MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

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To: Development Review Committee

From: Mitchell N. Harvey, AICP, Comprehensive Planning Manager

Through: Townsley Schwab, Acting Director of Planning & Environmental Resources

Date: July 13, 2008

Subject: *Request for an Amendment to Section 9.5-258(b) of the Monroe County Code*

Meeting: July 22, 2008

I REQUEST

In response to direction by the Board of County Commissioner on June 18, 2008, the Growth Management Division is requesting to amend the Monroe County Code to allow the provision of wastewater service to properties located within the Coastal Barrier Resources System Overlay together with the provision of those utilities required to provide sanitary wastewater collection and treatment. This will give Monroe County the ability to more closely comply with the State requirement to provide ~~centralized~~ sewer services throughout the Florida Keys by July 1, 2010.

Chapter 9.5, Article VII Division 2 is proposed to be amended as follows:

Sec. 9.5-258. Coastal barrier resources system overlay district.

(b) *Application:* The Coastal Barrier Resources System Overlay District shall be overlaid on all areas, except for Stock Island, within federally designated boundaries of a Coastal Barrier Resources System Unit on current Flood Insurance Rate Maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: ~~central wastewater treatment collection systems;~~ potable water; electricity; and telephone and cable. This prohibition shall not preclude the provision of sanitary wastewater service and those utilities required to provide sanitary wastewater collection and treatment nor the maintenance and upgrading of existing public utilities in place on the effective date of this ordinance. ~~and shall not apply to wastewater nutrient reduction cluster systems.~~

II PROCESS

Reviewed by _____

In accordance with the provisions set forth in Sec. 9.5-511 of the Monroe County Code (MCC), amendments may be proposed by the Board of County Commissioners (BOCC), the Planning Commission, the Director of Planning, 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 the text and map amendment applications as they are received and pass them on to the Development Review Committee and the Planning Commission for recommendation and final approval by the BOCC.

The Planning Commission and the BOCC shall each hold at least one public hearing on a proposed amendment to the text or to the land use district map. 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, and shall submit its recommendations and findings to the BOCC. The BOCC shall consider the report and recommendation of and the testimony given at the public hearings and may either adopt or not adopt an ordinance approving the proposed amendment. Ordinances are then reviewed by the Florida Department of Community Affairs.

III RELEVANT PRIOR COUNTY ACTIONS

June 2000 – BOCC approved the Monroe County Wastewater Management Plan;
December 19, 2001 – BOCC approved Ordinance 043-2001 amending the Monroe County Land Development Regulations to include Section 9.5-258, thereby establishing the Coastal Barrier Resources System Overlay;
April 16, 2008 – BOCC approved the expansion of the Sumerland/Cudjoe/Sugarloaf Regional Wastewater System to cover design for Big Pine Key and Lower Sugarloaf Key;
May 21, 2008 – BOCC approved central sanitary wastewater service to the property owners of No Name Key through inclusion of the area in the Lower Keys Regional Service Area wastewater treatment and collection system.
June 18, 2008 – BOCC discussed an item to direct staff to amend Section 9.5-258 Coastal Barrier Resources System Overlay District of the Monroe County Code to eliminate the prohibition of the establishment of central wastewater treatment collection systems and utilities for no Name Key. Following public discussion, the BOCC approved a motion that the prohibition of utilities is reworded such that the focus and priority be placed on wastewater first and any discussion of electric or any other utility is deferred until the wastewater goal is accomplished. The Board directed staff to amend the Land Development Regulations and the Comprehensive Plan.
June 18, 2008 – BOCC approved a resolution to remove the developed residential area the unrecorded plat on the east end of No Name Key, otherwise originally known as "Islands End" from the Coastal Barrier Resource System.

IV REVIEW OF APPLICATION

A. *Consistency of the proposed amendment with the provisions and intent of the Monroe County Year 2010 Comprehensive Plan:*

Existing Policy 102.8.5 discourages the extension of utilities within the Coastal Barrier Resources System Overlay District. The proposed amendment to the Monroe County Land Development Regulations clarifies the intent of Monroe County to provide ~~centralized~~ wastewater service throughout the unincorporated area by July 1, 2010 as mandated by the Chapter 99-395, Laws of Florida. An amendment to Policy 102.8.5 is being considered concurrently with the proposed amendment to the land development regulations.

B. *Consistency of the proposed amendment with the provisions and intent of Chapter 9.5 of the Monroe County, Land Development Regulations:*

In accordance with MCC Sec. 9.5-511(d)(5)b., the BOCC may consider the adoption of an ordinance enacting the proposed change based on one (1) or more of the following factors:

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

None.

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

None.

iii. Data errors, including errors in mapping, vegetative types and natural features described in Volume 1 of the Monroe County Year 2010 Comprehensive Plan:

None.

iv. New issues;

In order to improve near shore water quality, the State of Florida requires the provision of ~~centralized~~ wastewater service to eliminate sewage disposal surface water discharges within Monroe County by the July 1, 2010 (Chapter 99-395, Section 6, Laws of Florida). On June 18, 2008, the BOCC directed staff to amend the Comprehensive Plan and Land Development Regulations to allow wastewater service within the Coastal Barrier Resources System Overlay District. An amendment to Policy 102.8.5 of the Monroe County Year 2010 Comprehensive Plan is concurrently being considered to allow wastewater service within the Coastal Barrier Resources System Overlay District, <u>together with the provision of those utilities required to provide sanitary wastewater collection and treatment</u>. Provision of wastewater service within the coastal areas of Monroe County will further the mandate of the State to improve near shore water quality through the elimination of sewage disposal surface water discharges.

v. Recognition of a need for additional detail or comprehensiveness:

The proposed amendment clarifies Monroe County's intent to be a better steward of the natural environment by providing ~~centralized~~ wastewater service within Monroe County, which includes areas within the Coastal Barrier Resources System Overlay District.

vi. Data updates:

None.

C. *Consistency with the Principles for Guiding Development in the Florida Keys Area of Critical State Concern:*

All land development regulations enacted, amended or rescinded within a area of critical state concern must be consistent with the Principles for Guiding Development, Section 380.0552(7), Florida Statutes. The proposed GOP amendment promotes and furthers the following Principles in Section 380.0552(7):

i. To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.

The proposed amendment strengthens Monroe County's ability to provide ~~centralized~~ wastewater service to existing and future land uses within the unincorporated area. Growth controls presently in place, such as the Residential Rate of Growth Ordinance (ROGO) and Non-residential Rate of Growth Ordinance (NROGO), effectively moderates how much new development will occur within Monroe County.

One focus of the Area of Critical State Concern program was environmental protection. The associated ACSC work program supports the efforts by Monroe County to improve near shore water quality by developing and implementing ~~centralized~~ wastewater and storm water management plans.

ii. To protect shoreline and marine resources including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

The provision of ~~centralized~~ wastewater service will improve near shore water quality, enhancing the Florida Key's unique shoreline marine habitats which include mangroves, coral reefs, and seagrass beds,

iii. To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

~~Centralized~~ Wastewater service is an essential component of residential and nonresidential development, reducing the incidence of near shore water pollution that affects the well-being of both Florida Keys citizens and its tourist visitors who are an essential supporter of the local economy. Eco-Tourism has long been an economic driver within Monroe County and the Florida Keys. Maintaining the health of near shore habitat is consequently a high priority to the Florida Keys and its citizens.

iv. To limit the adverse impacts of development on the quality of water throughout the Florida Keys.

The provision of ~~centralized~~ wastewater service will improve near shore water quality through the elimination of septic hot spots and the use of uncontrolled individual septic systems whose contaminants leach into the adjacent near shore waters.

v. To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including sewage collection and disposal facilities.

The proposed amendment will give the Florida Keys Aqueduct Authority the ability to design, construct, and maintain ~~centralized~~ wastewater service throughout the Monroe County unincorporated area. Economies of scale are extremely important to public utilities in our current budgetary environment. Limitations on the expansion of wastewater services are prohibiting economies of scale. Allowing additional users to access the proposed ~~centralized~~ wastewater system will promote lower user fees. The present Coastal Barrier Resource System Overlay District limits our ability to do this.

vi. To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida Resource.

The maintenance of near shore water quality is an essential element of the Florida Keys. Pollution of the Keys' aquatic habitat can result in the permanent degradation and destruction of the Florida Keys' unique marine resources. Near shore water pollution has resulted in the periodic closing of public beaches and promotes algae growth that destroys coral reefs that are unique to the Florida Keys. Implementation of a County-wide ~~centralized~~ wastewater system will significantly reduce the level of near shore pollution resulting from individual septic

systems through protecting public health, safety and welfare as well as our most important resource.

D. *Impact on Community Character:*

The proposed amendment will allow existing and future land uses located within Coastal Barrier Resources System Overlay the potential of being served by ~~centralized~~ wastewater service, to promote, improve and protect near shore water quality. Monroe County presently maintains several unique land use controls, such as the Tier System, Rate of Growth Ordinance (ROGO), Nonresidential Rate of Growth Ordinance (NROGO), and the Incidental Take Permit (ITP, 6/9/96). It is anticipated that the proposed amendment will not affect the rate of new growth in Monroe County. However, the proposed amendment will insure that as growth proceeds within the context of these regulations, ~~centralized~~ wastewater service will be available concurrent with the impact of existing land uses and new development. No changes in land use density, intensity or community character is anticipated as a result of the proposed amendment. This amendment will result in the enhancement of near shore water quality, which will in turn promote a more sustainable shoreline and near shore aquatic environment.

V FINDINGS OF FACT

1. The Coastal Barrier Resources Act (CBRA) of 1982 established the Coastal Barrier Resources System (CBRS) to restrict the federally subsidized development of coastal barrier areas and specifically prohibited the "construction or purchase of any structure, appurtenance, facility, or related infrastructure" 16 U.S.C. 3504(a)(1) in said areas.

2. Monroe County has 15 designated units of the CBRS which can be found listed in Table 3.21 of the Monroe County Year 2010 Comprehensive Plan Technical Document and illustrated on the Existing Land Use Maps of the Comprehensive Plan Map Atlas.

3. Objective 102.8 of the Monroe County Year 2010 Comprehensive Plan states: "Monroe County shall take actions to discourage private development in areas designated as units of the Coastal Barrier Resources System.

4. Policy 102.8.5 of Monroe County Year 2010 Comprehensive Plan states: "Upon adoption of the Comprehensive Plan, Monroe County shall initiate efforts to discourage the extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone services to CBRS units".

5. Current Flood Insurance Rate Maps published for the National Flood Insurance Program by the Federal Emergency Management Agency, indicate there are five developed residential areas (with five structures or less per acre) and one commercial area that fall within the CBRS designation; and

6. On December 18, 2001, the Board of County Commissioners adopted Ordinance No. 043-2001, creating Section 9.5-258 of the Monroe County Code which established a Coastal

Barrier Resources System Overlay District, the purpose of which is to implement the policies of the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities to or through lands designated as a unit of the Coaster Barrier Resources System.

7. Pursuant to Chapter 99-395, Laws of Florida, Monroe County has been mandated by the State of Florida to provide a ~~centralized~~ sewer system by July 1, 2010 as a means of improving near shore water quality within the Florida Keys.

8. On June 18, 2008, the Growth Management Staff was directed by the Board of County Commissioners to amend the comprehensive plan and land development regulations to reword the prohibition on utilities such that the focus and priority be placed on wastewater first and any discussion of electric or any other utility be deferred until the wastewater goal is accomplished.

VI CONCLUSIONS OF LAW

1. The proposed amendment will not affect the existing or future land use character of Monroe County.

2. The proposed amendment is inconsistent with the Monroe County Year 2010 Comprehensive Plan. Amendments to the Comprehensive Plan are being considered concurrently.

3. The proposed amendment will allow a more comprehensive implementation of a ~~centralized~~ wastewater service system throughout the unincorporated area of Monroe County as required by Chapter 99-395, Laws of Florida.

VII RECOMMENDATION

Staff recommends approval to the Development Review Committee.

VIII ATTACHMENTS

1. Citizen Comment Letter Dated 7/7/08 from Alicia Roemmele-Putney
2. Monroe County Code and Comprehensive Plan Citation
3. Ordinance No. 43-2001
4. Coastal Barrier Resources Act
5. Coastal Barrier Resources Act Reauthorization
6. Chapter 99-395, Laws of Florida
7. Resolution No. 179-2008
8. CBRS No Name Key Unit FL-50 Map

Reviewed by _____