be in compliance in accordance with Chapter 163.3184, Florida Statutes. The Department of Economic Opportunity ("DEO") notice of intent to find the Amendment in compliance shall be deemed to be the final order if no timely petition challenging the Amendment is filed.

The foregoing Ordinance was offered by Councilman Ken Davis, who moved its adoption on first reading. This motion was seconded by Councilman Jim Mooney, and upon being put to a vote, the vote was as follows:

Mayor Deb Gillis	YES
Vice-Mayor Mike Forster	YES
Councilman Ken Davis	YES
Councilwoman Cheryl Meads	YES
Councilman Jim Mooney	YES

PASSED on first reading this 13th day of December, 2018.

The foregoing Ordinance was offered by Vice Mayor Mike Forster, who moved for its adoption. This motion was seconded by Councilman Jim Mooney, and upon being put to a vote, the vote was as follows:

Mayor Deb Gillis	YES
Vice Mayor Mike Forster	YES
Councilman Ken Davis	YES
Councilwoman Cheryl Meads	YES
Councilman Jim Mooney	YES

PASSED AND ADOPTED on the second reading 4th day of April, 2019.

Deb Gillis

DEB GILLIS, MAYOR

ATTEST:

Kelly S Toth

KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

_____
ROGET V. BRYAN, VILLAGE ATTORNEY

Exhibit 6

CITY OF MARATHON, FLORIDA

9805 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667

October 24, 2018 **VIA FEDEX:** 7735-7715-2098

Mr. Ray Eubanks
Administrator Plans Review & Processing
Florida Department of Economic Opportunity
107 E. Madison Street
Caldwell Building, MSC 160
Tallahassee, Florida 32399

RE:**Transmittal of Ordinance 2018-009 upon Second Hearing (Comp Plan Amendment 2018-01ACSC)**

Dear Mr. Eubanks,

Ordinance 2018-009 is an amendment to the City of Marathon Comprehensive Plan and is therefore subject to State Coordinated Review process pursuant to Section 163.3184(4), Florida Statutes.

The Ordinance included herein was adopted by the City of Marathon City Council on October 23, 2018. The Ordinance represents a modification to the procedures for the Building Permit Allocation System to specifically allow 300 Workforce Early Evacuation Residential Units.

This transmittal package contains one (1) hard copy and two (2) CD's of relevant documents including executed Ordinance, staff agenda reports, and other pertinent materials.

Having been transmitted by the City of Marathon, please accept this adoption package on behalf of the Department of Economic Opportunity.

Copies of this transmittal have been sent to all appropriate review agencies.

Pending the review and approval of Ordinance 2018-009, the City is also transmitting Ordinance 2018-010 which represents the companion amendment to the Land Development Regulations. The City understands that Ordinance 2018-010 may not be reviewed and therefore formally approved until the Department issues a Notice of Intent concerning the 2018-009 Ordinance and that Ordinance becomes effective.

Thank you in advance for your review. Should you have any questions, please contact me.

Sincerely,

George Garrett,
Director of Planning
garrettg@ci.marathon.fl.us
City of Marathon
Phone: (305) 289-4111
Fax: (305) 743-3667
garrettg@ci.marathon.fl.us

cc: City Clerk
City Attorney
Isabella Cosio Carballo, South Florida Regional Planning Council
Deena Woodward, Department of State, Bureau of Historic Preservation
Scott Sanders, Florida Fish and Wildlife Commission
Comp Plan Review, Department of Agriculture and Consumer Services
Plan Review, Department of Environmental Protection
Terry Manning, South Florida Water Management District
Shereen Yee Fong, Florida Department of Transportation
Kylene Casey, Department of Education
Christine Hurley, Monroe County Growth Management Director

COUNCIL AGENDA STATEMENT

Meeting Date: October 23, 2018

To: Honorable Mayor and Council Members

From: George Garrett, Planning Director

Through: Chuck Lindsay, City Manager

Agenda Item: **Ordinance 2018-09**, Amending The City's Comprehensive Plan, Adding Goal 1-4 And Associated Objectives And Policies To Chapter 1, "Future Land Use Element;" And Goal 1-4 Shall Be Known As The "Workforce-Affordable Housing Initiative" Providing For An Additional 300 Affordable Allocations To An Allocation Pool To Be Identified As The Affordable-Early Evacuation Pool;" And Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date.

RECOMMENDATION:

The City Council unanimously voted for approval of this Ordinance in its first hearing on September 11, 2018. This is the second hearing for this Comprehensive Plan amendment. No changes have been made to the Ordinance and the Department of Economic Opportunity has approved the Comprehensive Plan amendment in its Objections, Recommendations, and Comments (ORC) letter dated last week.

The Planning Commission heard the item on August 20, 2018 and recommended transmittal to the City Council by unanimous vote. The City Council directed the transmittal of this Ordinance to the State Department f Economic Opportunity on September 11, 2018. The Department of Economic Opportunity has provided a review of the proposed amendment and indicated that it furthers the goals of the Comprehensive Plan consistent with the requirements of the Work Program as adopted by Rule. Similarly, the proposed amendment meets the intent of the Workforce-Affordable Housing Initiative set forth by the Administration Commission.

APPLICANT: City of Marathon

REQUEST: Amend City of Marathon Comprehensive Plan by Adding Goal 1-4, concerning the Workforce-Affordable Housing Initiative.

ANALYSIS OF COMPREHENSIVE PLAN CHANGE REQUEST:

Preface

The current Land Development Regulations provide only brief guidance concerning the review of a proposed Comprehensive Plan Amendment.

Section 102.19 simply states:

Section 102.19. Standards for Review.
When considering an application for a Comprehensive Plan Amendment, the review shall include all standards and criteria of Fla. Stat. ch. 163.

Standards in Chapter 163, F.S. offer some additional guidance, but are limited. Pertinent sections of Chapter 163 promulgate process rather than establishing criteria for the development of a proposed Comprehensive Plan Amendment. Chapter 163.3184, Process for adoption of comprehensive plan or plan amendment, define the sequential process for transmittal, review, and approval of a Comprehensive Plan Amendment. Most relevant to this delineation of process is the definition of **"compliance"** which is recited for review below:

163.3184 Process for adoption of comprehensive plan or plan amendment.--

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

(b) "In compliance" means consistent with the requirements of ss. 163.3177, when a local government adopts an educational facilities element, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable. Thus, leading through an exhaustive process, the State Land Planning Agency must find a Comprehensive Plan or Plan Amendment in compliance in accordance with the above definition. Process as further defined in the section leads from Local Government Transmittal through review by the State Land Planning Agency and other required local and state government bodies to a finding of "in compliance" by the State Land Planning Agency.

Review is contemplated and expected to be completed by such agencies as the South Florida Regional Planning Council, whose responsibility it is to review the proposal for consistency with the Strategic Regional Policy Plan. Such review is not therefore, the responsibility of the local government to determine consistency in this regard and will not be addressed herein. Though referenced in the definition of compliance and elsewhere Chapters 163.3177, 163.3191, 163.3245, and 369 will not be reviewed as a compliance matter. Chapter 163.3177 defines required elements in a comprehensive plan. The City has an approved comprehensive plan which must be assumed to have all required elements. Chapter 163.3191 refers to the required Evaluation and Appraisal Report (EAR); a review of an approved comprehensive plan required of the City every seven years. The City is not subject to an EAR at this juncture and therefore is not relevant as a criterion to the review herein. Finally, Chapter 163.3245 refers to the development of an optional sector plan. This optional element of an approved comprehensive plan was not adopted by the City and therefore will not be used as a criterion for review in this proposed FLUM amendment. Chapter 369 refers to invasive aquatic plant control and the Wekiva River area and similarly will not be the subject of compliance review herein.

Other pertinent review elements leading to a determination of compliance are found in Chapter 163.3178 Coastal management, Chapter 163.3180 Concurrency and the principals for guiding development in the Florida Keys Area of Critical State Concern. This application for a FLUM amendment will be analyzed against the limited compliance issues found in sections of Chapter 163 F.S. and Chapter 380 F.S. noted immediately above. Relevant sections are provided in EXHIBITS 2, 3, & 4 attached or with website references for your review

Compliance Discussion

Relevant criteria promulgated in Chapters 163 and 380 F.S.can be itemized in bullets as follows based on the critical concerns more specifically identified in the City's comprehensive plan:

- Natural Resource Protection
  - Wetlands
  - Estuaries
  - Living marine resources
  - Beaches / Dunes
  - Unique wildlife habitat
  - Water Quality
- Historical Resources
- Infrastructure / Concurrency Management
  - Wastewater
  - Stormwater
  - Potable Water
  - Solid Waste
  - Transportation
- Affordable Housing
- Hazard Mitigation
  - CHHA
  - Hurricane Evacuation
- Ports
  - Marina Siting
- Public Use
  - Shoreline use and Access
  - Water dependent and independent activity
- Land Acquisition
  - Conservation
  - CHHA
  - Public Services

These bullet items should be utilized as the focus points for review of the proposed FLUM amendment and for future comprehensive plan amendments.

SUMMARY

This proposed Comprehensive Plan Amendment will add the Workforce-Affordable Housing Initiative to the City's adopted Comprehensive Plan allowing the allocation of up to 300 new affordable residential units identified as "Early Evacuation" Affordable Residential Allocations.

ANALYSIS

Natural Resources

The City of Marathon Comprehensive Plan places significant emphasis on the protection of its environmental resources while protecting the property rights of its citizens. The proposed amendment through the implementation of the existing Comprehensive Plan and Land Development Regulations and the restriction of the use of habitats such as hammock, salt march and buttonwood, mangroves, and fresh water wetlands, will not further impact natural resources offered protection under the City's regulations. Additionally, through the resolution of the FEMA-FWS lawsuit, but the protection and preservation of endangered animals and their habitat is taken into consideration in issuance of an incidental take permit to FEMA from FWS. See Exhibit 1 – FEMA-FWS documentation

Historical and Cultural Resources

Elements of the City's Land Development Regulations, Chapter 106, Article 5 & 7 (See Exhibit 2), protect existing historic and cultural resources. No Significant Impact would result from the proposed change.

Infrastructure

No Significant Impact would result from the proposed change.

Wastewater infrastructure

No Significant Impact would result from the proposed change. See Exhibit 3

Stormwater infrastructure

The City of Marathon developed an award winning stormwater system simultaneous with the construction of its wastewater system for City owned rights-of-way. Stormwater is otherwise managed on site through the City's stormwater Ordinance (see Exhibit 4). No Significant Impact would result from the proposed change. See Exhibit 4.

Potable Water

No Significant Impact would result from the proposed change. See Exhibits 5a & b

Solid Waste

No Significant Impact would result from the proposed change.

Transportation

LOS for U.S. 1 and adjoin streets is well within LOS standards for transportation. No Significant Impact would result from the proposed change. See Exhibit 6

Affordable Housing

The proposed amendment will significantly enhance the City's continuing efforts to enhance affordable housing in the Keys. See Exhibit 7 a & b which elucidate the critical nature of the need for affordable housing. These are documents which were produced before Hurricane Irma which served to underscore the problem with the loss of more than 400 residential structures in the City of Marathon.

Hazard Mitigation

No Significant Impact would result from the proposed change.

Coastal High Hazard Areas

No Significant Impact would result from the proposed change.

Hurricane Evacuation

No Significant Impact would result from the proposed change. All Early Evacuation units (tenants) would be required to evacuate within the first 24 hours of a 48 hour evacuation window. The City's (and County's) obligation is to be prepared to evacuate at 24 hours before the impacts of Tropical Storm Force Winds in the Keys. Already, the Emergency Management Departments within the Florida Keys coordinate the evacuation of not only their permanent residents, but the temporary residents visiting the Keys in the short term. Conceptually, adding the "Early Evacuation Residential units to the list of facilities and residential units that leave the Keys in the first 24 hours is relatively simple. Statutorily (380.0552 (9) (a) (2), the City cannot exceed the 24 hour evacuation time for its permanent residents. The Statue, on the other hand, does not define how, the County and municipalities of the Florida Keys accomplishes this statutory axiom. Thus, requiring that some permanent residents lave early, the City believes, meets the intent of the statutes. Already, Emergency Management officials require that individuals living in low lying areas evacuate early. See Exhibits 8 a, b, c, d, & e.

Ports – Marina Siting

No Significant Impact would result from the proposed change.

Public Use – Access to Water

No Significant Impact would result from the proposed change.

Land Acquisition

The proposed amendment will utilize existing land acquisition mechanisms to further the purposes of providing affordable housing within the City. Because of the critical nature and need for affordable housing at this time, funding provided to the Monroe County Land Authority and funds provided through the Stewardship Act have been prioritized for the acquisition of lands for affordable housing. In addition, some of the Recovery funds provided through CDBG-DR and similar sources may be utilized for the purchase of such lands.

Alternate Compliance Review Criteria

Since there are no internal Comprehensive Plan change review criteria available in Chapter 102, Article 6, those that would apply for an LDR text change request (Chapter 102, Article 7) are useful. The basis for the LDR text change criteria are the same as for a Comprehensive Plan change ultimately.

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criteria and explanation of relevance to this proposed amendment are listed below:

A. The need and justification for the change;

The City is limited in the number of BPAS allocations allowed within the City of Marathon as provided in Rule 28-18, F.A.C. However, there is an extreme need for affordable housing BPAS allocations both as a reality of the costs of living in the Florida Keys and because of the significant impact felt by the affordable housing sector as a result of Hurricane Irma (September 10, 2017). Comprehensive Plan Policy 1-3.5.9, in fact requires that the City "shall work with the State to obtain more residential allocations specifically for affordable housing." The need for new affordable housing is overwhelming because of the impacts of the storm and the significant loss of affordable units to Hurricane Irma.

B. The consistency of the proposed amendment with the Comprehensive Plan; and

Comprehensive Plan Policy 1-3.5.9, requires that the City "shall work with the State to obtain more residential allocations specifically for affordable housing." The Administrative Commission's Workforce-Affordable Housing Initiative is the result of the City's efforts to obtain more affordable allocations.

C. Whether the proposed change shall further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed text amendments furthers the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by providing the mechanism to obtain and implement the Workforce-Affordable Housing Initiative..

CONCLUSION:

The proposed Amendment is consistent with and furthers the goals of the City of Marathon Comprehensive Plan and Land Development Regulations.

RECOMMENDATION:
The City Council unanimously voted for approval of this Ordinance in its first hearing on September 11, 2018. This is the second hearing for this Comprehensive Plan amendment. No changes have been made to the Ordinance and the Department of Economic Opportunity has approved the Comprehensive Plan amendment in its Objections, Recommendations, and Comments (ORC) letter dated last week.

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COUNCIL AGENDA STATEMENT

Meeting Date: October 23, 2018

To: Honorable Mayor and Council Members

From: George Garrett, Planning Director

Through: Chuck Lindsay, City Manager

Agenda Item: **Ordinance 2018-09**, Amending The City's Comprehensive Plan, Adding Goal 1-4 And Associated Objectives And Policies To Chapter 1, "Future Land Use Element;" And Goal 1-4 Shall Be Known As The "Workforce-Affordable Housing Initiative" Providing For An Additional 300 Affordable Allocations To An Allocation Pool To Be Identified As The Affordable-Early Evacuation Pool;" And Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date.

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REQUEST: Amend City of Marathon Comprehensive Plan by Adding Goal 1-4, concerning the Workforce-Affordable Housing Initiative.

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- Historical Resources
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These bullet items should be utilized as the focus points for review of the proposed FLUM amendment and for future comprehensive plan amendments.

SUMMARY

This proposed Comprehensive Plan Amendment will add the Workforce-Affordable Housing Initiative to the City's adopted Comprehensive Plan allowing the allocation of up to 300 new affordable residential units identified as "Early Evacuation" Affordable Residential Allocations.

ANALYSIS

Natural Resources

The City of Marathon Comprehensive Plan places significant emphasis on the protection of its environmental resources while protecting the property rights of its citizens. The proposed amendment through the implementation of the existing Comprehensive Plan and Land Development Regulations will not further impact natural resources offered protection under the City's regulations.

Historical and Cultural Resources

No Significant Impact would result from the proposed change.

Infrastructure

No Significant Impact would result from the proposed change.

Wastewater infrastructure

No Significant Impact would result from the proposed change.

Stormwater infrastructure

No Significant Impact would result from the proposed change.

Potable Water

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Solid Waste

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Transportation

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Hazard Mitigation

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Alternate Compliance Review Criteria

Since there are no internal Comprehensive Plan change review criteria available in Chapter 102, Article 6, those that would apply for an LDR text change request (Chapter 102, Article 7) are useful. The basis for the LDR text change criteria are the same as for a Comprehensive Plan change ultimately.

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criteria and explanation of relevance to this proposed amendment are listed below:

A. The need and justification for the change;

The City is limited in the number of BPAS allocations allowed within the City of Marathon as provided in Rule 28-18, F.A.C. However, there is an extreme need for affordable housing BPAS allocations both as a reality of the costs of living in the Florida Keys and because of the significant impact felt by the affordable housing sector as a result of Hurricane Irma (September 10, 2017). Comprehensive Plan Policy 1-3.5.9, in fact requires that the City "shall

work with the State to obtain more residential allocations specifically for affordable housing." The need for new affordable housing is overwhelming because of the impacts of the storm and the significant loss of affordable units to Hurricane Irma.

B. The consistency of the proposed amendment with the Comprehensive Plan; and

Comprehensive Plan Policy 1-3.5.9, requires that the City "shall work with the State to obtain more residential allocations specifically for affordable housing." The Administrative Commission's Workforce-Affordable Housing Initiative is the result of the City's efforts to obtain more affordable allocations.

C. Whether the proposed change shall further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed text amendments furthers the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by providing the mechanism to obtain and implement the Workforce-Affordable Housing Initiative..

CONCLUSION:
The proposed Amendment is consistent with and furthers the goals of the City of Marathon Comprehensive Plan and Land Development Regulations.

RECOMMENDATION:
The City Council unanimously voted for approval of this Ordinance in its first hearing on September 11, 2018. This is the second hearing for this Comprehensive Plan amendment. No changes have been made to the Ordinance and the Department of Economic Opportunity has approved the Comprehensive Plan amendment in its Objections, Recommendations, and Comments (ORC) letter dated last week.

The Planning Commission heard the item on August 20, 2018 and recommended transmittal to the City Council by unanimous vote. The City Council directed the transmittal of this Ordinance to the State Department f Economic Opportunity on September 11, 2018. The Department of Economic Opportunity has provided a review of the proposed amendment and indicated that it furthers the goals of the Comprehensive Plan consistent with the requirements of the Work Program as adopted by Rule. Similarly, the proposed amendment meets the intent of the Workforce-Affordable Housing Initiative set forth by the Administration Commission.

Sponsored By: Lindsey
Planning Commission Public Hearing Date: August 20, 2018
City Council Public Hearing Date: September 11, 2018
October 23, 2018
Enactment Date: October 23, 2018

CITY OF MARATHON, FLORIDA
ORDINANCE 2018-09

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S COMPREHENSIVE PLAN, ADDING GOAL 1-4 AND ASSOCIATED OBJECTIVES AND POLICIES TO CHAPTER 1, "FUTURE LAND USE ELEMENT;" AND GOAL 1-4 SHALL BE KNOWN AS THE "WORKFORCE-AFFORDABLE HOUSING INITIATIVE" PROVIDING FOR AN ADDITIONAL 300 AFFORDABLE ALLOCATIONS TO AN ALLOCATION POOL TO BE IDENTIFIED AS THE AFFORDABLE-EARLY EVACUATION POOL;" AND PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY AFTER FINAL ADOPTION BY THE CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE.

WHEREAS, the City of Marathon (the "City") has adopted a Comprehensive Plan which has been found to be in compliance by the State Department of Community Affairs ("DCA"), pursuant to Chapter 163, Florida Statutes; and

WHEREAS, the City is located within the Florida Keys Area of Critical State Concern (the "FKACSC"), as established pursuant to Chapter 380, Florida Statutes; and

WHEREAS, pursuant to the provisions of Chapters, 163, 166 and 380 Florida Statutes, the City of Marathon, Florida (the "City") proposes to amend Chapter 1, "Future Land Use Element," of the Comprehensive Plan; and

WHEREAS, adding Goal 1-4, "Workforce-Affordable Housing Initiative," and associated Objective, and Policies which further the goals, objectives and policies of the City Comprehensive Plan (the "Plan"); and

WHEREAS, pursuant to Chapter 163, *Florida Statutes*, and Sections 101.02 and 102.22 of the Code, the Planning Commission sitting as the Local Planning Agency publicly considered the proposed text amendment on August 20, 2018 at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

WHEREAS, the City Council reviewed and approved transmittal of this Ordinance to the Florida Department of Economic Opportunity and other required agency reviewers on September 11, 2018; and

WHEREAS, the State Department of Economic Opportunity returned a favorable Objections, Recommendations, and Comments (ORC) Report during the week of October, 14, 2018 indicating that the City could adopt this proposed Ordinance as written; and

WHEREAS, pursuant to the same legislative provision, the City Council accepted the ORC Repost, considered the recommendation of the Planning Commission, accepted additional public input, and deliberated on the proposed Policy amendment on October 23, 2018 at a duly noticed public hearing, and recommended that the amendment be transmitted to the Florida Department of Economic Opportunity as formally adopted by the City; and

WHEREAS, the City Council finds that approval of the proposed Policy amendments are in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Chapter 102, Article 6 of the Code, and promotes and protects the health, safety and welfare of the residents of the City; and

WHEREAS, the City Council desires to approve the proposed amendment pursuant to Chapter 163.3184 F.S., in accordance with State law,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THAT

~~Strikethrough~~ = deletion **bold underline** = addition

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. Amend the Comprehensive Plan, Chapter 1, Future Land Use Element, to include Goal 1-4 and related objective and policies:

Goal 1-4 Workforce-Affordable Housing Initiative.
To support the City of Marathon's workforce by alleviating constraints on affordable housing, the City shall participate in the Workforce-Affordable Housing Initiative, as approved during the June 13, 2018 meeting of the Administration Commission. The Workforce-Affordable Housing Initiative will require new construction or repurposed structures that participates to commit to evacuating renters in the 48 to 24-hour window of evacuation.

Objective 1-4.1 Provide Workforce-Affordable Housing Building Permit Allocations.

[1]Additions to existing text are shown by underline; deletions are shown as ~~strikethrough~~

Pursuant to Policy 1-3.5.9, the City has worked with the State Department of Economic Opportunity to "obtain more residential allocations specifically for affordable housing." The City thereby, shall establish a new limited category to be known as the "Affordable - Early Evacuation Pool" which will provide 300 workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative. These allocations are in addition to the maximum allocations identified in Rules 28-18, Florida Administrative Code. The City shall be responsible for the management, distribution, and enforcement of requirements associated with the Early Evacuation Affordable allocations. The City of Marathon shall ensure adherence to these requirements through implementation of the policies of this objective.

Policy 1-4.1.1 – Distribution of Workforce-Affordable Housing Allocations.

Workforce-affordable housing allocations shall be distributed at any time through adequate public notice and hearing procedures pursuant to Chapter 102, Articles 1 through 4 of the City's Land Development Regulations and in accordance with the BPAS ranking procedures established in Chapter 107, Article 1, "Building Permit Allocation System (BPAS).

Policy 1-4.1.2 - Specific Standards and Requirements for Workforce-Affordable Housing.

Affordable-Early Evacuation residential units under this program shall:

- **a. be multifamily structures;**
- **b. be rental units;**
- **c. require, at a minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission;**
- **d. not be placed in the V-Zone or within the Coastal Barrier Resource Systems;**
- **e. require on-site property management;**
- **f. comply with applicable habitat and other locational criteria and densities for multifamily affordable housing units;**
- **g. shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, hardwood hammock, or fresh water wetlands (disturbed categories excepted);**
- **h. incorporate sustainable and resilient design principles into the overall site design;**
- **i. ensure accessibility to employment centers and amenities;**
- **j. require deed-restrictions ensuring:**
  - **(i) the property remains workforce-affordable housing in perpetuity;**

[1]Additions to existing text are shown by underline; deletions are shown as ~~strikethrough~~

(ii) **tenants evacuate during the period in which transient units are required to evacuate;**

(iii) **rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident;**

(iv) **onsite property managers are formally trained in evacuation procedures.**

Policy 1-4.1.3 – Evacuation exemptions.

Persons living in workforce-affordable housing who are exempt from evacuation requirements of Policy 1.1.2.i.(ii) include all first responders, correction officers, health care professionals, or other first-response workers required to remain during an emergency, provided the person claiming exemption under this policy has faithfully certified their status with property management.

Policy 1-4.1.4 – ADA Compliance.

All workforce-affordable housing developments must demonstrate compliance with all applicable federal standards for accessibility for persons with disabilities.

Policy 1-4.1.5 -Evaluation and Report.

The City of Marathon shall provide the state land planning agency with an annual report on the progress and implementation of the Workforce-Affordable Housing Initiative. Reported information shall include documentation of the number of workforce-affordable units built, occupancy rates, and compliance with the requirement to evacuate the units in the Phase I evacuation. Said report shall be provided to the State in a timely manner such that the State may include the information in the required Annual Report to the Governor and Cabinet on the City of Marathon progress toward completion of its Work Program pursuant to Goal 9-1 of the City's Comprehensive Plan and Rule 28-18, F.A.C.

SECTION 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause of phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 4. The provisions of this Ordinance constitute a "Comprehensive Plan amendment" as defined by State law. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the DCA and other state agencies for review and approval pursuant to

[1]Additions to existing text are shown by underline; deletions are shown as ~~strikethrough~~

Sections 380.05(6) and (11), Florida Statutes.

SECTION 5. This Ordinance shall be effective immediately upon approval by DCA pursuant to Chapters 163 and 380, Florida Statutes.

SECTION 6. This Ordinance shall be effective immediately upon approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, Florida Statutes.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 23RD DAY OF OCTOBER, 2018.

THE CITY OF MARATHON, FLORIDA

_____

Michelle Coldiron, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

_____

Diane Clavier, City Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

_____

David Migut, City Attorney

[1]Additions to existing text are shown by underline; deletions are shown as ~~strikethrough~~

Sponsored By: Lindsey
Planning Commission Public Hearing Date: August 20, 2018
City Council Public Hearing Date: September 11, 2018
October 23, 2018
Enactment Date: October 23, 2018

CITY OF MARATHON, FLORIDA
ORDINANCE 2018-09

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S COMPREHENSIVE PLAN, ADDING GOAL 1-4 AND ASSOCIATED OBJECTIVES AND POLICIES TO CHAPTER 1, "FUTURE LAND USE ELEMENT;" AND GOAL 1-4 SHALL BE KNOWN AS THE "WORKFORCE-AFFORDABLE HOUSING INITIATIVE" PROVIDING FOR AN ADDITIONAL 300 AFFORDABLE ALLOCATIONS TO AN ALLOCATION POOL TO BE IDENTIFIED AS THE AFFORDABLE-EARLY EVACUATION POOL;" AND PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY AFTER FINAL ADOPTION BY THE CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE.

WHEREAS, the City of Marathon (the "City") has adopted a Comprehensive Plan which has been found to be in compliance by the State Department of Community Affairs ("DCA"), pursuant to Chapter 163, Florida Statutes; and

WHEREAS, the City is located within the Florida Keys Area of Critical State Concern (the "FKACSC"), as established pursuant to Chapter 380, Florida Statutes; and

WHEREAS, pursuant to the provisions of Chapters, 163, 166 and 380 Florida Statutes, the City of Marathon, Florida (the "City") proposes to amend Chapter 1, "Future Land Use Element," of the Comprehensive Plan; and

WHEREAS, adding Goal 1-4, "Workforce-Affordable Housing Initiative," and associated Objective, and Policies which further the goals, objectives and policies of the City Comprehensive Plan (the "Plan"); and

WHEREAS, pursuant to Chapter 163, *Florida Statutes*, and Sections 101.02 and 102.22 of the Code, the Planning Commission sitting as the Local Planning Agency publicly considered the proposed text amendment on August 20, 2018 at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

WHEREAS, the City Council reviewed and approved transmittal of this Ordinance to the Florida Department of Economic Opportunity and other required agency reviewers on September 11, 2018; and

WHEREAS, the State Department of Economic Opportunity returned a favorable Objections, Recommendations, and Comments (ORC) Report during the week of October, 14, 2018 indicating that the City could adopt this proposed Ordinance as written; and

WHEREAS, pursuant to the same legislative provision, the City Council accepted the ORC Repost, considered the recommendation of the Planning Commission, accepted additional public input, and deliberated on the proposed Policy amendment on October 23, 2018 at a duly noticed public hearing, and recommended that the amendment be transmitted to the Florida Department of Economic Opportunity as formally adopted by the City; and

WHEREAS, the City Council finds that approval of the proposed Policy amendments are in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Chapter 102, Article 6 of the Code, and promotes and protects the health, safety and welfare of the residents of the City; and

WHEREAS, the City Council desires to approve the proposed amendment pursuant to Chapter 163.3184 F.S., in accordance with State law,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THAT

~~Strikethrough~~ = deletion **bold underline** = addition

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. Amend the Comprehensive Plan, Chapter 1, Future Land Use Element, to include Goal 1-4 and related objective and policies:

Goal 1-4 Workforce-Affordable Housing Initiative.
To support the City of Marathon's workforce by alleviating constraints on affordable housing, the City shall participate in the Workforce-Affordable Housing Initiative, as approved during the June 13, 2018 meeting of the Administration Commission. The Workforce-Affordable Housing Initiative will require new construction or repurposed structures that participates to commit to evacuating renters in the 48 to 24-hour window of evacuation.

Objective 1-4.1 Provide Workforce-Affordable Housing Building Permit Allocations.

[1]Additions to existing text are shown by underline; deletions are shown as ~~strikethrough~~

Pursuant to Policy 1-3.5.9, the City has worked with the State Department of Economic Opportunity to "obtain more residential allocations specifically for affordable housing." The City thereby, shall establish a new limited category to be known as the "Affordable - Early Evacuation Pool" which will provide 300 workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative. These allocations are in addition to the maximum allocations identified in Rules 28-18, Florida Administrative Code. The City shall be responsible for the management, distribution, and enforcement of requirements associated with the Early Evacuation Affordable allocations. The City of Marathon shall ensure adherence to these requirements through implementation of the policies of this objective.

Policy 1-4.1.1 – Distribution of Workforce-Affordable Housing Allocations.

Workforce-affordable housing allocations shall be distributed at any time through adequate public notice and hearing procedures pursuant to Chapter 102, Articles 1 through 4 of the City's Land Development Regulations and in accordance with the BPAS ranking procedures established in Chapter 107, Article 1, "Building Permit Allocation System (BPAS).

Policy 1-4.1.2 - Specific Standards and Requirements for Workforce-Affordable Housing.

Affordable-Early Evacuation residential units under this program shall:

a. **be multifamily structures;**
b. **be rental units;**
c. **require, at a minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission;**
d. **not be placed in the V-Zone or within the Coastal Barrier Resource Systems;**
e. **require on-site property management;**
f. **comply with applicable habitat and other locational criteria and densities for multifamily affordable housing units;**
g. **shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, hardwood hammock, or fresh water wetlands (disturbed categories excepted);**
h. **incorporate sustainable and resilient design principles into the overall site design;**
i. **ensure accessibility to employment centers and amenities;**
j. **require deed-restrictions ensuring:**
    (i) **the property remains workforce-affordable housing in perpetuity;**
    (ii) **tenants evacuate during the period in which transient units are required to evacuate;**

[1]Additions to existing text are shown by underline; deletions are shown as ~~strikethrough~~

(iii) **rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident;**

(iv) **onsite property managers are formally trained in evacuation procedures.**

Policy 1-4.1.3 – Evacuation exemptions.

Persons living in workforce-affordable housing who are exempt from evacuation requirements of Policy 1.1.2.i.(ii) include all first responders, correction officers, health care professionals, or other first-response workers required to remain during an emergency, provided the person claiming exemption under this policy has faithfully certified their status with property management.

Policy 1-4.1.4 – ADA Compliance.

All workforce-affordable housing developments must demonstrate compliance with all applicable federal standards for accessibility for persons with disabilities.

Policy 1-4.1.5 -Evaluation and Report.

The City of Marathon shall provide the state land planning agency with an annual report on the progress and implementation of the Workforce-Affordable Housing Initiative. Reported information shall include documentation of the number of workforce-affordable units built, occupancy rates, and compliance with the requirement to evacuate the units in the Phase I evacuation. Said report shall be provided to the State in a timely manner such that the State may include the information in the required Annual Report to the Governor and Cabinet on the City of Marathon progress toward completion of its Work Program pursuant to Goal 9-1 of the City's Comprehensive Plan and Rule 28-18, F.A.C.

SECTION 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause of phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 4. The provisions of this Ordinance constitute a "Comprehensive Plan amendment" as defined by State law. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the DCA and other state agencies for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

[1]Additions to existing text are shown by underline; deletions are shown as ~~strikethrough~~

SECTION 5. This Ordinance shall be effective immediately upon approval by DCA pursuant to Chapters 163 and 380, Florida Statutes.

SECTION 6. This Ordinance shall be effective immediately upon approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, Florida Statutes.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 23RD DAY OF OCTOBER, 2018.

THE CITY OF MARATHON, FLORIDA

Michelle Coldiron

Michelle Coldiron, Mayor

AYES: Zieg, Cook, Senmartin, Bartus, Coldiron
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

for Hillary Palmer, Deputy Clerk
Diane Clavier, City Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

David Migut

David Migut, City Attorney

[1]Additions to existing text are shown by underline; deletions are shown as ~~strikethrough~~

Exhibit 7

THE CITY OF KEY WEST
CITY CLERK'S OFFICE
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3831; E-mail: csmith@cityofkeywest-fl.gov

SENT VIA US CERTIFIED MAIL: 7018 0680 0001 8332 3338

March 12, 2019

DEO - Bureau of Comprehensive Planning
Ray Eubanks, State Land Planning Agency
Caldwell Building
107 E. Madison MSC160
Tallahassee, FL 32399-4120

Re: An Ordinance of the City of Key West, Florida, amending the City's Comprehensive Plan, adding Objective 1-1.17 and associated policies to Chapter 1, "Future Land Use Element"; Objective 1-1.17 shall be known as the "Workforce-Affordable Housing Initiative" providing for an additional 300 affordable allocations to an allocation pool to be identified as the "Affordable-Early Evacuation Pool", pursuant to Chapter 90, Article VI, Division 3; Providing for severability; Providing for repeal of inconsistent provisions; Providing for inclusion into the City of Key West Comprehensive Plan; Providing for an effective date.

Pursuant to Chapter 163.3184(4), Florida Statutes, the City of Key West City Commission, acting within the jurisdiction of the Florida Keys Area of Critical State Concern (designated pursuant to Section 380.05, F.S.), hereby transmits one (1) hard copy and two (2) compact discs of a proposed amendment to the Comprehensive Land Use Plan. This amendment is subject to State Coordinated Review Process, Section 163.3184(4), Florida Statutes, and the City requests the State Land Planning Agency to formally review the proposed Comprehensive Plan amendment. This amendment was heard and adopted on 2nd reading at a regular meeting of the City Commission on March 5, 2019 under **Ordinance No. 19-06**.

Copies of the entire amendment package are also being provided to the Florida Department of Environmental Protection, Florida Department of Transportation and South Florida Water Management District, Florida Department of Economic Opportunity.

THE CITY OF KEY WEST
CITY CLERK'S OFFICE
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3831; E-mail: csmith@cityofkeywest-fl.gov

Amendment Name/Description:

Key West Ordinance No. 19-06

An Ordinance of the City of Key West, Florida, amending the City's Comprehensive Plan, adding Objective 1-1.17 and associated policies to Chapter 1, "Future Land Use Element"; Objective 1-1.17 shall be known as the "Workforce-Affordable Housing Initiative" providing for an additional 300 affordable allocations to an allocation pool to be identified as the "Affordable-Early Evacuation Pool", pursuant to Chapter 90, Article VI, Division 3; Providing for severability; Providing for repeal of inconsistent provisions; Providing for inclusion into the City of Key West Comprehensive Plan; Providing for an effective date.

Thank you in advance for your timely review of these materials. Should you have any questions about the proposed Comprehensive Plan Amendment Ordinance, please contact Patrick Wright, Director of Planning at (305) 809-3778 and pwright@cityofkeywest-fl.gov .

Sincerely,

Cheryl Smith

Cheryl Smith, MMC, CPM
City Clerk

Enc
CS/sph

Cc: Plan Review, Department of Environmental Protection
Kenneth Jeffries, Florida Department of Transportation
Terry Manning, South Florida Water Management District
Ray Eubanks, Department of Economic Opportunity
Patrick Wright, Director of Planning, City of Key West

Ordinance 19-06 Comp Plan

ORDINANCE NO. 19-06

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING THE CITY'S COMPREHENSIVE PLAN, ADDING OBJECTIVE 1-1.17 AND ASSOCIATED POLICIES TO CHAPTER 1, "FUTURE LAND USE ELEMENT"; OBJECTIVE 1-1.17 SHALL BE KNOWN AS THE "WORKFORCE-AFFORDABLE HOUSING INITIATIVE" PROVIDING FOR AN ADDITIONAL 300 AFFORDABLE ALLOCATIONS TO AN ALLOCATION POOL TO BE IDENTIFIED AS THE "AFFORDABLE-EARLY EVACUATION POOL", PURSUANT TO CHAPTER 90, ARTICLE VI, DIVISION 3; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR INCLUSION INTO THE CITY OF KEY WEST COMPREHENSIVE PLAN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Key West (the "City") has adopted a Comprehensive Plan which has been found to be in compliance by the State Department of Community Affairs ("DCA"), pursuant to Chapter 163, Florida Statutes; and

WHEREAS, the City is located within the Florida Keys Area of Critical State Concern (the "FKACSC") as established pursuant to Chapter 380, Florida Statutes; and

WHEREAS, pursuant to the provisions of Chapters 163, 166, and 380 of the Florida State Statutes, the City of Key West, Florida (the "City") proposes to amend Chapter 1, "Future Land Use Element," of the Comprehensive Plan; and

WHEREAS, adding Objective 1-1.17 "Workforce-Affordable Housing Initiative" and associated policies, will further the goals, objectives, and policies of the City Comprehensive Plan; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

The Comprehensive Plan is hereby amended as follows*:

OBJECTIVE 1-1.17: WORKFORCE-AFFORDABLE HOUSING INITIATIVE. To support the City of Key West's workforce by alleviating constraints on affordable housing, the City shall participate in the Workforce-Affordable Housing Initiative, as approved during the June 13, 2018 meeting of the Florida Administration Commission. The Workforce-Affordable Housing Initiative will require new construction that participates to commit to evacuating tenants in the Phase I clearance window of evacuation. The City, thereby, shall establish a new limited category to be known as the "Affordable – Early Evacuation Pool" which will provide 300 workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative, as well as any additional allocations which may be authorized by the Florida Administration Commission or transferred to Key West that are not accepted by other Florida Keys municipalities or Monroe County. These allocations are in addition to the building permit allocations identified in Objective 1-1.16. The City shall be responsible for the management, distribution, and enforcement of requirements associated with the Early Evacuation Affordable allocations. The City of Key West shall ensure adherence to these requirements through implementation of the policies of this objective.

---

*(Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck~~ through at second reading.)

Policy 1-1.17.1: Distribution of Workforce-Affordable Housing Allocations. Workforce-Affordable Housing allocations shall be available for allocation on a first-come first-served basis and distributed at any time following adequate public notice and hearing procedures pursuant to Chapter 108 of the City's Land Development Regulations. In the event applications received exceed the allocations authorized herein, the competing applications shall be ranked in accordance with the BPAS ranking procedures in Chapter 108, Section 997 (c).

Policy 1-1.17.2: Specific Standards and Requirements for Workforce-Affordable Housing. Affordable-Early Evacuation residential units built under this program shall:

a. be multiple-family structures;

b. be rental units;

c. require, at a minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission;

d. require on-site property management;

e. comply with applicable habitat and other locational criteria and densities for multiple-family affordable housing units;

f. incorporate resilient design principles into the overall site design;

g. ensure accessibility to employment centers and amenities;

h. require deed-restrictions ensuring:

(i) the property remains workforce-affordable housing in perpetuity;

(ii) tenants evacuate during the Phase I evacuation period;

(iii) rental agreements contain a separate disclosure requiring tenants to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident;

Policy 1-1.17.3: Evacuation exemptions. Persons living in workforce-affordable housing who are exempt from evacuation requirements of Policy 1-1.17.2.h.(ii) include first responders, correctional officers, healthcare professionals, or other first-responder workers required to remain in the lower keys during an emergency evacuation, provided the person claiming exemption under this policy has faithfully certified their status with property management.

Policy 1-1.17.4: ADA Compliance. All workforce-affordable housing developments must demonstrate compliance with all applicable federal standards for accessibility for persons with disabilities.

Policy 1-1.17.5: Evaluation and Report. The City of Key West shall provide the state land planning agency with an annual report on the progress and implementation of the Workforce-Affordable Housing Initiative. Reported information shall include documentation of the number of workforce-affordable units built, occupancy rates, and compliance with the requirement to evacuate the units in the Phase I evacuation.

Section 2. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provision of this Ordinance shall be deemed severable therefrom and shall be constructed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3. All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4. This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

Read and passed by the City Commission at a regular meeting held this 20th day of November, 2018.

Read and passed on final reading at a regular meeting held this 5th day of March, 20 19.

Authenticated by the presiding officer and Clerk of the Commission on 6th day of March 2019

Filed with the Clerk March 6th, 20 19.

Mayor Teri Johnston	Yes
Commissioner Gregory Davila	Yes
Commissioner Mary Lou Hoover	Yes
Commissioner Sam Kaufman	Yes
Vice Mayor Clayton Lopez	Yes
Commissioner Billy Wardlow	Yes
Commissioner Jimmy Weekley	Yes

TERI JOHNSTON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

EXECUTIVE SUMMARY

To: Jim Scholl, City Manager

Through: Patrick Wright, Planning Director

From: Vanessa Sellers, Planner II

Meeting Date: November 20, 2018

RE: **Text Amendment of the Comprehensive Plan –** An ordinance of the City of Key West, Florida, amending the City's Comprehensive Plan, adding Objective 1-1.17 and associated policies to Chapter 1, "Future Land Use Element"; Objective 1-1.17 shall be known as the "Workforce-Affordable Housing Initiative" providing for an additional 300 affordable allocations to an allocation pool to be identified as the "Affordable-Early Evacuation Pool", pursuant to Chapter 90, Article VI, Division 3; providing for severability; providing for repeal of inconsistent provisions; providing for inclusion into the City of Key West Comprehensive Plan; and providing for an effective date.

ACTION STATEMENT:

The purpose of this ordinance is to amend the City's Comprehensive Plan, adding Objective 1-1.17 and associated policies to Chapter 1, "Future Land Use Element." Objective 1-1.17 shall be known as the "Workforce-Affordable Housing Initiative" providing for an additional 300 affordable allocations to an allocation pool to be identified as the "Affordable-Early Evacuation Pool."

BACKGROUND:

The proposed ordinance to amend the City's Comprehensive Plan is part of a process to address the affordable housing shortage in the City and the County. The City Commission is hearing this Comprehensive Plan text amendment and also a text amendment to the Land Development Regulations which will allow the City to participate in the "Workforce-Affordable Housing Initiative," as approved during the June 13, 2018 meeting of the State of Florida Administration Commission. This Comprehensive Plan text amendment will establish a new objective (1-1.17) for 300 workforce-affordable building permit allocations in addition to the allocations described in Chapter 108, Article X, of the Land Development Regulations (the "LDRs"), as well as any additional allocations which may be authorized by the Florida Administration Commission or transferred to Key West that are not accepted by other Florida Keys municipalities or Monroe County. The text amendment will also establish supplementary policies.

REQUEST:
The proposed text amendment to the Comprehensive Plan is as follows*:

OBJECTIVE 1-1.17: WORKFORCE-AFFORDABLE HOUSING INITIATIVE. To support the City of Key West's workforce by alleviating constraints on affordable housing, the City shall participate in the Workforce-Affordable Housing Initiative, as approved during the June 13, 2018 meeting of the Florida Administration Commission. The Workforce-Affordable Housing Initiative will require new construction that participates to commit to evacuating tenants in the Phase I clearance window of evacuation. The City, thereby, shall establish a new limited category to be known as the "Affordable – Early Evacuation Pool" which will provide 300 workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative, as well as any additional allocations which may be authorized by the Florida Administration Commission or transferred to Key West that are not accepted by other Florida Keys municipalities or Monroe County. These allocations are in addition to the building permit allocations identified in Objective 1-1.16. The City shall be responsible for the management, distribution, and enforcement of requirements associated with the Early Evacuation Affordable allocations. The City of Key West shall ensure adherence to these requirements through implementation of the policies of this objective.

Policy 1-1.17.1: Distribution of Workforce-Affordable Housing Allocations. Workforce-Affordable Housing allocations shall be available for allocation on a first-come first-served basis and distributed at any time following adequate public notice and hearing procedures pursuant to Chapter 108 of the City's Land Development Regulations. In the event applications received exceed the allocations authorized herein, the competing applications shall be ranked in accordance with the BPAS ranking procedures in Chapter 108, Section 997 (c).

Policy 1-1.17.2: Specific Standards and Requirements for Workforce-Affordable Housing. Affordable-Early Evacuation residential units built under this program shall:

a. be multiple-family structures;
b. be rental units;
c. require, at a minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission;
d. require on-site property management;
e. comply with applicable habitat and other locational criteria and densities for multiple-family affordable housing units;
f. incorporate resilient design principles into the overall site design;
g. ensure accessibility to employment centers and amenities;
h. require deed-restrictions ensuring:

(i) the property remains workforce-affordable housing in perpetuity;
(ii) tenants evacuate during the Phase I evacuation period;
(iii) rental agreements contain a separate disclosure requiring tenants to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident;

Policy 1-1.17.3: Evacuation exemptions. Persons living in workforce-affordable housing who are exempt from evacuation requirements of Policy 1-1.17.2.h.(ii) include first responders, correctional officers, healthcare professionals, or other first-responder workers required to remain in the lower keys during an emergency evacuation, provided the person claiming exemption under this policy has faithfully certified their status with property management.

Policy 1-1.17.4: ADA Compliance. All workforce-affordable housing developments must demonstrate compliance with all applicable federal standards for accessibility for persons with disabilities.

Policy 1-1.17.5: Evaluation and Report. The City of Key West shall provide the state land planning agency with an annual report on the progress and implementation of the Workforce-Affordable Housing Initiative. Reported information shall include documentation of the number of workforce-affordable units built, occupancy rates, and compliance with the requirement to evacuate the units in the Phase I evacuation.

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*Coding: Added language is **underlined**; deleted language is ~~struck through~~ at first reading.

City Actions:

Planning Board:	**October 18, 2018 (approved)**
City Commission:	**November 20, 2018 (first reading)**
DEO (ORC – Objections, Recommendation, and Comments):	**TBA**
City Commission:	**March 5, 2019 (second reading)**

Planning Staff Analysis:

The purpose of Chapter 90, Article VI, Division 3 of the Land Development Regulations (the "LDRs") of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") is to provide a means for changing the text of the Comprehensive Plan. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the City Commission shall consider, in addition to the factors set forth in this subdivision, the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Options / Advantages / Disadvantages:

Option 1: **Approve** the text amendment to the City's Comprehensive Plan to amend Chapter 108, adding Objective 1-1.17 and associated policies to Chapter 1, "Future Land Use Element," as recommended by the Planning Board through Resolution no. 2018-55.

a. **Consistency with the City's Strategic Plan, Vision, and Mission:**
The Strategic Plan is silent on this issue.

b. **Financial Impact:**
There will be no cost to the City if this request is approved.

Option 2: **Deny** the text amendment to the City's Comprehensive Plan to amend Chapter 108, adding Objective 1-1.17 and associated policies to Chapter 1, "Future Land Use Element," as recommended by the Planning Board through Resolution no. 2018-55.

a. **Consistency with the City's Strategic Plan, Vision, and Mission:**
The Strategic Plan is silent on this issue.

b. **Financial Impact:**
There will be no cost to the City if this request is denied.

Recommendation:

As per Resolution 2018-55, the Planning Board recommends the **approval** of the text amendment to the Comprehensive Plan.

DEO Press Releases

Gov. Scott Directs DEO to Enhance Workforce Housing in the Florida Keys

May 02, 2018

TALLAHASSEE, Fla – Governor Scott today directed the Department of Economic Opportunity (DEO) to propose enhanced workforce housing in the Florida Keys as part of the continued efforts to recover from the tremendous impact Hurricane Irma had on the Keys. Hurricane Irma destroyed much of the housing that served the workforce population and proposed Keys Workforce Housing Initiative will allow local governments to grant additional building permits for rental properties. This initiative will be presented to the Florida Cab the next meeting.

Governor Scott said, "Hurricane Irma left a devastating impact on our state, especially in the Florida Keys and since the storm we have been working hard to rebuild even stronger before. For business owners across the Keys, the availability of affordable workforce housing has been a challenge that was compounded by Hurricane Irma. The Keys Workforce Housing Initiative will provide much-needed access to workforce housing, allowing businesses the opportunity to grow while providing a plan to ensure Keys residents can evacuat before a storm."

DEO is charged with reviewing local development decisions in the Florida Keys due to its legislative designation as an Area of Critical State Concern. State law requires that growt limited in the Keys to ensure that residents can evacuate safely within 24 hours in advance of a hurricane. To meet the increased demand for workforce housing, the innovative Ke Workforce Housing Initiative will require new construction that participates to commit to evacuating renters in the 48-hour window of evacuation.

The initiative will allow up to 1,300 new building permits for workforce housing throughout the Florida Keys. Local governments that choose to participate in the initiative will work w DEO to amend their comprehensive plans to allow for additional building permits that meet these safety requirements.

Cissy Proctor, Executive Director of DEO, said, "As I have toured the damage from Hurricane Irma, the number one priority of business and community leaders is the need for mor workforce housing. We are proud to provide an option to local governments that will help businesses have the talent they need to remain in the Keys and grow their companies. Th solution will not only provide workforce housing for private-sector businesses but public servants, like law enforcement and teachers, as well. Our agency is committed to working v partners in the Keys to provide ample workforce housing without compromising the safety of Floridians. We appreciate our partners at the Florida Division of Emergency Managem working with us to make sure Keys residents are still able to safely evacuate."

Representative Holly Raschein said, "Hurricane Irma pushed the affordable housing problem in the Florida Keys to a critical state, decimating an already strained stock of housing workforce. I have discussed this concern with Governor Scott and the Department of Economic Opportunity (DEO) both in Tallahassee and during the Governor's many visits to th as he's lead us through our recovery efforts. The plan Governor Scott has directed DEO to bring before Cabinet is a creative solution to the most pressing recovery challenge still f the Florida Keys and I encourage all Cabinet members to support this proposal."

Wes Maul, Director of the Florida Division of Emergency Management, said, "Our agency's primary goal is the safety of Florida residents during disasters. The Keys Workforce Ho Initiative ensures the safety of tourists and residents of the Keys during major storms, while allowing critical economic development activities to continue. We appreciate DEO's partnership in this endeavor."

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© 2017 State of Florida Department of Economic Opportunity

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabil
All voice telephone numbers on this website may be reached by persons using TTY/TDD equipment via the Florida Relay Serv

City of Key West, FL

City Hall
1300 White Street
Key West FL 33040

Action Minutes - Final

Planning Board

Thursday, October 18, 2018 | **6:00 PM** | **City Hall**

ADA Assistance: It is the policy of the City of Key West to comply with all requirements of the Americans with Disabilities Act (ADA). Please call the TTY number 1-800-955-8771 or for voice 1-800-955-8770 or the ADA Coordinator at 305-809-3811 at least five business days in advance for sign language interpreters, assistive listening devices, or materials in accessible format.

ALL VISUAL PRESENTATIONS FOR AGENDA ITEMS MUST BE RECEIVED (24) TWENTY-FOUR HOURS PRIOR TO THE MEETING.

Call Meeting To Order 6:00 PM

Pledge of Allegiance to the Flag

Roll Call

Absent 1 - Pike

Present 6 - Mr. Browning, Mr. Lloyd, Mr. Russo, Mr. Varela, Mr. Gilleran, and Chairman Holland

Approval of Agenda

Old Business

1 Variance - 3228 Flagler Avenue - (RE# 00069040-000000) - A request for a variance to the minimum side yard setback requirement in order to construct eight residential units on property located within the Commercial Limited (CL) zoning district pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Mr. Lloyd, seconded by Mr. Russo, that the Board finds that all the standards set forth in code Section 90-395(A) have been met by the Applicant, that the Applicant has demonstrated a "Good Neighbor Policy" and that the Variance be Passed subject to the conditions set forth on the staff report. The motion carried by the following vote:

Absent: 1 - Mr. Pike

Yes: 6 - Mr. Browning, Mr. Lloyd, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

2 Minor Development Plan, Conditional Use, and Landscape Waiver - 3228 Flagler Avenue (RE#00069040-000000) - A request for minor development plan, Conditional Use and landscape waiver approvals for the construction of eight (8) non-transient units on property located within the Commercial Limited (CL) Zoning District pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Mr. Lloyd, seconded by Mr. Russo, that the Board finds that Applicant's proposed conditional use demonstrates all the requirements of the Code Section 122-62(C) have been met by the Applicant, that the Applicant has demonstrated a "Good Neighbor Policy" and that the Application be granted subject to the conditions set forth on the staff report. The motion carried by the following vote:

Absent: 1 - Mr. Pike

Yes: 6 - Mr. Browning, Mr. Lloyd, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

3 Exception for Outdoor Merchandise Display - 407 A & B Front Street (RE # 00000180-000000) - A request for exception for outdoor merchandise display on property located within the Historic Residential Commercial Core Duval Street Gulfside (HRCC-1) Zoning District pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Mr. Russo, seconded by Mr. Varela, that the Planning Resolution be Passed. The motion carried by the following vote:

No: 2 - Mr. Browning, and Mr. Lloyd

Absent: 1 - Mr. Pike

Yes: 4 - Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

4 An After-the-Fact Variance - 3302 Harriet Avenue - (RE# 00031440-000100) - A request for variances to maintain a 6 foot solid fence on the front of the property and a eight foot gate entry on the side of the property located within the Medium Density Residential (MDR) zoning district pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Mr. Browning, seconded by Mr. Lloyd, that the Board finds that all the standards set forth in code Section 90-395(A) have been met by the Applicant, that the Applicant has demonstrated a "Good Neighbor Policy" and that the After the fact Variance be Passed subject to the conditions set forth on the staff report. The motion carried by the following vote:

No: 1 - Chairman Holland

Absent: 1 - Mr. Pike

Yes: 5 - Mr. Browning, Mr. Lloyd, Mr. Russo, Mr. Varela, and Vice Chair Gilleran

New Business

5 Comprehensive Plan Text Amendment - A Resolution of the City of Key West Planning Board recommending an Ordinance to the City Commission amending the City's Comprehensive Plan, adding Objective 1-1.17 and associated policies to Chapter 1, "Future Land Use Element"; and Objective 1-1.17 shall be known as the "Workforce-Affordable Housing Initiative" providing for an additional 300 affordable allocations to an allocation pool to be identified as the "Affordable-Early Evacuation Pool", pursuant to Chapter 90, Article VI, Division 3; Providing for severability; Providing for repeal of inconsistent provisions; Providing for inclusion into the City of Key West Comprehensive Plan; Providing for an effective date.

A motion was made by Mr. Browning, seconded by Mr. Varela, that the Planning Resolution be Passed. The motion carried by the following vote:

No: 1 - Mr. Lloyd

Absent: 1 - Mr. Pike

Yes: 5 - Mr. Browning, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

6 Text Amendment of the Land Development Regulations - A Resolution of the City of Key West Planning Board recommending an Ordinance to the City Commission amending Chapter 108 of the Land Development Regulations, to create a new Article XII, to be titled the "Workforce Affordable Housing Initiative", for the purpose of implementing Comprehensive Plan Objective 1-1.17, authorizing the acceptance of 300 "Affordable-Early Evacuation Pool" BPAS units; pursuant to Chapter 90, Article VI, Division 2; Providing for definitions, findings, purpose and intent, applicability, application, review of application, and monitoring; Providing for severability; Providing for repeal of inconsistent provisions; Providing for an effective date.

A motion was made by Vice Chair Gilleran, seconded by Mr. Russo, that the Planning Resolution be Passed. The motion carried by the following vote:

No: 1 - Mr. Lloyd

Absent: 1 - Mr. Pike

Yes: 5 - Mr. Browning, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

7 Major Development Plan - 638 United Street (RE # 00036600-000000) - A request for a major development plan approval and landscape modifications/waiver for the construction of five (5) residential units on property located within Historic Residential/Office (HRO) zoning district pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Vice Chair Gilleran, seconded by Mr. Browning, that the Planning Resolution be Passed, Prior or simultaneous to issuance of a Certificate of Occupancy for this development the project at 3228 Flagler Avenue must receive a Certificate of Occupancy. The motion carried by the following vote:

Absent: 1 - Mr. Pike

Yes: 6 - Mr. Browning, Mr. Lloyd, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

8 POSTPONED BY STAFF - 000000, and 00065060-000000) - A request for an extension of an approved Amended and Restated Development Agreement in the General Commercial (CG) Zoning District pursuant to Chapter 90, Article IX and Section 122-416 through 122-420 of the Land Development Regulations of the Code of Ordinances of the City of Key West.

A motion was made by Mr. Michael Browning, seconded by Mr. Michael Browning, that the Planning Resolution be Postponed to November 15. The motion passed by an unanimous vote.

9 Variance - 2800 Staples Avenue - (RE# 00067000-000000) - A request for a variance to the maximum building coverage allowed in order to construct an accessory structure in the rear yard. The property is located within the Single Family (SF) zoning district pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Mr. Lloyd, seconded by Mr. Russo, that the Board finds that all the standards set forth in code Section 90-395(A) have been met by the Applicant, that the Applicant has demonstrated a "Good Neighbor Policy" and that the Variance be Passed subject to the conditions set forth on the staff report. The motion carried by the following vote:

Absent: 1 - Mr. Pike

Yes: 6 - Mr. Browning, Mr. Lloyd, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

10 Variance - 1124 Truman Avenue (RE # 00032360-000000) - A request for a variance to the minimum rear yard setback requirement in order to construct a 133-square-foot addition at property located within the Historic Neighborhood Commercial - Truman / Simonton (HNC-1) zoning district pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Mr. Lloyd, seconded by Mr. Russo, that the Board finds that all the standards set forth in code Section 90-395(A) have been met by the Applicant, that the Applicant has demonstrated a "Good Neighbor Policy" and that the Variance be Passed subject to the conditions set forth on the staff report. The motion carried by the following vote:

Absent: 1 - Mr. Pike

Yes: 6 - Mr. Browning, Mr. Lloyd, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

11 Conditional Use - 1124 Truman Avenue (RE # 00032360-000000) - A request for conditional use approval to allow for the expansion of an existing restaurant to include on site consumption area at property located within the Historic Neighborhood Commercial - Truman / Simonton (HNC-1) zoning district pursuant to Sections 122-62 and 122-808 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Mr. Browning, seconded by Mr. Russo ,that the Board finds that Applicant's proposed conditional use demonstrates all the requirements of the Code Section 122-62(C) have been met by the Applicant, that the Applicant has demonstrated a "Good Neighbor Policy" and that the Application be granted subject to the conditions set forth on the staff report. The motion carried by the following vote:

Absent: 1 - Mr. Pike

Yes: 6 - Mr. Browning, Mr. Lloyd, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

12 Transient Unit/License Transfer - Unit/License in Unassigned Status (formerly 501 Amelia Street RE # 00027670-000100) to 215 Eanes Lane (RE # 00017950-000000) - A request to transfer one transient unit and license in unassigned status to property located within the Historic Residential Commercial Core -3 Duval Street Oceanside (HRCC-3) zoning district pursuant to Section 122-1338 and 122-1339 the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Vice Chair Gilleran, seconded by Mr. Varela, that the Planning Resolution be Passed. The motion carried by the following vote:

No: 1 - Mr. Lloyd

Absent: 1 - Mr. Pike

Yes: 5 - Mr. Browning, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

13 Exception for Outdoor Merchandise Display - 205 Elizabeth Street, Unit A, A1, B - (RE# 00072082-003903) - A request an exception for outdoor merchandise display on property located on Lazy Way Lane, Unit A, A-1, B in the Historic Residential Commercial Core Duval Street Gulfside (HRCC-1) zoning district per the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Mr. Browning, seconded by Mr. Russo, that the Planning Resolution be Passed. The motion carried by the following vote:

No: 1 - Mr. Lloyd

Absent: 1 - Mr. Pike

Yes: 5 - Mr. Browning, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

14 Exception for Outdoor Merchandise Display - 205 Elizabeth Street, Unit G - (RE# 00072082-003903) - A request an exception for outdoor merchandise display on property located on Lazy Way Lane, Unit G in the Historic Residential Commercial Core Duval Street Gulfside (HRCC-1) zoning district per the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

A motion was made by Mr. Russo, seconded by Mr. Varela, that the Planning Resolution be Passed. The motion carried by the following vote:

Absent: 1 - Mr. Pike

Yes: 6 - Mr. Browning, Mr. Lloyd, Mr. Russo, Mr. Varela, Vice Chair Gilleran, and Chairman Holland

Public Comment

Reports

Adjournment 9:09 PM

Exhibit 8

Exhibit 8. Summary of County Actions on 300 Workforce early evacuation units

	Agenda Item wording	Staff Discussion items	Staff Recommendation	BOCC Minutes	Attachments to Agenda *(hyperlinks)*
May 10, 2018 BOCC Special Meeting	**B2.** Discussion and direction regarding the initiative by Governor Scott to Department of Economic Opportunity (DEO) for the Keys Workforce Housing Initiative to allow 1300 additional affordable housing Rate of Growth Ordinance Allocations (ROGO) for rental workforce housing, with a condition that developments that receive these ROGO allocations have a rental management agreement in place that requires rental occupants to evacuate in the early phase (48 hours in advance of tropical storm winds reaching the shore of the Florida Keys) of a hurricane evacuation. Currently transient units (hotels) and mobile home occupants are required to evacuate in the early phase of evacuation.	**Administration Commission Meeting on May 15, 2018, agenda item:** The Department of Economic Opportunity presents to the Administration Commission a proposal for enhanced workforce housing in the Florida Keys. The proposed Keys Workforce Housing Initiative will allow local governments to grant additional building permits for rental properties. The Department is charged with reviewing local development decisions in the Florida Keys due to its legislative designation as an Area of Critical State Concern. State law requires that growth be limited in the Keys to ensure that residents can evacuate safely within 24 hours in advance of a hurricane. State law also requires affordable housing be available near places of employment in the Florida Keys. The Keys Workforce Housing Initiative meets these two legislative mandates by allowing new construction of affordable housing that commits to evacuating renters 48-hours in advance of a hurricane. The initiative will allow up to 1,300 new building permits for workforce housing throughout the Florida Keys, with no more than 300 per local government. Local governments that choose to participate in the initiative will work with the Department to amend their comprehensive plans to allow for additional building permits that meet these safety requirements.	Staff recommends that the Board give direction to staff to explore options and work with DEO to develop sufficient information for the Board to consider should it decide to participate in the Governor's initiative.	Board directed staff to discuss the concerns expressed at today's meeting with DEO staff during their meeting on May 15, 2018; and, to give an update to the Board at the regularly scheduled meeting on May16, 2018.	FS 380.0552 Florida Keys Area Protection Act 24 hour evacuation time FAC 28-20.140 Work Plan ROGO allocations Resolution 226-2012_Hurricane MOU Reso GOAL_215 3.1___FUTURE_LAND_USE (1) 2017 Annual Keys Report Final AC Agenda 5-15-18
5.15.18	Administration Commission Meeting – Fl Cabinet schedule states this meeting was cancelled.				
May 16, 2018 BOCC Meeting	**P1.** County Attorney Report		n/a	Mr. Shillinger referred the Board to the County Attorney Report for May 2018. Mr. Shillinger read Christine Hurley's report on the Governor's proposal for 1,300 additional ROGO allocations following her meeting with DEO and state level staff. He advised the Board that they have a cabinet meeting scheduled for June 13, 2018 to discuss the allocations further. Board directed staff to take the Board's questions and concerns discussed today to the meeting with the cabinet on June 13, 2018.	

6.6.18	**County sends a letter (dated June 6, 2018) to DEO providing County comments and questions:** **Comments:** 1. Prospective tenants of the rental workforce housing include employees who work in retail and service-related industries, who may not be able to evacuate early due to financial constraints and lack of paid time off. 2. The issuance of an additional 1,300 allocations for rental workforce housing appears to undermine the whole process by which Monroe County has been regulating growth since the implementation of the Rate of Growth Ordinance (ROGO). Please explain how this is consistent with our current policy structure. 3. The acceptance of the 1,300 rental workforce units may set a precedent for further distributions of additional allocations (up to the point where the remaining 6.5 hours in the 48-hour evacuation phase would be exhausted) from the State rather than a dedication of funding for land acquisition, to resolve issues resulting from the state-regulated growth through ROGO. 4. The County has utilized ROGO as a mechanism to allow controlled growth while balancing the protection of the unique environmental habitats. The proposed initiative may weaken a system that has been operating to control growth for 30 years, which is the very reason so many visitors travel to the Florida Keys. 5. The County is concerned about enforcement of required evacuation for units awarded under the proposed program and how property owners would force tenants to evacuate. 6. The State should review data to determine how quickly storms strengthen or dissipate before they make landfall, prior to authorizing this program. 7. There is concern that tenants of the proposed rental workforce housing may be the employees who work in businesses that stay open until hurricane-force winds arrive. There is a concern that these residents may not be as economically flexible to leave the County on a repeated basis during the first phase of hurricane evacuation. 8. The addition of 1,300 workforce units that will house permanent residents who are required to evacuate during the first phase adds a new group to the first phase of evacuation, and may negatively impact the evacuation of permanent residents within the 24-hour time period. 9. The acceptance of the 1,300 rental workforce units may set a precedent for further distribution, leading to increased development throughout the County as additional allocations are requested and granted. 10. The addition of 1,300 workforce housing units within the County may increase traffic congestion. 11. Any additional workforce housing units may stress the County's infrastructure. 12. The state should review the number of allocations available through 2023 for each municipality within the ACSC. 13. There is concern that the proposed units may affect the Keys' carrying capacity. 14. The County seeks additional guidance on the workforce rental units including income level limits and types of housing that would be permitted under this proposed program. **Questions and Requests for Further Information:** 1. The initiative states that it is intended to serve "the workforce population." Please define the term “workforce population.” 2. Please advise if the workforce housing initiative is part of the State's assistance in recovering from Hurricane Irma. 3. Clarify if the proposed allocations can be restricted to people who earn 70% of their income in Monroe County, especially in light of the fact that these units may be used for CDBG-DR funded projects or LIHTC projects. 4. Please clarify the difference between CDBG-DR funding and CDBG funding. 5. Please detail the requirements of the property management rental agreements and who is responsible to ensure evacuations occur during the first phase. 6. Clarify if businesses would be encouraged to close earlier to facilitate evacuation. 7. Clarify in which phase of the hurricane evacuation model RVs are counted, and if there is acknowledgement that these units are often known to be used as de facto affordable housing. 8. Please indicate how the workforce housing initiative comports with existing laws, including but not limited to F.S. 380.0552(9)(a)2, which imposes a requirement of a hurricane evacuation clearance time for permanent residents of no more than 24 hours. 9. Please confirm that DEO will not engage in rulemaking to replace the number and distribution of ROGO allocations set forth in F.A.C. 28-20.140(2) in order to implement this initiative and will instead process amendments to the comprehensive plan proposed by local governments which would amend the requirements set forth in that administrative rule even though that local amendment will contain text that would differ from the current text set forth in F.A.C. 28-20.140(2) and thus will be inconsistent with the rule. Stated differently, would a local government’s amendment to its comprehensive plan be able to conflict with the language that appears in the Florida Administrative Code?
6.13.18	Administration Commission Meeting – Fl Cabinet accepts the Keys' Workforce Housing Initiative presented by DEO

Exhibit 8. Summary of County Actions on 300 Workforce early evacuation units

<table>
<tr>
<td>August 15, 2018 BOCC Meeting</td>
<td>County Attorney Report</td>
<td></td>
<td>n/a</td>
<td>Q1 Mr. Shillinger referred the Board to the County Attorney's report for August 2018. Mr. Shillinger addressed the Board concerning the 1,300 allocations that the Governor has made available.

After discussion, it was decided to place a discussion item on the September agenda.</td>
<td></td>
</tr>
<tr>
<td>September 19, 2018 BOCC Meeting</td>
<td>I3. Discussion and direction regarding the initiative by the State of Florida Administrative Commission to be administered through the Department of Economic Opportunity (DEO) for the Keys Workforce Housing Initiative to allow up to 1300 additional affordable housing allocations (up to 300 for unincorporated Monroe County) in Rate of Growth Ordinance Allocations (ROGO) for rental workforce housing, with a condition that developments that receive these ROGO allocations have a rental management agreement in place that requires rental occupants to evacuate in the early phase (48 hours in advance of tropical storm winds reaching the shore of the Florida Keys) of a hurricane evacuation. Currently transient units (hotels) and mobile home occupants are required to evacuate in the early phase of evacuation.</td>
<td>DEO has provided County staff with preliminary draft language based on the minimum requirements established in the initiative to use as a starting point. The County should consider the language provided and make modifications as necessary to ensure the Workforce Housing Initiative is locally driven.

From Presentation:
<table>
<tr><td colspan="3">Approximate Current ROGO Distribution</td><td>TOTAL</td></tr>
<tr><td>550 Affordable
(Available immediately)</td><td>630 Market-rate
(126 per year)
(8 Big Pine)
(57 Lower Keys)
(61 Upper Keys)</td><td>127 Administrative Relief
(95 Lower Keys)
(32 Upper Keys)</td><td>1296</td></tr>
<tr><td colspan="3">State Administrative Commission PLUS 300 Affordable Workforce Allocations</td><td>TOTAL</td></tr>
<tr><td>850 Affordable*
(300* require early evacuation)

*Available post CP amendment</td><td>630 Market-rate
(126 per year)
(8 Big Pine)
(57 Lower Keys)
(61 Upper Keys)</td><td>127 Administrative Relief
(95 Lower Keys)
(32 Upper Keys)</td><td>1596</td></tr>
</table>
Alternative, using new 300 allocations for administrative relief:
<table>
<tr><td colspan="3">State Administrative Commission PLUS 300 Affordable Workforce Allocations</td><td>TOTAL</td></tr>
<tr><td>850 Affordable*
(300* require early evacuation)

Available post CP amendment</td><td>330 Market-rate
(66 per year)
(8 Big Pine)
(30 Upper Keys)
(28 Lower Keys)
Shifts 300 MR allocations to Admin Relief</td><td>427 Administrative Relief
(240 Lower Keys)
(187 Upper Keys)</td><td>1596</td></tr>
</table>
*Any development with two (2) or more units (AFFORDABLE or MARKET RATE) approved utilizing allocations from these pots must enter into a Development Agreement to evacuate in the first phase of evacuation pursuant to DEO's policies required for the additional 300 units.</td>
<td>Staff recommends the BOCC provide direction to staff regarding processing necessary text amendments to the Comprehensive Plan and Land Development Code to implement the Workforce Housing Initiative.

If the BOCC directs staff to process the necessary text amendments, Staff further recommends limiting the use of the proposed Workforce Housing Initiative allocations until: (1) after all existing remaining allocations (market-rate and affordable) are exhausted and (2) to resolve pending administrative relief applications.</td>
<td>After discussion, motion was made by Commissioner Carruthers and seconded by Commissioner Murphy directing staff to develop a written sample policy; staff will meet with DEO; and then staff will come back to the Board to explain, not only answers to the questions here today, but what could be accepted by the DEO before starting the process of community meetings, DRC and Planning Commission; and additional legal input regarding how to avoid 6,000.00 to 8,000.00 takings cases. Motion carried unanimously</td>
<td>Exhibit_1_Gov.Scott_Press_Release
FAC 28-20.140 Work Plan ROGO allocations
GOAL_215
2017 Annual Keys Report
3.1___FUTURE_LAND_USE (1)
Resolution 226-2012_Hurricane MOU Reso
DEO_DRAFT_Language_WORKFORCE-AFFORDABLE
6-13-2018 Admin Comm Agenda and Transcript
Letter_to_DEO_06.06.18_FINAL_signed
DAY OF MEETING SLIDE PRESENTATION BOCC 9-19-2018 Item I3 - revised EMAILED FROM BOB 9 19 18 DURING MEETING</td>
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Exhibit 8. Summary of County Actions on 300 Workforce early evacuation units

January 30, 2019 BOCC Special Meeting	**B2.** Discussion and direction regarding the initiative by the State of Florida Administrative Commission to be administered through the Department of Economic Opportunity (DEO) for the Keys Workforce Housing Initiative to allow up to 1300 additional affordable housing allocations (up to 300 for unincorporated Monroe County) in Rate of Growth Ordinance Allocations (ROGO) for rental workforce housing, with a condition that developments that receive these ROGO allocations have a rental management agreement in place that requires rental occupants to evacuate in the early phase (48 hours in advance of tropical storm winds reaching the shore of the Florida Keys) of a hurricane evacuation. Currently transient units (hotels) and mobile home occupants are required to evacuate in the early phase of evacuation	DEO has provided County staff with preliminary draft language based on the minimum requirements established in the initiative to use as a starting point. The County should consider the language provided and make modifications as necessary to ensure the Workforce Housing Initiative is locally driven. The City of Marathon, the City of Key West and Islamorada, Village of Islands have all transmitted comprehensive plan amendments, consistent with accepting 300 units, to DEO and are currently under review. The City of Marathon's proposed amendment has been challenged. That case is scheduled to be heard on April 30 through May 3rd, 2019, in Marathon. Consistent with the discussion item presented to the BOCC on September 19, 2018, staff drafted options to accept the 300 units. Options 2 and 3 include moving 300 existing market-rate allocations into the administrative relief pool to settle potential takings cases. If the BOCC directs staff to work on this, several other polices and code provisions may need amendment. Staff has drafted three (3) options for consideration by the BOCC: 1. Do not accept the 300 early evacuation affordable ROGOs and extend ROGO allocations through 2026; 2. Accept the 300 early evacuation affordable ROGOs and extend ROGO allocations until 2026; and 3. Accept the 300 early evacuation affordable ROGOs and do not extend ROGO beyond 2023	**Staff recommends Option 2 presented in this agenda item: extend the Rate of Growth Ordinance (ROGO) Allocation Distribution Schedule through 2026, and continue to pursue accepting 300 Workforce Housing ROGOs offered by the State; staff also recommends that the BOCC direct staff to not process the required Comprehensive Plan amendments until any challenges to local municipalities' Comprehensive Plan amendments are completed, so that the County can further study the issues raised.**	Board took no official action.	300_units_Policies_strikethrough_01.15.19 WHITE PAPER_build out_land_acquisition_strategies_7_11_13 land acquisition request WHITE PAPER 10-17-13 acquisition table_v2 Military Buffer Acquisition_FINAL 10-22-13 Presentation: Hurricane Sally Devastates the Florida Keys - News of the Near Future (003)

Exhibit 8. Summary of County Actions on 300 Workforce early evacuation units

<table>
<tr>
<td>January 22, 2020 BOCC Meeting</td>
<td>O10: A Public Hearing was held to consider an Ordinance by the Monroe County Board of County Commissioners amending Monroe County Comprehensive Plan Policy 101.3.2 to extend the time period of the Rate of Growth Ordinance through 2026.

O11: A Public Hearing was held to consider an Ordinance by the Monroe County Board of County Commissioners amending Monroe County Land Development Code Section 138-24(a) to extend the time period of the Rate of Growth Ordinance through 2026.</td>
<td>
<table>
<tr><th></th><th colspan="2">Annual Allocation</th></tr>
<tr><th>ROGO Year</th><th>Market rate</th><th>Affordable</th></tr>
<tr><td>July 13, 2013- July 12, 2014</td><td>126</td><td>71</td></tr>
<tr><td>July 13, 2014- July 12, 2015</td><td>126</td><td>71</td></tr>
<tr><td>July 13, 2015- July 12, 2016</td><td>126</td><td rowspan="12">568 total AFH (total available immediately)</td></tr>
<tr><td>July 13, 2016- July 12, 2017</td><td>126</td></tr>
<tr><td>July 13, 2017- July 12, 2018</td><td>126</td></tr>
<tr><td>July 13, 2018- July 12, 2019</td><td>126</td></tr>
<tr><td>July 13, 2019- July 12, 2020</td><td>126</td></tr>
<tr><td>July 13, 2020- July 12, 2021</td><td>~~126~~ 64</td></tr>
<tr><td>July 13, 2021- July 12, 2022</td><td>~~126~~ 64</td></tr>
<tr><td>July 13, 2022- July 12, 2023</td><td>~~126~~ 64</td></tr>
<tr><td>July 13, 2023- July 12, 2024</td><td>62</td></tr>
<tr><td>July 13, 2024- July 12, 2025</td><td>62</td></tr>
<tr><td>July 13, 2025- July 12, 2026</td><td>62</td></tr>
<tr><td>Total</td><td>1,260</td><td>710*</td></tr>
<tr><td colspan="3">*Includes two annual affordable ROGO allocation for the Big Pine Key / No Name Key subarea through the Incidental Take Permit (ITP) ending in 2023.</td></tr>
</table>
</td>
<td>Approval</td>
<td>During Public hearing to extend the time period of the rate of growth ordinance (ROGO) through 2026, BOCC directed staff to prepare an agenda item to discuss and provide direction on whether to direct staff to process Comprehensive Plan and Land Development Code amendments to: 1) move a portion of market-rate Rate Of Growth Ordinance (ROGO) units to the affordable housing allocation pool and/or 2) accept the 300 Workforce Housing units offered by the Department of Economic Opportunity (DEO) required to evacuate in Phase 1 of the Hurricane Evacuation model.

BOCC also voted to extend the remaining market rate ROGOs out for an additional three (3) years from 2023 to 2026.</td>
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<td>February 19, 2020 BOCC Meeting</td>
<td>I7. Discussion and direction on whether to direct staff to process a comprehensive plan and land development code amendment to: 1) move a portion of the 378 remaining market rate Rate of Growth Ordinance (ROGO) units through 2026 to the affordable housing allocation pool and/or 2) accept the 300 Workforce Housing units offered by the Department of Economic Opportunity (DEO) required to evacuate in phase 1 of the hurricane evacuation model.</td>
<td>On January 22, 2020, the BOCC directed staff to prepare an agenda item to discuss and provide direction on whether to direct staff to process Comprehensive Plan and Land Development Code amendments to: 1) move a portion of the remaining 378 market-rate Rate Of Growth Ordinance (ROGO) units to the affordable housing allocation pool.

Further, after the meeting, some commissioners asked staff to also add to the discussion whether to accept the 300 Workforce Housing units offered by the Department of Economic Opportunity (DEO) required to evacuate in Phase 1 of the Hurricane Evacuation model.

Staff is seeking direction on whether to begin the Comprehensive Plan amendment process to accept the 300 units.

It should be noted that Cities of Islamorada, Marathon, and Key West have all amended their Comprehensive Plans to accept their 300 units and those amendments have been challenged and have been heard by an administrative law judge. The outcome is not known at this point.</td>
<td>Staff recommends the BOCC discuss the item and provide appropriate direction to staff.</td>
<td>After discussion, motion was made by Commissioner Coldiron and seconded by Commissioner Cates to start the process to accept the 300 workforce housing units.

The BOCC did not decide on the potential shifting of market rate allocations to the affordable housing pool (BOCC members mentioned they were not in a position to make a decision and wanted a staff to develop a menu of options).</td>
<td>AIS_5158_300_Units
4_Previous_ROGO_Quarters
Evacuation_Images
Takings Claims Bill Whitepaper
January 2020
300_units_Policies_strikethrough_
V2_02.19.2020</td>
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Exhibit 8. Summary of County Actions on 300 Workforce early evacuation units

July 15, 2020 BOCC Meeting	**I5.** Discussion and direction on whether to direct staff to process a comprehensive plan and land development code amendment to move a portion of the 294 remaining Market Rate - Rate of Growth Ordinance (ROGO) units through 2026 to the affordable housing allocation pool.	On the February 19, 2020, BOCC meeting, the BOCC discussed whether to direct staff to process a comprehensive plan and land development code amendment to: 1) move a portion of the 378 remaining Market Rate - Rate of Growth Ordinance (ROGO) units through 2026 to the Affordable Housing allocation pool and/or 2) accept the 300 Workforce Housing units offered by the Department of Economic Opportunity (DEO) required to evacuate in phase 1 of the hurricane evacuation model. At the February meeting, the BOCC did not decide on the potential shifting of market rate allocations to the affordable housing pool (BOCC members mentioned they were not in a position to make a decision and wanted staff to develop a menu of options). Additionally, also at the February meeting, the BOCC directed staff to start the process to accept the 300 workforce housing units. It should be noted that the municipalities (Cities) of Islamorada, Marathon, and Key West have all amended their Comprehensive Plans to accept the 300 Workforce Housing units and those amendments were challenged. Hearings were held in December 2019, before Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings. On April 24, 2020, Administrative Law Judge Van Wyk recommended approval of Marathon, Key West, and Islamorada's respective ordinances accepting the 300 ROGOs under the Workforce Housing Initiative. Currently, it is unknown when the final order will be issued (possibly late July) or if the final order may be challenged. The final outcome of the City's amendments are not known at this point.	**Staff seeks direction on the seven (7) options provided.**	During a discussion item on potentially shifting market rate allocations to the affordable housing pool (agenda item I5), the BOCC provided further direction to staff on accepting the 300 workforce housing early evacuation unit building permit allocations. The BOCC directed: accept the 300 workforce housing early evacuation unit building permit allocations to be used in exchange for existing affordable allocations at multifamily developments (for developers that agree to the early evacuation restriction) and the affordable housing allocations returned to the County (returned in the exchange) be set aside and banked for takings cases (bank them within an administrative relief pool).	AIS_Feb 19 2020 BOCC_I7_300 Units and shifting allocations discussion Seven Options for BOCC Consideration Feb 19 2020 BOCC meeting minutes Takings Claims Bill Whitepaper January 2020 Summary of BOCC items on ROGOs and Workforce 300 early evac units 2020 Monroe County AFH Income Limits and Rates Marathon example__BPAS_Market Rate Owner-occupied Allocation Pool F.S. 196.015 Permanent Residency by the property appraiser_homestead exemption F.S. 222.17 Manifesting and Evidencing Domicile in Florida_clerk of the court